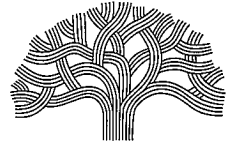


# CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 3315 • OAKLAND, CALIFORNIA 94612-2032

Department of Planning, Building and Neighborhood Preservation  
Planning & Zoning Services Division

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## VIA EMAIL AND US MAIL

September 17, 2012

Dennis Malone  
Director of Finance and Operations  
Head Royce School  
4315 Lincoln Ave.  
Oakland, CA 94602

### **RE: Case File Numbers: PUD04-400; PUDF05-339; ER04-0014, and PUDF07-520 Determination of Revocation Complaint**

Dear Mr. Malone,

The purpose of this letter is to inform you that, per Planning Code Section 17.152.080 and 17.152.070, the City of Oakland **has determined that sufficient evidence exists to set a hearing** to revoke or amend the above-referenced approvals for Head Royce School.

This determination is issued in accordance with Planning Code Section 17.152.080, which states that “[s]ufficient evidence exists if there is substantial evidence that a violation of the zoning regulations, any prescribed condition of approval, or a public nuisance exists on or is emanating from any property that is subject of a Zoning permit issued pursuant to one of the Zoning Regulations listed in (Planning Code) Section 17.152.070.” In addition, Planning Code Section 17.152.030(C) states that “any use or condition caused or permitted to exist in violation of any of the provisions of the zoning regulation shall be and is declared to be a public nuisance.” In this instance, Head Royce School was issued permits (case file numbers PUD04-400 and PUDF07-520), which allowed the construction of a Community Education facility and implementation of the Master Plan pursuant to Conditions of Approval.

This determination is based, in part upon the staff’s review of the revocation complaint and other documents submitted by the Neighborhood Steering Committee et. al., Leila Moncharsh, Drew Lau-Regent, Roberta Dempster, and Josh Thieriot on August 9, 2012, the revocation complaint amendments received on August 25 and 26, 2012, and the California Department of Education Data from 2011-2012. Copies of the complaint documents were mailed to you on August 16, 2012 and August 27, 2012. This determination also is made based upon full consideration of the letter and attachments dated September 7, 2012 from Mr. Harold P. Smith to Heather Klein.

In accordance with Planning Code Section 17.152.080, Planning staff hereby makes the following determinations:

#### **A. Traffic Queues (Complaint Issue 1)**

Staff has determined that there is sufficient evidence to set a hearing regarding alleged violations of PUD04-400 Condition of Approval #24 and PUDF07-520 Condition of Approval #36.

This evidence includes, but is not limited to, the following: Complaint Document pages 9-11; Volume 1 pages 064, 066-067, 084-086, 088-089, 113-114, 124.3; Volume 2 pages 128, 130-131, 136-140, 153-154, 170, 175-178, 188, 195-196, 201, 207; Volume 3 pages 217, 309-310, 317; Volume 4 pages 327-342, 369, 376, 382, 394; DVD pictures 004-005, 008 and movies 007 and 009 dated 5-9-12; DVD pictures 015-017, 019-020, 022-024, 029 and movie 0025 dated 5-22-12; DVD pictures 001, 011, 014, 016, 021 and movies 013, 019-020, 029, 034-036, 043-044, 049, and 051 dated 5-24-12; DVD pictures 020-021, 023-025, 035-036, 146, movie 0022, 0028, 0037 dated 5-25-12; and Documents submitted by Head Royce School: Letter page 9 and Exhibit 8.

**B. Violation of Traffic Rules (Cars Pushed into Oncoming Traffic, Parents Blocking Driveways, Unsafe Behaviors by Children and Adults During Pick-Up and Drop-off, U-Turns, , etc) (Revocation Complaint Issue 3, 4, 5)**

Staff has determined that there is sufficient evidence to set a hearing regarding allegations that persons associated with the School and, therefore, the School itself, are in violation of PUD04-400 Condition of Approval #34 and PUDF07-520 Condition of Approval #47, as well as Whittle Neighborhood Agreement #5 and Lincoln to Laguna (Alida) Neighborhood Agreement #5, which were included as Conditions of Approval for both permits, regarding compliance with traffic laws and the school's traffic rules.

This evidence includes, but is not limited to, the following: Complaint Document pages 10, 13, 14-16; Volume 1 pages 061-062, 067, 087, 089, 094, 101-102, 114, 124.1; Volume 2 pages 129, 153-154, 175-178, 184, 211-214; Volume 3 pages 217, 284-286, 288-297, 300, 309-311, 314-315; Volume 4 pages 318-319, 322-324, 327-328, 335-341, 352, 363, 369, 376-377, 382, 385, 393-394, 396-397, 400-401, 405-406; DVD pictures 005-006; DVD pictures 008-011, 015-021, 026-027 and movies 0028 dated 5-22-12; DVD pictures 004-008, 012, 021-026, 030, 032-033, 037-042, 045-048, 052 and movies 003, 0013, 0019, 0020, 0029, 0034, 0035, 0036, 0043, 0044, 0049, 0051 dated 5-24-12; and DVD pictures 007, 020, 023, 035-036.

**C. Responsiveness to Neighborhood Complaints / License Plate Rule Traffic Rule Enforcement System (Revocation Complaint Issue 6)**

Staff has determined that there is sufficient evidence to set a hearing regarding allegations that the School is in violation of PUD04-400 Condition of Approval #34 and PUDF07-520 Condition of Approval #47, as well as Whittle Neighborhood Agreement #5 and Lincoln to Laguna (Alida) Neighborhood Agreement #5, which were included as Conditions of Approval for both permits, regarding response to complaints and traffic rule enforcement.

This evidence includes, but is not limited to, the following: the documents listed above; Complaint Document page 16; Volume 1 pages 068, 089-090, 115, 124.2, 124.4; Volume 2 pages 182-184, 207, 211-212; Volume 3 pages 218-220, 223, 229, 236-237, 239-241, 290, 303-304, 312; and Volume 4 pages 318-319, 322, 327, 365-368, 370, 372, 381-383, 402-406, 409-416.

**D. Monitors (Revocation Complaint Issue 7)**

Staff has determined that there is sufficient evidence to set a hearing regarding allegations that the School is in violation of PUD04-400 Condition of Approval #24 and 34 and PUDF07-520 Condition of Approval #36 and 47, as well as Whittle Neighborhood Agreement #5, Lincoln to Laguna (Alida) Neighborhood Agreement #5 and Lincoln Neighborhood Agreement #13 which were included as Conditions of Approval for both permits, regarding the lack of adequate and trained monitors to conduct traffic rule enforcement.

This evidence includes, but is not limited to, the following: the documents listed in the Violation of the Traffic Rules Section; Complaint Document page 18; Volume 1 pages 066-069, 090-092, 115-116, 124.1, 124.3; Volume 2 pages 142-143, 153-154, 174-178, 180-184, 186, 189, 196-197, 203, 207, 211-212; Volume 3 pages 218, 220, 222, 227, 232, 234, 236-237, 239, 241, 290, 300, 310, 314; Volume 4 pages 319, 327, 333, 369, 394, 397, and 406; movie 0051 dated 5-24-12; movie 0028 dated 5-25-12; and Documents submitted by Head Royce School Exhibit 16.

**E. Summer Camp Noise (Complaint Issue 8)**

Staff has determined that there is sufficient evidence to set a hearing regarding allegations that the noise resulting from the School's summer program is in violation of the Planning Code Section 120.120.050 and Municipal Code 8.18.10 and 12.56 and, therefore, is likely causing a public nuisance.

This evidence includes, but is not limited to, the following: Complaint Document pages 20-21; Volume 3 pages 217, 224, 303-304, 306, 307-308; and Volume 4 pages 320, 367, 370, 377, and 418-419.

**F. Lack of Supervision of Students on Campus (Complaint Issue 9, 16)**

Staff has determined that there is sufficient evidence to set a hearing regarding allegations that persons associated with the School and, therefore, the School itself, is likely causing a public nuisance due to lack of supervision of students while on the campus.

This evidence includes, but is not limited to, the following: Complaint Document page 22; Volume 3 page 217; and Volume 4 pages 365-366, 377-378, 386-387, 402-404, 409-410, 412-413, 415-416, and 417-419.

**G. Deliveries (Complaint Issue 11)**

Staff has determined that there is sufficient evidence to set a hearing regarding allegations that persons associated with the School and, therefore, the School itself, is in violation Lincoln Neighborhood Agreement #5, which was included as a Condition of Approval for both permits, and Municipal Code 8.18.20 regarding the location and noise associated with bulk and small package deliveries.

This evidence includes, but is not limited to the following: Complaint Document pages 11-12; Volume 1 pages 069, 079, 116; Volume 2 pages 157, 202-203; Volume 3 pages 218, 287, 291; Volume 4 pages 362-363, 370, and 372-375; Revocation Complaint Amendment Attachment B e-mail and photo; and Documents submitted by Head Royce School Letter page Exhibit 12 and 23.

**H. Landscape Maintenance (Fire Danger) (Complaint Issue 13, 14)**

Staff has determined that there is sufficient evidence to set a hearing regarding allegations that the School is in violation of PUD04-400 Condition of Approval #29 and PUDF07-520 Condition of Approval #43, Planning Code Section 17.124.060, and Municipal Code Section 8.24.020, as well as Whittle Neighborhood Agreement #7 which was included as a Condition of Approval for both permits, regarding the lack of landscape maintenance.

This evidence includes, but is not limited to the following: Complaint Documents pages 26-27; Volume 1 pages 068, 115, 121, 124.1; Volume 3 pages 303-304, 306; and Volume 4 pages 378, 384, 387, 390-392, and 411-412.

**I. School Events and Rental of the School to Outside Community Groups (Complaint Issue 15)**

Staff has determined that there is sufficient evidence to set a hearing regarding allegations that the School is in violation of Whittle Neighborhood Agreement #5 and Lincoln to Laguna (Alida) Neighborhood Agreement #5, which were included as Conditions of Approval for both permits, regarding the lack of additional event monitoring for traffic and noise. Furthermore, staff has determined that sufficient evidence exists that School is in violation of the Planning Code Section 17.10.050 which requires a Conditional Use Permit for Group Assembly, as well as PUD04-400 Condition of Approval #1 and PUDF07-520 Condition of Approval #1 related to conformance with the approved use (Community Education). City staff does not consider the rental of the facility to outside groups to be an accessory activity per Planning Code 17.10.040.

This evidence includes, but is not limited to the following: Complaint Document pages 28-29; Volume 1 pages 068-069, 097, 116, 122, 124.4; Volume 2 page 143; Volume 3 pages 218, 222, 224, 317; Volume 4 pages 367, 369-370, 377, 397, 404, 410, and 418-419; and Revocation Complaint Amendment Attachment B e-mail.

**J. Students Enrollment**

Upon its own investigation pursuant to Planning Code Section 17.152.080, staff has determined that there is sufficient evidence to set a hearing regarding allegations that the School is in violation of PUD04-400 Condition of Approval #1 and 26; PUDF07-520 Condition of Approval #1 and 38 regarding enrollment, as well as Whittle Neighborhood Agreement Part II #2 and Lincoln to Laguna (Alida) Neighborhood Agreement Part 2, #2, which were included as Conditions of Approval for both permits.

This evidence includes, but is not limited to the following: the documents listed above as sufficient evidence that the School is not in compliance with its Conditions of Approval; Volume 1 pages 066-069, 113-117, and 124.1-124.5; Revocation Complaint Amendment Attachment B California Department of Education Data from 2011-2012 and Documents submitted by Head Royce School: Letter page 24.

The City of Oakland has **determined that there is not sufficient evidence at this time to set a hearing** regarding allegations that Head Royce School has violated the Zoning Regulations, the Conditions of Project Approval, and that a public nuisance exists regarding the following complaints listed below.

**K. Parking (Complaint Issue 10)**

Staff has determined that there is not sufficient evidence to set a hearing regarding allegations that the School has violated the Planning Code, the Conditions of Approval, or the Neighborhood Agreements regarding the number of parking spaces. Parking on-street for parents, vendors, and a certain number of students and staff is not prohibited per the Planning Code. Parking in approved areas on residential streets, in and of itself, does not constitute a public nuisance as long as it does not obstruct the use or free passage of property.

**L. Speeding Trucks and Cars on Whittle Avenue (Complaint Issue 12)**

Staff has determined that there is not sufficient evidence to set a hearing regarding allegations that persons or vehicles associated with the School are in violation of traffic laws as a result of speeding. While congestion is evident, the narrowness of the streets make it unlikely that speeding over the posted limits occur on Lincoln Avenue due to the congestion, as shown in the photos and videos, or on the side streets due to the narrow street width.

**M. Emergency Vehicle Access**

Emergency vehicle access and blockage of fire hydrants was noted in the Complaint Document (pages 9-10) and in the complaint Volumes and DVD's submitted by the Neighborhood Steering Committee et. al., Leila Moncharsh, Drew Lau-Regent, Roberta Dempster, and Josh Thieriot. Staff has reviewed the documents and determined that there is not sufficient evidence to set a hearing regarding allegations that School traffic is causing a public nuisance related to emergency vehicles and blocking of hydrants. The vehicle code allows a fire hydrant to be blocked in certain instances where the driver can immediately move the vehicle. While staff has determined that sufficient evidence exists the School is in violation of the traffic queuing Condition of Approval and the Traffic Rules, the Level of Service evidence noted in Volume 2, page 156 indicates generally acceptable levels of traffic. Therefore, it is likely that if an emergency vehicle did drive down Lincoln Avenue, the vehicle could get through and also access the hydrants. Furthermore, while a vehicle associated with the School might not allow a resident to access their driveways or turn onto an adjacent street, it is more likely that these drivers would respond to an emergency vehicle.

**N. Café Use**

Use of the café by parents and guests was noted in the Complaint Document (page 23) and in the other complaint volumes submitted by the Neighborhood Steering Committee et. al., Leila Moncharsh, Drew Lau-Regent, Roberta Dempster, and Josh Thieriot. Staff has reviewed the documents and determined that there is not sufficient evidence to set a hearing regarding allegations that the café activity or café parking is in violation of the Planning Code. Furthermore, staff has determined that there is not sufficient evidence that the café traffic or parking is causing a public nuisance. The café was approved as part of the overall Master Plan for the School. The Conditions of Approval did not place any restriction on the use of the café. In addition, only persons associated with the School, not the general public, are attending the café. None of the documents presented indicate that persons are solely coming to the School to visit the café. It is more likely that parents and guests visit the café as part of their other School-related business on the campus. As noted above, parking is permitted on residential streets.

**The determination that City staff has not found sufficient evidence to set a hearing on the above issues related to parking, speeding, emergency vehicle access, and the café use may be appealed by the complainant, only, pursuant to the appeal procedure in Oakland Planning Code Chapter 17.152.080B. Specifically, if the complainant seeks to challenge this decision, an appeal must be filed by no later than ten calendar (10) days from the date of this letter, by 4:00 pm on September 27, 2012. An appeal shall be on a form provided by the Planning and Zoning Division, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of Heather Klein, Planner III. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or wherein his/her decision is not supported by substantial evidence and, pursuant to Planning Code Section 17.152.210, must include payment of fifty (50) percent of the appeal fee established by the City's Master Fee schedule in the amount of \$676.46. Failure to timely appeal will preclude the complainant from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of**

the appeal; failure to do so may preclude the complainant from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence submitted to the Zoning Manager by the appeal deadline.

In accordance with Planning Code Section 17.152.090, City staff will immediately begin preparation of the Revocation Administrative Record. Pursuant to Planning Code Section 17.152.100, City staff will provide notice of the date, time, and place of the Revocation Hearing as well as a copy of the Revocation Administrative Hearing no less than 17 days before the hearing. Per Planning Code Section 17.152.140, if the Hearing Officer determines that there has been a violation of the Zoning Regulations, or upon evidence that there has been a failure to comply with any prescribed condition of approval, or a determination is made that a public nuisance exists on or is emanating from the property, the Hearing Office may amend or revoke any Zoning permit associated with the property, add additional conditions of approval, abate the nuisance, impose fines or penalties, or issue a remedial order to address the violations and/or nuisances.

Please contact case planner, Heather Klein, if you have any questions regarding this letter or the revocation hearing process.

Sincerely,



SCOTT MILLER

Interim Planning and Zoning Director  
Department of Planning, Building and Neighborhood Preservation

cc: Heather Klein, Planner III  
Neil Gray, Planner III, Zoning District Supervisor  
Heather Lee, Supervising Deputy City Attorney

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September 17, 2012

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Michael Thilgen  
Don Dunning

I certify that on September 17, 2012 this letter was placed in the U.S. mail system and sent certified mail, as well as emailed, to the names and addresses listed above.

  
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**NAME & SIGNATURE OF PERSON PLACING IN MAIL**

9-17-12  
**DATE**