

DONNA M. VENERUSO
LEILA H. MONCHARSH

LAW OFFICES
VENERUSO & MONCHARSH
5707 REDWOOD RD., STE 10
OAKLAND, CALIFORNIA 94619
TELEPHONE (510) 482-0390
FACSIMILE (510) 482-0391

April 18, 2023

Rebecca Lind
Re: PLN 18532-ER01

Dear Ms. Lind:

Please find attached expert reports from William Weisgerber (Wildfire prevention and evacuation), Jeff Pack (Sound), and Clearwater Hydrology (Drainage).

I represent NSC. Because we have had insufficient time to review all of the material, especially the voluminous documents released Friday (April 14), I will not be able to respond to all of it by tomorrow (April 19) when the Planning Commission will hold its hearing to consider your recommendation to certify the EIR and grant the PUD permit, as requested by Head Royce School. I am filing with this letter, besides the expert reports, Oakland Fire Department Records and a 2012 complaint with four volumes of evidentiary support. I will need time to supplement the rest of the records supporting the NSC's position that it opposes the project in its current condition and also opposes the certification of the EIR as it is deficient under CEQA.

A. The EIR's Analysis of Wildfire Safety and Evacuation Impacts Is Inadequate

The FEIR concedes that Mr. Weisgerber is a recognized expert on the topic of wildfire prevention and evacuation procedures: "Mr. Weisgerber clearly brings considerable expertise on the topic of emergency preparedness and evacuation planning." (FEIR, p. 3-11.) It then ignores most of what Mr. Weisgerber said about the emergent need for an evacuation plan. Instead, it asks that the decision-makers put off this requirement to some other, way down the road, after the first building is open for occupancy, time in the future to come up with one. This violates both CEQA and common sense.

The time to produce the evacuation plan is during the vetting of the project within the CEQA process, not waiting for questionable mitigation measures to kick in down the road. The EIR must show that the mitigation of an emergency evacuation plan will indeed mitigate the significant environmental impact of exacerbating emergency evacuation caused by increased enrollment and staff by 361 persons, including vulnerable children. Impermissible deferral of mitigation measures occurs under CEQA when the agency puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described. (Guideline, § 15126.4.)

The missing evacuation plan is the potential mitigation measure and the decision-makers have an obligation to review that plan and an analysis of why the plan will successfully mitigate the inability of the people uphill from the school, the school occupants, and the neighbors from safely evacuating from a wildfire in the VHFRZ. The FEIR proposal of waiting until later to come up with a plan improperly defers “the formulation of mitigation measures until after project approval; instead, the determination of whether a project will have significant environmental impacts, and the formulation of measures to mitigate those impacts, must occur *before* the project is approved. [Citation.]” (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 906; see also CEQA Guidelines, § 15126.4, subd. (a)(1)(B).)

“[A]n exception to this general rule applies when the agency has committed itself to specific performance criteria for evaluating the efficacy of the measures to be implemented in the future, and the future mitigation measures are formulated and operational before the project activity that they regulate begins. [Citation.]” (*Center for Biological Diversity v. Department of Conservation, etc.* (2019) 36 Cal.App.5th 210, 239, 248 Cal.Rptr.3d 449.) Thus, “ “ ‘for [the] kinds of impacts for which mitigation is known to be feasible, but where practical considerations prohibit devising such measures early in the planning process ..., the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval.’ ” ” (*Oakland Heritage Alliance v. City of Oakland, supra*, at p. 906.)

“Conversely, “[i]mpermissible deferral of mitigation measures occurs when [the agency] puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described....” (*Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 280-281— quotation marks omitted.)

Here, there is no evidence that the risk of lost lives and property as people try to escape wildfire can be adequately mitigated by any evacuation plan. In its analysis, the EIR points to no study or modeling that supports its conclusion that an evacuation plan can reduce the admitted impact of increased students and staff to less than significant. As such, the EIR has failed to meet its obligation as an informational document. CEQA legally required that the EIR must analyze and show that an evacuation plan can satisfactorily reduce the impact to less than significant. (PRC (§§ 21002.1, subd. (a), 21100, subd. (b), *King And Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 851 (*King*).)

The EIR has failed to analyze through modeling what the evacuation of nearly 9,000 people would have on secondary and tertiary escape routes. Nor does it include any traffic study regarding 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. There is no discussion in the EIR regarding the role of panic and chaos in determining whether it is even possible to safely evacuate so many people, including the additional 344 school-aged children during a mass evacuation from the VHFSHZ where HRS is located.

The EIR also does not provide baselines showing pre-project whether it would be possible to evacuate the current population at HRS and then “it should be of paramount importance to update the existing modeling for any proposed expansion such as the HRS South Campus—as part and parcel of due diligence.” (Weisberger letter, pp. 2-3.) 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. (*Save our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 125 [“baseline determination is the first rather than the last step in the environmental review process”]; see also *Communities for a Better Environment v. City of Richmond* (2010) 184

Cal.App.4th 70, 89.) When an EIR omits relevant baseline environmental information, the agency cannot make an informed assessment of the project's impacts. (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.)

In *Vineyard Area Citizens For Responsible Growth, Inc. v. City Of Rancho Cordova* (2007) 40 Cal.4th 412, 442 (*Vineyard*), our Supreme Court stated:

The data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project. (*Ibid.* – quotation marks and cites omitted.)

The baseline modeling data regarding current possible evacuation conditions at HRS is completely missing. Actually, the only data from Mr. Wong's report and the City's fire department inspections shows that currently the North Campus would trap children inside due to the blocked gates and access points.

Page 3-6 of the FEIR basically says 'well, there's nothing stopping the City Council from making a policy decision that the project is appropriate for the proposed location.' It then says "However, the Project does present a very important concern pertaining to increasing the number of children that would be present within an area of very high fire hazard risk, and the Draft EIR does present sufficient information for City decision-makers to evaluate that risk when weighing the relative merits of the proposed project. . . ." It is strange to think that anyone would expect City Council members to sit there and weigh the so-called "merits of the proposed project" having a school for wealthy families against saving lives in the event of a likely wildfire. CEQA expects much more out of its City Council and so does the public.

Failing to go through CEQA's analysis and failing to provide baseline information does preclude the City Council from just rubber-stamping the project application. There is not enough information for decision-makers and the public to do anything more than speculate about whether some nonexistent evacuation plan might even work to save one, let alone potentially thousands of lives. (Weisgerber, pp. 3-4.) The only involved policy decision is whether the City Council wishes to take on the risk of

exacerbating the situation of already having an emergency evacuation problem, along with the financial liability.

The FEIR statement on page 3-9 that HRS would only be putting at risk evacuees 20% of the time is not accurate. The proposed conditions of approval provide a very liberal list of events and HRS is in use at least from 6:00 a.m. to 6:00 p.m. weekdays. In the past it has often operated 18 hours per day – all day during school and after-school activities and all evening for events. Further, its recent claim that it would not rent out its facilities for outside organizations does not solve the problem that the facilities will include four theaters along with other accessories consistent with an event center, not a school. It is a short jump to say that all of their events will belong to the school with no explanation why they would need four theaters unless they actually plan to use all of them and for fundraising of some sort. That use is going to overlap with school operations, nights, and weekends. So, 20% is an untruthful representation – and also an immoral approach to emergency evacuation.

The EIR does not analyze HRS' long history of failing or refusing to comply with its use permit. Following a neighborhood complaint to revoke or modify its use permit in 2012, the school agreed in 2016 to a modified use permit requiring it to prepare an emergency plan in 2016. The school ignored the condition and did not prepare or file with the planner any emergency plan until 2019 and only then, after the neighbors pointed out the violation. And then, it did not contain any evacuation plan. HRS is still in violation of the condition. (See current 2016 CUP for HRS.)

According to the fire department records, HRS has routinely failed to comply with vegetation management inspections. In 2018 alone it took four violation notices before HRS got into compliance with fire vegetation management regulations. It has repeatedly failed the first inspection and delayed correcting the violation until the start of the school year at the end of August, having skipped all of the summer. After August, it failed to maintain vegetation management when inspected the following spring. (Submitted Fire Department records.)

Further, even the EIR preparer's fire expert found that the gates were blocked, locked, or in some other way unusable for emergency exit. Those

observations were made after HRS submitted its application for the instant project. Certainly by the time Mr. Wong found the access points blocked in 2021 or thereabouts, HRS should have had down the concept of emergency evacuation.

Just acknowledging some of the problems with HRS's violations of fire regulations and ignoring the rest of the history does not comply with CEQA requirements. Those facts alone, as evidenced by the NSC 2012 Complaint with four volumes of evidence all the way to today should have caused the EIR preparer to realize the admitted impact of the project on evacuation could not be reduced to less than significant. The EIR failed to show how the mitigation of a future evacuation plan would even occur. It appears that the approach was 'just trust HRS because they are a wealthy private school and therefore, can be trusted.' HRS burned through that trust with the neighbors and city planners decades ago from repeated violations of their use permits. In contravention to CEQA's legal requirements, 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. (PRC (§§ 21002.1, subd. (a), 21100, subd. (b), *King And Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 851 (*King*).

Further, the "mitigation measures discussed in the EIR should be feasible," meaning that they are "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (*King, supra*, 45 Cal.App.5th at p. 852.) The record evidence demonstrates that the evacuation plan was already necessary in 2016. There is nothing in the record to support the long future timeline for getting that plan completed now. Furthermore, the EIR does not fulfill its obligation to either mitigate the evacuation dangers or pursue another alternative.

The Supreme Court has described the alternatives and mitigation sections of CEQA as 'the core' of an EIR." (*Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 597-603 – cite omitted.) Also:

In furtherance of this policy, section 21081, subdivision (a), contains a substantive mandate requiring public agencies to refrain from approving projects with significant environmental

effects if there are feasible alternatives or mitigation measures that can substantially lessen or avoid those effects.

(*Ibid.* – quotation marks and cites omitted [appellate court upheld city’s refusal to grant demolition permit where there was no showing of infeasibility to preserving historic resource].)

Here, the EIR needed to either show that an evacuation plan would reduce the 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. It did neither.

Mr. Weisgerber describes the expectations of the California Attorney General as to what should be analyzed in an EIR. (Weisgerber, p. 6.) The FEIR did not consider this laundry list of items that should have been provided as part of the analysis. CEQA requires agencies to analyze any significant environmental effects a project might cause or risk exacerbating by bringing development and people into the area affected. (14 CCR, § 15126.2(a); *Cal. Bldg. Indus. Assn.*, *supra*, 62 Cal.4th at 385.) This includes effects not only to flora, fauna, and other natural resources in the vicinity of the project, but also to *humans*. (Pub. Res. Code § 21083(b)(3) [agency must find impacts significant if project “will cause substantial adverse effects on human beings, either directly or indirectly”]; 14 CCR, § 15065 [project’s potential to cause “substantial adverse effects on human beings, either directly or indirectly” must be evaluated under CEQA].) The EIR violated this mandate by ignoring the Attorney General’s directive as to what should be analyzed in an EIR.

Put another way, 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. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502.) Nearby residents, parents, uphill neighbors and employees at HRS have a right to know the project’s impacts on evacuation. Without this crucial information, the EIR fails as an informational document. (*Id.* at 515.)

The FEIR makes a plethora of conclusory statements in responses to comments B-9 and B3-2, like that since HRS is located adjacent to Lincoln

Avenue, it presents a different situation than increasing density in the hills above highway 13 through increased proliferation of accessory dwelling units, a practice the City Fire Chief has criticized. The Fire Chief's concern about interfering with evacuation routes is no different because HRS is on Lincoln Avenue, an admitted fire escape route. There is no evidence to support the EIR's conclusion, such as modeling to show that Lincoln Avenue would remain serviceable as an escape route in the event of a wildfire, contrary to the FEIR response B-9.

Unsupported conclusory statements do not suffice to support the FEIR's position that somehow, being located adjacent to Lincoln Avenue, will reduce the chances of lost lives due to blocking this wildfire escape route. (Guidelines, § 15126.6, subds. (c), (f)(2)(B)), [unsupported conclusory statements do not suffice], (*Laurel Heights, supra*, 47 Cal.3d at p. 404.) The FEIR's assumptions, premised on ambiguous generalizations rather than analysis and evidence, "failed to serve the purpose of enabling informed decision-making and public discussion." (See *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750-751.)

The EIR preparer could have chosen to obtain modeling of a probable wildfire evacuation situation but chose not. It also chose not to obtain an evacuation plan with supporting facts that would show it is possible to reduce the project's evacuation impacts to less than significant. It did none of that and probably for a good reason, e.g., that it is not possible to reduce the impact of the project to less than significant. At that point the FEIR was required to consider alternatives, such as the school opening a satellite school somewhere other than on Lincoln Avenue. (*Make UC A Good Neighbor v. Regents of University of California* (2023) 88 Cal.App.5th 656, 669.)

If there is no feasible mitigation or alternative available, the FEIR should have discussed overriding considerations. When an EIR has identified significant environmental effects that have not been mitigated, an agency may not approve the project unless it first finds additional mitigation infeasible due to "[s]pecific economic, legal, social, technological, or other considerations . . ." (Pub. Res. Code §21081(a)(3); see 14 CCR, §15091(a)(3).) An agency rejecting a mitigation measure as infeasible must be supported by substantial evidence in the record and "must explain in meaningful detail the reasons and facts supporting that conclusion." (*Marin Mun. Water Dist. v. KG Land Cal. Corp.* (1991) 235 Cal.App.3d 1652, 1664; see Pub. Res. Code,

§21081.5; 14 CCR, §15091(b).) Conclusory statements are inadequate. (*Village Laguna of Laguna Beach v. Bd. of Sups.* (1982) 134 Cal.App.3d 1022, 1034-1035.)

Yet, the EIR is totally silent as to why it is necessary to wait until the project is already constructed and right before occupancy before an evacuation plan is prepared. It does not say why it is infeasible to require an evacuation plan now when the plan can be vetted by experts, why an alternative is not viable, or why overriding considerations justify the City Council approving the project now with no evacuation plan. For these reasons, the EIR is deficient, and the City Council should not certify it.

In response to comment B3-8, the FEIR claims that OFD was consulted, but provides no opinions from OFD. Surely, something is missing! It is unheard of for an Oakland Fire Chief to remain muted on the topic of fire evacuation. The current chief was very outspoken about adding ADUs to the very high fire risk zone, despite political pressure to approve housing permits. It is hard to believe he has nothing to say on this topic of adding 361 people, including vulnerable students, into the middle of Lincoln Avenue.

The response to comment B3-13 again totally ignores that HRS has a long history of ignoring vegetation management requirements. As stated above, the EIR must show that a proposed mitigation will satisfactorily lessen an impact to less than significant. Just OFD and neighbors telling HRS repeatedly that they need to comply with fire codes, and HRS ignoring it all, does not equate to an adequate mitigation.

The response to comment B3-22 overlooks that it is HRS that is creating the evacuation problem, not the churches and the neighbors. Only HRS is located half-way down a very steep hill, has a main campus at the bottom of a steep canyon requiring children to climb out of it, insists on not providing sufficient onsite parking spots for all of its SOVs and busses, is constantly using public streets for parking, wants inconvenient tandem parking, and keeps expanding the number of students and staff that would need to be evacuated. The churches are located at the top of the Lincoln Avenue hill adjacent or very near highway 13 and its frontage road, provide an abundance of onsite parking to keep cars from blocking Lincoln Avenue during an emergency, have several escape routes, only operate in any large numbers on the weekend and not during HRS's hours, do not use public infrastructure for parking, and are not cheek and jowl next to houses. Their

staff and visitors can easily escape by foot or car. Ability Now is not located half way down the hill and has a very small number of persons using it, and again – plenty of onsite parking to avoid blocking Lincoln Avenue as an escape route. It also is not right next to housing.

As discussed above, the EIR also gave short shrift to analyzing emergency access both for people to escape a wildfire and for emergency vehicle access. We now know that one of the major problems during the 1991 wildfire that engulfed parts of Oakland and Berkeley was the lack of adequate means for simultaneous exit by fleeing residents and entry by fire personnel. Despite how important this issue has been in the past, and regardless of the dependence by fire personnel in the area above and through the Lincoln Avenue area having to rely on narrow winding roads with limited capacity, the EIR does not tell us its plan for solving that very problem. The public and decision makers lacked the information necessary to assess whether the project would result in inadequate emergency escape and emergency access. (See *County of Fresno, supra*, 6 Cal.5th at 516.)

The EIR's so-called "objectives" to reduce the risk of wildfire emergencies are nothing more than wishes rather than analysis. It does not even inform us how many cars will likely be on the roads during a potential evacuation, the capacity of the roads to handle evacuation, and how long it will take for evacuation to occur. The EIR contains very little information, indicating that there was any thought put into the specifics of a possible evacuation plan. (*League to Save Lake Tahoe Mountain etc. v. County of Placer* (2022) 75 Cal.App.5th 63, 134-143 [3DCA found adequate an EIR's analysis and mitigations for wildfire safety and evacuation because it contained many specifics supporting its analysis and its mitigation plans].)

In sum, the EIR's analysis of impacts on emergency response and evacuation plans contains only bare conclusions and opinions, with no reference to evidence or facts. CEQA requires more, and the City Council's approval of such an inadequate EIR would violate CEQA as a matter of law. (See *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918 935-36 [EIR's omission of essential information is a procedural violation subject to de novo review].)

Similarly, the EIR's reliance on its compliance with various codes and regulations pertaining to fire prevention to justify the EIR's less than significant determination also fails because compliance with applicable

regulations is not sufficient to conclude that a project will reduce a significant impact to less than significant. It does not relieve the EIR of its duty under CEQA to disclose project impacts. (*Kings County, supra*, 221 Cal.App.3d 692, 716-17; *Amador Waterways, supra*, 116 Cal.App.4th at 1108-09.) Finally, there is no explanation for why it would be necessary to wait, perhaps for decades, before HRS submits an evacuation plan that should have been included in an emergency plan – one that was already ordered in 2016 and ignored by HRS first by 2019 and now by 2023.

I will comment on the other two reports tomorrow morning. Thank you for considering my comments.

Sincerely,

Leila H. Moncharsh

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

Attachments previously emailed

cc: Client

March 20, 2023

William Weisgerber, President
Weisgerber Consulting
El Macero, CA 95618

Ms. Leila Moncharsh, Attorney at Law
5707 Redwood Rd., # 10
Oakland, CA 94619

Ms. Moncharsh:

At your request, Weisgerber Consulting has reviewed the Final EIR (FEIR) for the proposed expansion of the Head Royce School (HRS) Planned Unit Development (PUD). As President of Weisgerber Consulting, I am specifically responding to FEIR comments on the following areas of my professional expertise on mass evacuation, and contained in my earlier letter, dated December 7, 2021, regarding the Draft EIR (DEIR) for HRS:

- **Chapter 3**—*Master Response to Comments on Evacuation (pages 3-8 to 3-11)*
- **Chapter 4**—*Response to Comment Letter B – Law Offices of Veneruso & Moncharsh, Leila H. Moncharsh, December 20, 2021 (pages 4-17)*
- **Chapter 4**—*Response to Comment Letter B3 - Weisgerber Consulting, December 7, 2021 (pages 4-50 to 4-56)*

Professional Background: To reiterate the December 7, 2021, letter, my career qualifications consist of a professional fire service career spanning over 45 years, rising through the fire service ranks from firefighter and engine company officer to include over 30 years as a chief officer (Battalion Chief, Operations Chief, Fire Marshal, and Fire Chief). My responsibility within the chief officer ranks not only included fire administration and incident command, but also California Fire Code regulatory compliance and enforcement, oversight and direct management of local emergency services, local hazard mitigation planning (including emergency evacuation planning), and emergency/disaster response operations. I also have a proven background in interim chief and fire marshal service (post-retirement), as well as consulting on local hazard mitigation, emergency planning, and fire prevention bureau administration and operations.

FEIR Opinion Background: Among the mission critical life-safety issues insufficiently addressed in the FEIR review of the HRS PUD Project, is the non-existence of a realistic, on-going, and verifiable evacuation plan for the HRS campus site. Which is of primary concern.

WUI EVACUATION RESEARCH:

To this point, there has been a plethora of research published on the specific topic of WUI evacuation, compiled from a cohort of global experts, by the National Fire Protection Association (NFPA) Research Foundation (2021). This work introduces an evacuation modeling platform called **WUI-NITY: a platform for the simulation for the wildland-urban interface fire evacuation** (specifically concentrating on the WUI commu-NITY). The platform accounts for fire spread, pedestrian movement, and traffic; in consideration of situational awareness by responders and human behavior of residents *in evacuation scenarios under the life-threatening duress of an actual emergency and the dynamic evolution of the*

situation. Its credibility is furnished through rigorous testing (working closely with stakeholders to ensure the model is valid and valuable), by enhancing outputs to provide insights not ordinarily generated elsewhere (i.e., trigger buffer designs; vulnerability assessments, effects on traffic impact, panic, and life-safety values).

<https://www.nfpa.org/News-and-Research/Data-research-and-tools/Wildland-Urban-Interface/WUINITY-a-platform-for-the-simulation-of-wildland-urban-interface-fire-evacuation>

Additionally, in the wake of the 2018 Camp Fire disaster in Paradise, CA, there have been numerous high-profile engineering studies prepared specifically on modeling WUI Egress and Evacuation, including the following:

UCLA Engineering Department Study prepared for PG&E (2022);

https://static1.squarespace.com/static/54628adae4b0f587f5d3e03f/t/62543e3b217100425b1aff5f/1649688125299/GIRS-2022-03_Wildfire+Egress+Model.pdf

Caltrans Division of Research, Innovation and System Information (DRISI) (2021); <https://dot.ca.gov/-/media/dot-media/programs/research-innovation-system-information/documents/preliminary-investigations/pi-0278-a11y.pdf>

American Society of Civil Engineers (ASCE) (2019). <https://ascelibrary.org/doi/10.1061/JTEPBS.0000221>

Furthermore, the **Readiness and Emergency Management for Schools (REMS) Technical Assistance (TA) Center** has prepared an 11-page Wildfire [Preparedness] Fact Sheet for K-12 schools and Institutes of Higher Learning (IHLs) (2018). https://rems.ed.gov/docs/WildfireFactSheet_508C.pdf

None of these innovative research products of advanced methodologies have been referenced or incorporated into the planning of this Project, the DEIR, or FEIR.

The preparers of the FEIR have anchored an HRS mass evacuation strategy to the viability of Lincoln Avenue as the primary route for the impact on capacity during a mass evacuation—experiencing a simultaneous convergence of the HRS and surrounding population in an uncontrolled manner. Moreover, there has been no consideration given toward modeling secondary and tertiary routes (essential elements to emergency planning). A strategy of this depth requires a mission critical proof-of-concept for accommodating the additional student and staff population (361) to the existing traffic and pedestrian load on campus; and in full consideration of the existing uphill population (estimated in the FEIR at only 50% of actual population and still totaling 8,945 people of myriad ages and abilities). Furthermore, it remains unconvincing that the FEIR suggests K-12 aged students (particularly lower primary grades) will be able to just calmly march down the street amidst the other frantic population trying to escape harm's way on foot, bicycle, or vehicle.

It is recommended that decision-makers for both the City of Oakland and HRS view the KTVU-2 raw news footage of the 1991 Oakland Hills Fire evacuation attempts, and evaluate the impact of “history repeating itself,” on the heels of this decision. The first 2-minutes of this 6-minute clip (link below) provides real-world, Oakland evidence, sufficient to give pause for further thoughtful consideration toward adding 344 school-aged children to the equation of mass evacuation from the VHFSHZ, in which HRS is located.

<https://www.youtube.com/watch?v=NseOhUqZAh0>.

The conclusions in this response to the HRS FEIR are anchored in the fact that the caliber of evacuation modeling referenced herein should—in any practical sense—already be in place for existing conditions at HRS. It then should be of paramount importance to update the existing modeling for any proposed expansion such as the HRS South Campus—as part and parcel of the due diligence.

CHAPTER 3—MASTER RESPONSE TO COMMENTS ON EVACUATION (pages 3-8 to 3-11)

[FEIR] Chapter 3, page 3-4—Project Impacts (excerpted):

“...public comments on the [DEIR] do not identify any reasons that the Project...would have any reasonable possibility of significantly increasing the risk of fire hazards in the area...the risk of existing wildfire hazards may affect the Project is not a CEQA threshold...”

OPINION: Regardless of the CEQA thresholds set for exacerbating existing conditions, the introduction and presence of an increased vulnerable population into the VHFSHZ, by definition, exacerbates the severity of the existing condition of the life-safety situation. In the absence of recognizing this level of life-safety impact—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.

[FEIR] Chapter 3, page 3-5—Existing Wildfire Risks vs. Exacerbation of Wildfire Risks (excerpted):

“... While not an impact of the Project, the Draft EIR certainly does not suggest that the risk of wildfire hazard that is present at the site and in the surrounding area is less than significant, but rather highlights the significance of the risk that is present...No public comments on the Draft EIR suggest that the Draft EIR did not identify this potential impact such that it represents a new impact not discussed in the Draft EIR, or that this impact is substantially greater than as described in the Draft EIR...”

OPINION: 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.

[FEIR] Chapter 3, page 3-6—Comments on Merits of the Project (excerpted):

“...That CEQA consideration does not preclude City decision-makers from considering, based on substantial evidence, whether the Project is appropriate at the location proposed...However, when considering the relative merits of the Project, the City can consider whether it is prudent to increase the number of people, especially student populations, in an area of high wildfire risk...”

OPINION: Fully concur that this remains a policy-level decision as to whether the Project is appropriate for the location. As there is substantial evidence that the HSR Project has not performed sufficient due diligence with respect to significant life-safety issues associated with the addition of 344 vulnerable population to the VHFSHZ. Moreover, it is not prudent to approve the Project in its current form.

[FEIR] Chapter 3, page 3-6—Comments on Merits of the Project (excerpted):

“...However, the Project does present a very important concern pertaining to increasing the number of children that would be present within an area of very high fire hazard risk, and the Draft EIR does present sufficient information for City decision-makers to evaluate that risk when weighing the relative merits of the proposed Project...”

OPINION: Fully concur that the Project does present a very important concern pertaining to increasing the number of children that would be present. However, strongly disagree that the Draft EIR does

present sufficient information for City decision-makers to evaluate that risk when weighing the relative merits of the proposed Project. To the contrary, it is the DEIR *comment letters* that present sufficient information for City decision-makers in this risk evaluation.

[FEIR] Chapter 3, page 3-8—Project Impacts (excerpted):

“...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...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...As such, the Project does not conflict with or interfere with any such plans...”

OPINION: The City of Oakland not having a publicly facing evacuation plan for the Oakland Hills does not mitigate, nor preclude, HRS from professionally developing their own campus safeguards for mass evacuation planning in a disaster.

[FEIR] Chapter 3, page 3-8—Exacerbation of Evacuation Congestion (excerpted):

“...Irrespective of the presence (or lack thereof) of a publicly facing evacuation plan, the hazards of a wildfire could be exacerbated by the Project, if the Project resulted in a condition whereby community residents were unable to evacuate safely due to increased traffic congestion on potential evacuation routes. As noted in a recent California Supreme Court decision (Center for Biological Diversity v. Lake County, Superior Court of the State of California, Case #CV42115, January 2020), “additional people competing for the same limited routes can cause congestion and delay in evacuation, resulting in increased wildfire related deaths. By bringing a significant number of people into the area, [the project] may significantly exacerbate existing environmental hazards, specifically, wildfires and their associated risks. Therefore, this is an issue that is required to be addressed under CEQA.” ...”

OPINION: Fully Concur

[FEIR] Chapter 3, page 3-9—Exacerbation of Evacuation Congestion (excerpted):

“...Under such a catastrophic scenario, as many as 8,945 people may be seeking to use Lincoln Avenue as an evacuation route to safe, downhill locations. Under a worst-case scenario that assumes Lincoln Avenue as the only evacuation route from the School, the Project could add as many as 361 more people (or an approximately 4 percent increase in people) using Lincoln during an evacuation. However, the School is not in full session year-round, is open only about 50 hours per week, and has a limited number of special evening events that are to be finished by 10:00 pm. These conditions effectively limit the School’s full operations to approximately 20 percent of the total hours of any given year, reducing the chances that full occupancy and operation at the School would occur at the same time as an emergency evacuation...”

OPINION: Disaster and emergency planning, particularly mass evacuation, must operate on the premise of worst-case scenario. To suggest that the chances of an emergency or disaster is reduced because HRS is only at full occupancy and operation 20% of the time is unconscionable. That is not the premise you would want planned for your airline, your elevator, your fire alarm, or sprinkler system. And it should be no less diligent for mass evacuation planning, training, and execution for a vulnerable school population located in the VHFSHZ.

[FEIR] Chapter 3, page 3-10—Evacuation Planning as Reasonable and feasible Mitigation (excerpted):

“...They also recommend developing a better mechanism to communicate directly with local officials and Incident Commanders; identifying primary and secondary destinations and routes for an evacuation, and effectively communicating these destinations to parent and guardians; and regularly practicing an evacuation in concert with the Oakland Fire Department...”

OPINION: Fully concur.

[FEIR] Chapter 3, page 3-10—Evacuation Planning as Reasonable and Feasible Mitigation (excerpted):

“...intended as a condition of approval for the Project’s PUD permit, requiring a detailed implementation plan as a precondition prior to issuance of a certificate of occupancy for the first building permit that would enable an increase of current student enrollment. It would serve to further increase student safety, rather than significantly exacerbating existing environmental hazards in the event of an extreme wildfire event...”

OPINION: To ensure full compliance with this crucial requirement of life-safety, disaster, and emergency planning, it would be most precise to require the approval of a complete emergency mass evacuation plan as part of the EIR, and *before granting any building permits* for the PUD. The FEIR language is ambiguous and open to broad (and detrimental) interpretation.

[FEIR] Chapter 3, page 3-11—Additional Mitigation (excerpted):

“...City decision-makers may believe that these recommendations require further evaluation and detail, or additional coordination with the OFD and the City’s Emergency Services Department, or that on-going City monitoring of the School’s implementation of these recommendations is warranted...”

OPINION: It is recommended that City decision-makers make this condition mandatory.

BEST PRACTICES FOR ANALYZING AND MITIGATING WILDFIRE IMPACTS OF DEVELOPMENT PROJECTS UNDER CEQA:

In 2022, the California Attorney General became active in local land use issues concerning rural development and wildfire risk, focusing on the capability of the CEQA documentation for projects in higher fire risk areas. The Attorney General also issued a CEQA “best practices” memorandum in October 2022. This Memorandum provides detailed recommendations for how local governments should be evaluating risk and mitigation in higher fire risk areas.

The California Attorney General’s letter is another resource the FEIR preparer should have studied and incorporated into its report. <https://oag.ca.gov/system/files/attachments/press-docs/Wildfire%20guidance%20final%20%283%29.pdf> (Attorney General of California, Rob Bonta, October 2022, pp. 10-11, 12).

Many of the variables that should be considered in analyzing a project’s impact on wildfire risk are in the following excerpts from the Attorney General’s memorandum, which outlines several key mass evacuation “best practices” for further deliberation under the CEQA review:

“...IV. C. Analyzing the project’s impact on evacuation and emergency access

Evacuation modeling and analysis should include the following:

- *Evaluation of the capacity of roadways to accommodate project and community evacuation and simultaneous emergency access.*
- *Assessment of the timing for evacuation.*
- *Identification of alternative plans for evacuation depending upon the location and dynamics of the emergency.*
- *Evaluation of the project's impacts on existing evacuation plans.*
- *Consideration of the adequacy of emergency access, including the project's proximity to existing fire services and the capacity of existing services.*
- *Traffic modeling to quantify travel times under various likely scenarios.*

In considering these evacuation and emergency access impacts, lead agencies may use existing resources and analyses, but such resources and analyses should be augmented when necessary. For example, agencies should:

- *Utilize information from the EIR's analysis of traffic/transportation impacts, but they should not limit themselves to that information, which may not reflect the impact of emergency conditions on travel times.*
- *Consult with local fire officials and ensure that assumptions and conclusions regarding evacuation risk are substantiated with sound facts. Emergency conditions may not allow for ideal evacuation scenarios—staggered, staged, or targeted evacuation in response to a wildfire may sometimes be possible, but human behavior is difficult to predict and wildfires can be erratic, unpredictable, and fast-moving.*
- *Consider impacts to existing evacuation plans, but recognize that, depending on the scope of an existing evacuation plan, additional analyses or project-specific plans may be needed. Community evacuation plans often identify roles and responsibilities for emergency personnel and evacuation routes, but do not necessarily consider the capacity of roadways, assess the timing for community evacuation, or identify alternative plans for evacuation depending upon the location and dynamics of the emergency.*
- *Avoid overreliance on community evacuation plans identifying shelter-in-place locations. Sheltering in place, particularly when considered at the community planning stage, can serve as a valuable contingency, but it should not be relied upon in lieu of analyzing and mitigating a project's evacuation impacts.*

IV. D. Mitigating wildfire risk, evacuation, and emergency access impacts

- *Enhanced communication to the project population about emergency evacuation plans and evacuation zones.*
- *Parking limitations to ensure access roads are not clogged with parked vehicles..."*

CHAPTER 4— RESPONSE TO COMMENT LETTER B – LAW OFFICES OF VENERUSO & MONCHARSH, LEILA H. MONCHARSH, DECEMBER 20, 2021 (pages 4-17)

[FEIR] Response to Comment B-9 (excerpted):

“...This comment cites statements made by the Oakland’s Fire Chief and Deputy Fire Chief about the dangers of increasing density and blocking evacuation routes in and below the hills. These statements were made during a public hearing on the merits and dangers of continuation of the Accessory Dwelling Unit provision of the City Planning Code within the Oakland Hills. These comments were not made in reference to Head-Royce School. Head-Royce School and the proposed South Campus have very different access conditions by being located adjacent to Lincoln Avenue, and the School would not include a full-time residential population....”

OPINION: This **FEIR Response to Comment B-9** makes a bright-line distinction between the impact of Accessory Dwelling Units and the HSR Project, when they are addressing the same phenomena of adding a significant number vulnerable population to a mass evacuation equation. The FEIR preparer’s contention that Lincoln Avenue has sufficient capacity is unfounded, as there has not been any credible modeling study on the impacts of this additional load on Lincoln Avenue’s capacity to remain serviceable for such an evacuation. This is a very dangerous assumption to make, absent any practical data from a realistic, on-going, verifiable plan that has been developed through a systematic modeling platform.

CHAPTER 4—RESPONSE TO COMMENT LETTER B3 - WEISGERBER CONSULTING, DECEMBER 7, 2021 (pages 4-50 to 4-56)

[FEIR] Response to Comment B3-2 (excerpted):

“...By introducing the pedestrian evacuation strategy, faculty and students from Head-Royce (including the additional population attributed to the Project) would not compete for the limited evacuation routes with residents in the surrounding area, and would not add additional vehicle congestion and delay, and this potentially significant impact would be reduced to less than significant levels. The recommended evacuation strategy identified in the Evacuation Planning Recommendations report (an Appendix to the Draft EIR) would serve to further increase student safety, rather than significantly exacerbating existing environmental hazards in the event of an extreme wildfire event. If required as conditions of Project approval, these recommendations would also serve to address cumulative emergency evacuation conditions throughout the Oakland Hills by reducing potentially conflicting evacuation conditions...”

OPINION: The FEIR response statements to **Comment B3-2** are unfounded, as there has been no bona fide modeling of a proposed mass evacuation plan to establish a proof-of-concept. The preparers of the FEIR envision the students calmly *walking* down the sidewalk under intense emergency conditions, when there is no practical or experiential point of reference such as is documented in raw news-video footage of the evacuation efforts during the wind-driven, 1991 Oakland Hills Fire.

<https://www.youtube.com/watch?v=NseOhUqZAh0>.

This footage represents the worst-case scenario, and which should be the benchmark for emergency planning of mass evacuation in the Oakland Hills. The circumstances in 1991 included: traffic stalled to a halt, public panic, residents *running* down the sides and middle of the street, burning material trapped under vehicles, and burning brands of fuel carried by winds at street level. Additionally, there is no data or reasonable conclusion to support the FEIR statements of “...not competing for limited evacuation routes...” “...reduction of significant impact to less than significant...”, nor “...increased student safety...”

[FEIR] Response to Comment B3-5 (excerpted):

“...As indicated in the Master Response to comments on Evacuation Planning, Head-Royce School shall be required to prepare a stand-alone Emergency Evacuation Plan for the School...This Emergency Evacuation Plan for the School shall be subject to review and approval by the Oakland Fire Department, with input from Emergency Services, OPD Traffic Division, and the Public Works’ Transportation Planning staff. This Plan shall consider the recommendation to subscribe to the AC Alert program...”

OPINION: Fully concur with the requirement that an approved Emergency Evacuation Plan be a condition of the EIR approval for the Project, and that it be vetted *prior to granting any building permits.*

[FEIR] Response to Comment B3-8:

“City Planning staff and the EIR consultant team did discuss this project with OFD to obtain comments and source materials regarding existing evacuation plans for the area. OFD also reviewed the administrative Draft EIR prior to publication, but provided no additional comments.”

OPINION: The OFD was shown the administrative draft of the DEIR. However, there is no indication that the OFD has been afforded the opportunity to review and opine on the comment letters for the DEIR, and to give OFDs thoughts prior to the FEIR. This appears to be an egregious omission in the process.

[FEIR] Response to Comment B3-13 (excerpted):

“... Pursuant to this SCA, Head-Royce School would be required to submit a Vegetation Management Plan to the Oakland Fire Department for review and approval prior to approval of any construction-related permit, with ongoing monitoring and inspection by OFD prior to, during, and after construction of the Project...”

OPINION: An HSR Vegetation Management Plan needs to be fully vetted as part of CEQA , the EIR, and *prior to granting any building permits.* Fully concur with the requirement that HSR submit to the Oakland Fire Department for review and approval prior to issuance of any construction-related permits, with ongoing monitoring and inspection by OFD prior to, during, and after construction of the Project.

[FEIR] Response to Comment B3-15 (excerpted):

“...The DEIR does note that the ABAG Annex for Oakland and the City of Oakland Local Hazard Mitigation Plans are silent on a publicly facing emergency evacuation plan that would include HRS, and that without such a public-facing plan, Head-Royce School may have to be its own decision-maker in a wildfire.” However, the School should not be in the position of making its own decisions on this critical matter...”

OPINION: Absent a publicly-facing emergency mass evacuation plan—and while HRS should not have to make its own decisions on this critical matter—as matter of due diligence, HRS should maintain the responsibility to their campus and community to seek professional consultation on the proper elements of a well-designed mass evacuation plan for *their* part in an expanded impact to the influx of evacuees on Lincoln Avenue. As, when the emergency occurs, and HRS is ill-prepared, the question will remain, *“How could you let this happen?”*

[FEIR] Response to Comment B3-16:

“Staff fully concurs with the recommendation that a bona-fide mass evacuation plan be developed for the School, with training for students, staff, and parents. This Evacuation Plan is to be developed by a professional consultant who specializes in emergency planning and evacuation, subject to approval by

the OFD Fire prevention Bureau, with advice and input from Emergency Services, OPD Traffic Division, and the Public Works' Transportation Planning staff."

OPINION: Fully concur.

[FEIR] Response to Comment B3-22 (excerpted):

"...However, as is also noted in the Evacuation Planning Recommendations report, there is a broader issue (or shortcoming), in that there is no publicly facing emergency mass evacuation plan for the remainder of the Oakland Hills. This includes the surrounding neighborhoods, the LDS Temple, Immersion Preschool, Ascension Cathedral, Ability Now (with multiple wheelchair user clients), and the UCP Plant Exchange Event Center. Head-Royce School is not the responsible party, and this EIR is not the appropriate venue for establishing such a broader plan for the rest of the surrounding neighborhood and other nearby institutional uses..."

OPINION: See opinion on **[FEIR] Response to Comment B3-15 (excerpted)**, above.

Conclusions: The shortcomings of HRS's emergency mass evacuation planning remain glaringly apparent.

Once again, given the location (and large student census) HRS needs to have instilled in their leadership, a sense of urgency with which to have laser-focused attention on coordination with the OFD, OPD and Oakland Emergency Services regarding not only HRS, but also actively coordinating with the adjacent neighbors: LDS Temple, Immersion Preschool, Ascension Cathedral, Ability Now (with multiple wheelchair user clients), and the UCP Plant Exchange Event Center. Each component affects the dynamics for effecting mass evacuation of the campus and neighborhood.

Moreover—and this point cannot be emphasized strongly enough—there remains the highest degree of need for a bona fide mass evacuation plan to be *vetted* through the public safety community of the OFD (FPB and Emergency Services) in the same manner as a high-rise facility is required to. The OPD Traffic Division should review the plan for impact and conflict with other street evacuation protocols—and to insure it is incorporated and in compliance with existing OPD plans. Also, Oakland Public Works—Transportation Planning Division should review the plan for impacts on the existing Traffic Impact Analysis and established traffic service level rating(s) for the area. Once completed, the HRS Board should thoroughly review the plan before approval and adoption—and mandate that all faculty, staff, students, and parents be trained on the plan, with a minimum of semi-annual exercises (at least one observed by the OFD). Try to visualize 900-1200 students (plus faculty & staff) trying to simultaneously get onto the same streets as evacuating residents and businesses—without training.

The evacuation plan described in the DEIR has many unsupported conclusions, and a contrived approach to safety procedures without any measure of practical application or execution. The health and safety liability associated with this is not of an acceptable measure. A school organization that is responsible for over 1,000 people, daily, cannot write a mass evacuation plan in the absence of experiential expertise. To take this approach is a recipe for disaster in an emergency, holding increasingly significant potential for people (especially the vulnerable population of primary grade school-aged children, and the ADA at-risk population) to be lost, injured, or killed. And, once again, in the aftermath of such a disaster the public and the media will turn to HRS, the City, and OFD to ask, *"How could you let this happen?"*

Recommendations:

Given the demonstrative wildfire history evidence from the 1991 Oakland Hills Fire, the likelihood for a wildfire starting in the Oakland Hills and reaching HRS is of an extremely high and dangerous probability; and, as such, HRS should diligently plan accordingly.

To remedy the situation, *it is strenuously re-emphasized herein*, the primary recommendations contained in the December 7, 2021 opinion letter authored by Weisgerber Consulting. HRS should immediately move to execute a concentrated effort toward the following elements for an emergency mass evacuation plan:

A Bona Fide Written Emergency Plan:

- Develop a written campus mass evacuation plan and procedure, completed with the expertise of a professional consultant who specializes in evacuation; with some particular emphasis on routes, alternate routes, exit design calculations, pedestrian planning and flow rates, evacuee accountability, ADA compliance considerations, and designs for emergency movement via bus-shuttle systems. The plan should be written in cooperation with the OFD and City of Oakland Local Hazard Mitigation Plan, to include, but not be limited to:
- A decision-making process for initiating evacuation.
- A campus accountability system to ensure all persons are safely evacuated.

Campus Staff Training

- Training in supervising and managing a mass evacuation of students K-12, with ADA considerations for the campus population with mobility needs. Particularly in managing students walking distances of up to 1-mile to an assembly point.
- Pre-designated assembly points for parents or guardians. It is recommended that a new, thoroughly developed plan be written for adequately communicating emergency evacuation information, and instructions to parents or guardians, to reunify with their students.
 - The plan should contain a methodology for primary, secondary, and tertiary assembly sites—based on the circumstances; and not de facto reporting to one pre-designated location to await further instructions.

Coordinated Emergency Communications:

- A coordinated emergency communication plan for real time updates with the City of Oakland Emergency Operations Center (EOC) and/or OFD Operations Center (DOC).
- A planned interface relationship between a dedicated HRS representative and the Liaison Officer designated by the City of Oakland Emergency Operations Plan (EOP). This designee could request pre-authorization to report to the EOC, as do public schools.

Semi-annual Exercises:

- It is recommended that HRS **should absolutely** conduct semi-annual evacuation exercises with at least one being in coordination with OFD, to ensure that the campus is well-indoctrinated toward an emergency reflex response to a disaster.
- The role of exercises cannot be *over-stated* in preparing the campus for a wildfire.

Other notable assumptions in Appendix 16B that HRS :

These items should address immediately, as integral components to a written emergency plan, include:

- It is noted in DEIR, Appendix 16B, page 8 (Additional Notes and Observations), that the Oakland 2016-2021 Local Hazard Mitigation Plan and the Oakland Safety Plan do not have a publicly facing evacuation plan or response plan.
 - **This does not absolve HRS** from working diligently with the City, and HRS's own consultant, toward the best practices objectives of responsibly protecting their students, staff, and the neighborhood from the effects of a mass evacuation during a wildfire.
 - HRS staff should thoroughly review all pertinent documents in preparation for a bona fide plan to protect the population of the campus and the neighborhood.
- **Shelter-in-place should not be a protective action** under wildfire conditions, as this has extremely high potential for leading to injury or death.
 - It is strongly recommended that a dedicated HRS Liaison be designated to coordinate strong, direct lines of communication with City officials (OFD, OPD, Emergency Services) as paramount to an HRS emergency plan and decision-making process for initiating evacuation.
- It is recommended that **HRS make a capital investment in an emergency back-up power generator system** for the campus—to power essential functions during an emergency.

This concludes the analysis and opinion commentary of the FEIR Responses to the HRS DEIR comment letters, for expansion to a south campus. Do not hesitate to contact me with any questions.

Respectfully,

William Weisgerber

William Weisgerber
Weisgerber Consulting

Cc: file

JEFFREY K. PACK

ACOUSTICAL CONSULTANT

Curriculum Vitae

EDUCATION

Berklee College of Music, Boston, Massachusetts, 1984
Bachelor of Music; Professional Music

University of Southern California, Los Angeles, 1981
Bachelor of Science; Geological Sciences

West Valley College, Saratoga, California, 1979
Associate in Science; Science and Mathematics

EXPERIENCE

7/81 to Present President and Principal Consultant
Edward L. Pack Associates, Inc.
San Jose, California

Mr. Pack has experience in architectural, environmental, and industrial acoustics, including interior design of office buildings, hospitals, medical buildings, hotels, recording studios, auditoriums and residences, HVAC noise control, mechanical equipment enclosures, roadway and railroad noise barriers, transportation noise assessments and industrial facility noise control. Transportation noise assessments involve the analysis of automobile, truck, railroad and aircraft noise as they impact residential, commercial and industrial land uses. His responsibilities are involved with both the administrative and technical aspects of Edward L. Pack Associates and his duties also include presentations at public hearings, expert witness testimony, conducting seminars in acoustics, directing and monitoring construction corrective work in residential and commercial buildings and the design and construction direction of noise enclosures for mechanical equipment. Measurements, analyses, and evaluations are made to develop the specific recommendations required for the correction of noise and vibration problems.

He has extensive experience in the field of interior acoustics associated with auditoriums, multi-purpose rooms, gymnasiums, classrooms, churches, public meeting halls, TV and audio/visual recording studios, hospitals, and other acoustically critical spaces. Mr. Pack is an expert in architectural acoustics designing noise isolating walls, windows and floor/ceilings, particularly in multi-family housing for compliance with State and local building codes.

Jeffrey K. Pack, (cont'd)

5/86 to
5/94

President

The Techtonics Company
Sunnyvale, California

Mr. Pack designed, developed, and manufactured acoustic and electronic drum triggering devices, acoustic stringed instrument transducers, including piezoelectric pick-ups for guitars, violins, violas, cellos and basses from inception through final shipping. As President, duties included management of production personnel, purchasing, sales, marketing, and advertising. Retail stores and distributors carrying The Techtonics Company products are located worldwide.

2/93 to
3/94

Adjunct Professor

Cogswell Polytechnical College
Cupertino, California

Adjunct professor of acoustics, which included teaching noise control engineering, audio engineering, architectural acoustics, and sound reinforcement system design.

7/84 to
12/87

Owner

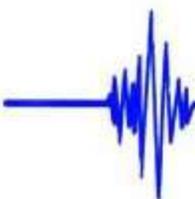
Mirage Music Technologies
San Jose and Hermosa Beach, California

Mr. Pack designed and constructed speaker cabinets, taught music, designed sound reinforcement systems, worked as a DJ for private and public events, worked as a performing musician.

His prior experience includes teaching assistant for Oceanography 210 at USC, 4 years as private drum and percussion instructor, conducting seminars in acoustics and noise control, and in music education as the South Bay Area Alumni Representative for the Berklee College of Music. Other engineering experience included geologic structure mapping, mineralogy, and geologic engineering.

AFFILIATIONS

Acoustical Society of America
American Institute of Physics
Audio Engineering Society
National Council of Acoustical Consultants
Sigma Gamma Epsilon Geological Society



EDWARD L. PACK ASSOCIATES. INC.

1975 HAMILTON AVENUE
SUITE 26
SAN JOSE, CA 95125

Acoustical Consultants

TEL: 408-371-1195
MOB: 408-921-4886
www.packassociates.com

March 27, 2023
Project No. 52-004-2

Leila H. Monscharsh, Esq.
Veneruso & Moncharsh
5707 Redwood Road
Suite 10
Oakland, CA 94602

Subject: Rebuttal to Responses to the Peer Review of the Final Environmental Impact Report, Head-Royce School Expansion, Lincoln Avenue, Oakland

Dear Ms. Monscharsh:

This report will provide you with our rebuttal to the responses to the peer review comments of the Noise Assessment Study prepared by Illingworth-Rodkin and the noise chapter of the Draft Environmental Impact Report (DEIR) for the planned expansion of the Head-Royce School along Lincoln Avenue in Oakland. The responses to our comments were provided by Lamphier-Gregory.

The responses to our comments were provided in two sections. The first section is a narrative of the overall responses to our comments with new analyses and data. The second section contains itemized responses to our comments.

The first part of our rebuttal is our comments on the overall narrative response by the respondent. The second part of our rebuttal is our comments on the itemized responses to our original comments. The narrative section begins on page 3-21 of the FEIR. Our rebuttal appears in order with the respondent's narrative.

I. Rebuttal to Respondent's Narrative

In terms of CEQA policies, the methodology is to determine the change in the noise environment based on the local jurisdictional thresholds. These are contained in the General Plan where the descriptor is in terms of the Day-Night Level.

The average ambient conditions for the receiver locations down slope and at greater distances from Lincoln Avenue are likely to have significantly lower ambient sound

levels or noise exposure (DNL). Thus, the limit on noise increases due to the project would be more stringent.

We acknowledge the difficulty with conducting noise measurements during the pandemic when traffic volumes were abnormally low and the school was closed. However, ambient noise conditions are currently close to normal so there is no justification for not obtaining adequate noise data.

We understand new noise measurements were conducted on site on March 10, 2022. This new analysis and new data were presented in the FEIR responses to comments.

The exact location (distance to centerline) of the new noise measurements along Lincoln Avenue was not reported. We can only assume that the new measurements were made at the 50 ft. distance previously used by Salter. The measurement location should be reported so that the new noise data can be compared to the previous data without having to make assumptions.

The ambient data in the DEIR response is 180 ft. from the centerline of Lincoln Avenue, which is 53 dB DNL. The new LT1 (long term) noise data were made at a distance of approximately 635 ft. from the centerline of Lincoln Avenue and with topographical differences. The new data indicate that the previous assumptions of the noise levels at the residences to the south and west were not correct and that there is a significant difference between the DEIR values and the new data. The ambient at the receiver locations behind Laguna Avenue are lower. Thus, the basis for the CEQA evaluation results in stricter project-generated noise limits.

The threshold of significance is the ambient + 5 dB. Therefore, the ambient + 4 dB would be considered less-than-significant. For example:

Ambient = 49 dB DNL

Acceptable = 49 dB DNL + 4 dB = 53 dB DNL

Project-generated limit = 53 dB DNL – 49 dB DNL = 51 dB DNL.

The project-generated noise limit would be 51 dB DNL or the ambient + 2 dB.

Salter did not review the Illingworth-Rodkin noise thresholds. RGD Acoustics only opined on the comparison of football game noise versus indoor graduation event noise by Salter. We did not suggest that “permanent” noise thresholds be used instead. Our comment was to use both the standards contained in the City of Oakland Noise Ordinance and in the City of Oakland General Plan for all noise sources individually and combined.

Salter’s “report” mentioned in the responses was only two pages of data tables. There were no comments regarding Illingworth-Rodkin’s data or methodologies. See the DEIR footnote on page 13-30.

Salter and RGD did not review source noise of other operations. They reviewed only the graduation noise data as shown in Appendix 13 of the DEIR (Illingworth-Rodkin report). We agreed with RGD that the Salter graduation noise data are better for use than the Illingworth-Rodkin football game noise data.

Our comment regarding nonexistent data, inaccuracies or unqualified parties pertained to conclusions drawn without technical back up or the reporting of combined and cumulative noise levels not provided in the Illingworth-Rodkin report. All noise data, analyses, calculations, recommendations and conclusions should be obtained, prepared and reported by the qualified acoustician of the project. These analyses should be included in the environmental documents in their entirety for public and peer review.

CEQA uses both short term noise level compliance, e.g., the Noise Ordinance limits, and long term noise increases, e.g., the General Plan, to determine noise impacts. Both sets of standards need to be used for evaluation purposes.

Each noise source – drop-offs, loop road traffic, recess, outdoor classrooms, pick-ups, the PAC – need to be analyzed in relation to the Noise Ordinance (short-term noise). Sources that occur simultaneously should also be combined for Noise Ordinance compliance. Then, each source noise exposure (DNL) needs to be determined so that all of the noise source noise exposures can be combined to obtain the project-generated noise exposure. This noise exposure is then added to the ambient to obtain the cumulative noise exposure. The cumulative noise exposure is compared to the ambient to determine if an increase of 5 dB (threshold of significance) or more will occur.

We do not disagree that noise from the outdoor classroom under normal teacher speech conditions will be within the limits of the Noise Ordinance. However, we do disagree with the calculation methods. Harris, 1991, pg. 16-2 – Speech to Noise Ratio of 5-8 dB for outdoor environments. Voices are raised when the background noise levels reach 50 dBA. There is usually about a 3-6 dB increase in vocal level for every 10 dB increase in the background level above 50 dBA. In classrooms, this increase is typically on the order of 10 dB for every 10 dB increase in the background level.

We acknowledge the removal of the PAC loading dock from the project. No further comments regarding loading dock noise are necessary.

We concur with the operational adjustments to outdoor gatherings at the PAC.

The graduation noise level study, particularly the P.A. system levels, uses the L_{eq} as the noise descriptor. The City of Oakland Noise Ordinance does not use the L_{eq} for evaluation purposes. The L_{max} and the various L_n values need to be determined and reported. Since a graduation event will typically occur for more than a few minutes, the DNL should also be determined for inclusion into the overall project-generated noise analysis in terms of the DNL and the CEQA evaluation.

Similarly, the project traffic noise analysis used the L_{eq} , but the standards are not in terms of the L_{eq} . The project loop road noise analysis must include both the various L_n values of the Noise Ordinance and the noise exposure (DNL) for the General Plan/CEQA analysis.

The proposed wall along the loop road is not detailed adequately. The receiver locations are not described. A graphic showing the location of the barrier would be helpful. Will the barrier, if constructed to be acoustically-effective, reduce noise for second floor elevations of the homes or just the first floors? Does the 5-6 dB of noise reduction apply only to certain areas of backyards or at the house setbacks or both?

The project noise exposure (DNL) is used only for project traffic on Lincoln Avenue. Noise exposure analyses must be included for all noise sources.

The cumulative noise analysis was done incorrectly. Cumulative does not mean that the sources occur simultaneously. Cumulative infers that the total project noise levels/exposures are combined then added to the existing background or ambient conditions, similar to a traffic study. The total project-generated noise exposure is a sum of all project noise sources that occur over the 24-hour period, i.e., project traffic, the loop road, drop-offs, pick-ups, the PAC, etc.

The CEQA evaluation consists of determining if the project causes a substantial increase in the ambient noise levels. Thus, to determine that increase, the ambient level must be known. For example,

$$\begin{aligned}\Delta\text{dB} &= \text{cumulative} - \text{ambient} \\ &= (\text{ambient} + \text{project}) - \text{ambient}\end{aligned}$$

If, ambient = 43
 project = 50
 cumulative = 51
 $\Delta\text{dB} = 51 - 43 = 8$; the project adds 8 dB to the ambient

If, ambient = 43
 project = 42
 cumulative = 46
 $\Delta\text{dB} = 46 - 43 = 3$; the project adds 3 dB to the ambient

II. Rebuttal to Specific Responses

B2-1: The definition of “intensity” remains to be incorrect. Intensity is the amount of sound pressure over a given area in a specified direction. It is not merely the amplitude of a sound wave. Intensity should not be used to describe “loudness”.

B2-2: The CEQA thresholds contained in the DEIR are correct. We retract our comment.

B2-3: The comment was meant to identify each potential source of noise and their noise limits in terms of the Noise Ordinance and the General Plan/CEQA.

B2-4: Our comment was regarding the data used in the TNM not SoundPlan. The TNM model was used to determine the ambient noise levels at an inadequate number of receiver locations without regard to topography or intervening structures.

B2-5: Noted

B2-6: The Noise Ordinance (Planning Code) uses short term noise standards for various types of noise with limits based on the duration of the noise. The noise study does not identify all of the noise sources and their respective durations per hour for evaluation against the Noise Ordinance limits. Rather, the noise study more often used the L_{eq} to report a source's noise level. In addition, the noise exposure (DNL) for each source must be determined and ultimately combined for the comparison to the ambient, per the CEQA thresholds.

B2-7: We did not comment on the applicability of vibration criteria. We only noted that the City's policy for vibration uses the FTA's transportation descriptor for construction vibration rather than the FTA's descriptor. Our comment was for the noise study to provide both VdB and PPV to avoid confusion. This is for the sake of clarity. Our comment was not a critique on analytical methodology. Since the City of Oakland references the FTA vibration polices (for construction), the FTA guidelines for vibration limits should be addressed rather than the CalTrans criteria.

B2-8: Project traffic is not the only permanent noise source associated with the project. All daily school operations are also permanent. Temporary sources are things like construction. However, CEQA does address temporary and permanent increase in the ambient noise environment due to the project. Our comment did not suggest using an incorrect threshold for operational noise. Our comment suggested that all noise source standards be addressed for all noise sources.

The response to our comment regarding applying the General Plan standards to operational noise remains to be inadequate. The response claims to provide additional analyses for "informational purposes only". Why is this? The intent of the environmental document is for informational purposes.

The descriptions of the DNL and the operational sources “bullet” paragraph explanations on page 4-35 are well appreciated and this type of presentation should be the focus of the noise study. The ensuing tables of operational noise data for receiver locations R-3 and R-7 are exactly what the original noise study should have presented. Although we disagree with some of the data used in the analysis (the recess noise data, for instance, seems low compared to similar operational data in our database), the tables clearly show the effect of the project on two residential receiver locations in terms of the General Plan/CEQA. Now, this type of analysis and presentation should be prepared for the Noise Ordinance standards.

B2-9: Noted. Same rebuttal.

B2-10: Noted.

B2-11: Please provide some calculations showing the expected interior noise levels in the PAC, the sound transmission loss provided by the building shell with windows open and closed (if applicable) and the noise levels extrapolated to the residential receiver locations.

Unknown noise sources should be identified as “potentially significant” and the mitigation measure requiring subsequent analyses to prove compliance with the standards should be included.

B2-12: Table 13-11 of the DEIR (pg. 13-31) clearly shows that the graduation ceremony will exceed the L_{33} limit of the Noise Ordinance. However, the Noise Ordinance also contains limits for the L_{max} , L_2 and L_{17} . Since the graduation ceremony will have varying noise sources and vary sound levels, all of the Noise Ordinance standards should be addressed.

B2-13: Because the specifications for the outdoor mechanical equipment at the PAC are not yet available, this is a “potentially significant impact”. The mitigation measure must require a detailed noise analysis of the outdoor mechanical equipment under a conditional use permit.

B2-14: What are the daytime noise levels at the residences shown in Table 5 and on Figure 7 of the Noise Study?

B2-15: The “Harris” book speech sound levels are based on a “quiet” background environment, such as inside a classroom. Speaking in an outdoor environment with amplification will require speech sound levels to be in the range of 75-78 dBA at 3 ft.

B2-16: A recess noise level of 59 dBA at 50 ft. from the center of a play area is on the low side. In addition, 50 ft. from the center of the play area indicates that the play area was small or that the measurements were taken too close to the children playing. The analysis does not segregate student age groups. Some age groups will generate different levels of noise than others. Younger children running around screaming will generate the highest levels of noise while older children will occasionally shout, typical of an order during an athletic event or game or to gather another student’s attention. The types of recess activities should be discussed, such as ball usage on a hard court or asphalt surface compared to a turf surface. The use of more conservative noise data would result in exceedances of the Noise Ordinance standards.

B2-17: The new analysis is appreciated. This analysis needs to be included in a revised DEIR.

B2-18: Actually, parking lot activity, pick-ups, drop-offs, etc. will create varying noise levels of various durations. The various sources’ noise levels should be calculated for the L_{max} , L_2 , L_{17} and L_{33} .

The respondent has a grave misunderstanding of the L exceedance values. A 17 minute duration is not the L_{17} . The L_{17} is the level of noise exceeded for 17% or time or 10 minutes out of an hour. The hourly average noise level ($L_{eq(h)}$) is not used by the Noise Ordinance. It is used to calculate the DNL’s for General Plan/CEQA purposes. The L_{17} is also not the maximum sound level. The L_{max} is the maximum sound level. The respondent continues to mix up standards and values. This goes back to our previous comment regarding the qualifications of the responding party.

B2-19: The noise level created by the loop road traffic, drop-offs, pick-ups, etc., should be calculated based on both the Noise Ordinance and General Plan standards. The respondent is using “dBA” when describing noise exposure. The proper terminology is dB DNL (or L_{dn}). The General Plan and the Noise Ordinance are two entirely different documents and both need to be addressed, but separately.

B2-20: The response for B2-18 is technically incorrect. The respondent has a lack of understanding of basic acoustic principles.

B2-21: The noise exposures at the residence shall be reported in terms of the DNL (or L_{dn}) and not noted merely as “dBA”. Combined noise exposures are not “cumulative”. This term is reserved for background or ambient conditions plus the project’s contribution. All sources of noise must be combined for both short-term (simultaneous occurrences) and long term (dB DNL re: General Plan/CEQA).

B2-22: No rebuttal.

B2-23: The removal of the loading dock is appreciated. No further comment on this issue.

B2-24: The requirement of the construction noise and vibration management plan must be included as a mitigation measure.

B2-25: Both the City of Oakland and CEQA reference the guidelines of the Federal Transit Administration for construction noise and vibration. The FTA indicates a vibration limit of 0.2 in./sec. PPV for typical wood framed houses such as those surrounding the project. Nowhere are the less stringent CalTrans guidelines referenced. The FTA guidelines should be used throughout the noise study and environmental documents.

B2-26: No further comment.

B2-27: The City of Oakland General Plan Land Use Compatibility table indicates the use of either the CNEL or the DNL. Since the remainder of the City’s standards, goals and policies use the DNL, the DNL is the applicable descriptor.

B2-28: The loading dock has been removed. One part of the noise study indicates that PAC noise will be contained to the interior and will be inaudible. There is no quantification to this claim. Other parts of the noise study indicate that noise from attendees outdoors could generate noise in excess of the Noise Ordinance standards. As the FEIR indicates a change in the operations to preclude noise excesses, these changes should be incorporated into a revised DEIR.

B2-29: Noise sources do not have to occur simultaneously in order to be additive. DNL's from various sources that do not occur at the same time can be combined.

B2-30: As stated earlier, particularly regarding the misuse of the L exceedance values, we question the competence of the person preparing some of the information presented in these documents. All analytical work subsequent to the original noise study must be prepared by a qualified acoustician, with the analytical details provided in a technical document and included in a revised DEIR for recirculation for public comment and peer review. New data and analyses provided only in a response document are unacceptable.

B2-31: On the contrary. The comments were made to provide the reader with a list of shortcomings of the noise study and DEIR. See the title of this particular section of the comment letter.

B2-32: The list of issues presented in the comment letter should be addressed in their entirety. Many aspects of these requirements have not been adequately fulfilled. The EIR remains to be inadequate.

III. Conclusions

The Final Environmental Impact Report remains to be inadequate even though new data, analyses and the project description have changed. A revised Draft Environmental Impact Report should be prepared so that the public and other professionals have a chance to review and comment on the revised Draft prior to the Final version. There are still shortcomings in the noise section as certain noise standards are used improperly, some responses contain false information and much of the analysis is not complete.

This concludes our rebuttal to the responses to the comments on the *Noise Assessment Study* prepared by Illingworth-Rodkin and Chapter 13 of the Draft Environmental Impact Report for the planned Head-Royce School expansion along Lincoln Avenue in Oakland. If you have any questions or would like an elaboration on this report, please call me.

Sincerely,

EDWARD L. PACK ASSOC., INC.

A handwritten signature in blue ink, reading "Jeffrey K. Pack", is written over a horizontal line.

Jeffrey K. Pack
President



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2974 Adeline St.
Berkeley, CA 94703
Tel: 510 841 1836
Fax: 510 841 1610

April 15, 2023

To: Pam Claussen, Carl Boe, Anne Purcell.

From: William Vandivere, M.S., P.E., Principal

RE: Technical memorandum on hydrologic and engineering assessment and EIR documentation review- Head Royce School Planned Unit Development Permit Project, Oakland CA

Thank you for inviting Clearwater Hydrology (CH) to comment on the referenced project's FEIR and the Responses to Comments, in particular the responses to the technical memorandum I prepared in Dec. 2021 on the DEIR Hydrology and Water Quality section. This letter is identified as Letter B5 in the Responses. The five responses provided, B5-1 through B5-4, address the comments offered under my heading "Assessment of Proposed Stormwater Control Plan and Related Hydrologic Design for Head Royce PUD".

In addition to reviewing the responses to comments B5-1 through B5-4, I reviewed Figure 5.25 of a publically-distributed pamphlet on the project (c. 2022) and updated Erosion Control and Stormwater Control Plans (SOM/Sherwood Design Engineers Jan 2022), Plan Sheets CO. 11-12, 21-23 and C7 00-04. Figure 5.25 of the pamphlet implies that no changes have been made to the Project stormwater plan. The currently presented Stormwater Control Plan prepared by Sherwood Design Engineers shows bioretention/biotreatment areas, all to the north of the loop access road. There is no indication in any of the provided documentation that the previous plan for earthen bottom stormwater retention basins linked by open swale segments has been amended. The response to comment B5-4 restates a mitigation measure related to geology, yet does not spell out in detail what the mitigation entails, in contrast to the detail laid out in their responses to the other comments.

If the CEQA process results in the lining of the retention basins south of the loop road and piped linkages, or their omission, in recognition of the recommendations of the Project geotechnical engineering consultant (Rockridge Geotechnical), I feel that the remainder of the stormwater handling measures indicated on the current (2022) plans addresses all of our previously stated concerns. If this is not the case, let this letter reinforce my professional opinion that the Project will likely have a detrimental hydrologic impact (decreased slope stability due to increased soil porewater pressures) on the properties bordering the Project to the south, including those of Claussen and Boe.

Yours truly,

William Vandivere, M.S., P.E.
Principal