

City of Albany



TO: ALBANY PLANNING & ZONING COMMISSION

FROM: ANNE HERSCH, AICP, CITY PLANNER

SUBJECT: PA 06-053 St. Mary's College High School Conditional Use Permit (CUP) & Design Review (DR)

DATE: SEPTEMBER 26, 2012

Property Owner: St. Mary's College High School 1294 Albina St. Berkeley, CA 94706	Applicant/Representative: Vivian Kahn, Kahn Mortimer Associates 737 2nd Street, #307 Oakland, CA 94607
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PROJECT: St. Mary's High School CUP & DR FILE: PA 06-053 LOCATION: 1600 Posen St. GP LU: PQ-Public/Quai Public ZONING: PF-Public Facilities PLANNER: Anne Hersch	Original filing: 2006 Date Received: 4/27/2011 Date Deemed Complete: 10/11/2012 Date of Notice Posted/Mailed: 8/31/2012 Date of Public Hearing: September 26, 2012 Total number of days to hearing: 516 days
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REQUEST

The applicant is seeking approval of a Mitigated Negative Declaration, Conditional Use Permit (CUP) request, and Design Review for a new music 13,400 sq. ft. building at St. Mary's College High School. The CUP proposal includes a proposal for anticipated new buildings on campus as funding becomes available. If approved, the CUP will supersede previous CUPs and will establish new operating conditions for the school.

STAFF RECOMMENDATION

Staff recommends that the Planning and Zoning Commission receive the report and review the draft findings and conditions. Should the Commission take action on the application, staff recommends the following actions:

1. Review the draft Mitigated Negative Declaration (MND) and move to approve Resolution 2012-02 adopting the MND
2. Review the draft Conditional Use Permit (CUP) findings and conditions and move to approve Resolution 2012-03 approving the CUP
3. Review the Design Review request for the new music building at St. Mary's College High School and approve the submittal with project conditions

ANALYSIS

The Planning & Zoning Commission reviewed the project and held a public hearing on September 12, 2012. At that time the Commission continued the project to a date certain of September 26, 2012 pending the following:

- The Commission requested additional time to review the correspondence received prior to the September 12, 2012 hearing.
- The Commission suggested that City staff, St. Mary's project representatives and surrounding neighbors schedule a meeting to discuss the potential for mediation.
- Albany City staff to discuss with City of Berkeley staff to potentially relocate the student drop off to the corner of Hopkins St. & Monterey St.

Correspondence

All correspondence received prior to the September 12, 2012 hearing is included as Attachment 4 to the staff report. The correspondence includes concerns related to traffic, student enrollment, chapel conditions, and adequacy of the Mitigated Negative Declaration (MND). The City's CEQA consultant has reviewed the letter questioning MND adequacy and remains comfortable with the analysis prepared.

Letters Received After the 9/12/2012 Hearing

The Community Development Department received two additional letters after the September 12, 2012 hearing. Both letters are included as attachments to the staff report.

Donna Dediemar Letter

Attachment 5 contains a letter from Donna Dediemar with two attachments related to school enrollment. The original enrollment condition was approved by Albany City Council when they reviewed the project on appeal in 1994. The appeal was denied and the project approval was upheld on August 16, 1994. At that time the City Council approved the following enrollment condition:

G-2. St. Mary's College High School (SMCHS) may operate a co-educational high school facility for grades 9 through 12 beginning in September, 1995, for up to 600 total students. Prior to September, 1995, the school is permitted to operate as a male-only school for grades 9 through 12 with a total enrollment not exceeding 420 students. The maximum enrollment figures may be exceeded on an absolute basis by up to five percent to allow for attrition and other student body changes.

The Commission had expressed concern that the enrollment condition which was approved by City Council should only be changed by City Council. The draft Conditions of Approval have been modified to include the existing language. (Language related to enrollment prior to September 1995 has been excluded from the Condition). If appealed to City Council, staff may recommend a simplified condition of approval.

Marci Hamilton Letter

Attachment 6 contains a letter from Marci Hamilton, an attorney retained by the Peralta Park Neighborhood Association, and who also provided public testimony at the September 12, 2012 hearing. The letter makes reference to the staff report dated September 12, 2012 as deficient with regard to traffic analysis, CEQA review, and the lack of conditions on the proposed Chapel. The letter further identifies that if the staff report were to be adopted, it would be a violation of church and state and that the staff report violates the Establishment Clause required by the First Amendment. The letters requests that the Commission require both the School and the neighbors to discuss mutually agreeable conditions related to the chapel.

As a matter of clarification, the Commission adopts findings and conditions of approval, not a staff report. All of the proposed conditions apply to entire the campus and school operation, which includes the Chapel. Furthermore, the uses included in the project application description are incorporated by reference in Condition A1, and function as a limit on Chapel activities.

If the Commission were to deny the Chapel portion of the project, it must determine that the findings of approval cannot be made based on factual information in the record, not RLUIPA. Also, if the Commission were to determine that the CEQA analysis is inadequate, findings must be based on CEQA Guidelines and statutes, not RLUIPA.

Mediation

As a first step towards mediation, City staff, St. Mary's representatives and the Peralta Park Neighborhood Association land use consultant have agreed to meet on Tuesday September 25, 2012 to discuss the possibility of mediation moving forward. Information discussed at this meeting will be shared with the Commission at the September 26, 2012 hearing.

The goal of mediation is for both parties to find middle ground and work towards resolving issues. Typically, mediation is kept confidential for the parties involved. Thus irrespective of whether or not mediation is held or if it is successful, the Planning & Zoning Commission must base a decision on the project based on the application face and project merits, not the mediation outcome.

Proposed Student Drop-Relocation

At the September 12, 2012 hearing, Berkeley City Councilmember Laurie Capitelli addressed the Planning & Zoning Commission and explained a proposal which would relocate the student drop off from the Albina Gate to the southwest corner of Hopkins St. and Monterey St. The Commission asked staff to talk to the Berkeley Department of Transportation for additional information. However, it is was also acknowledged that the relocation and right of way issues are in the City of Berkeley's jurisdiction and not in the City of Albany's realm. Additionally, the City of Albany cannot condition the project to require changes in Berkeley's public infrastructure/right of way.

Staff spoke with representatives from the City of Berkeley Transportation Division. They indicated that they have no objections to the relocation and are willing to work with the School and AC Transit to implement the drop off relocation. Additionally, the City of Berkeley remains committed to working with the Albina St. residents on the traffic calming project condition.

ATTACHMENTS

1. Resolution 2012-02 Mitigated Negative Declaration for St. Mary's College High School with Exhibit A: Mitigation Monitoring and Reporting Program (MMRP)
2. Resolution 2012-03 St. Mary's College High School CUP with Exhibit A: Conditions of Approval, Exhibit B: Project Plans, Exhibit C: MMRP
3. Resolution 2012-04 St. Mary's College High School Design Review Approval with Exhibit A: Conditions of Approval
4. Correspondence received prior to the September 12, 2012 hearing
5. Letter with Attachments received from Donna Dediemar dated September 13, 2012
6. Letter from Marci Hamilton date stamped received September 20, 2012
7. E-Mail from Chris Hamilton received September 21, 2012

**ATTACHMENT 1
PLANNING & ZONING COMMISSION
RESOLUTION 2012-02**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ALBANY, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, COMMISSION ADOPTING THE INITIAL STUDY-MITIGATED NEGATIVE DECLARATION FOR THE CONDITIONAL USE PERMIT FOR ST. MARY'S COLLEGE HIGH SCHOOL AND THE DESING REVIEW APPROVAL OF THE MUSIC BUILDING ST. MARY'S COLLEGE HIGH SCHOOL 1600 POSEN ST. ALBANY, CA 94706

WHEREAS, the City of Albany has received an application to amend and update the conditional use permit for St. Mary's College High School; and

WHEREAS, the application is defined as a "project" under the California Environmental Quality Act (CEQA) and is thus subject to environmental review; and

WHEREAS, the City retained the consulting firm Lamphier Gregory to prepare an Initial Study of the proposed Conditional Use Permit and Design Review application; and

WHEREAS, the Initial Study-Mitigated Negative Declaration (IS-MND) was made available to the public on June 1, 2012; and

WHEREAS, the City provided public notice of the availability of the IS-MND for public review and posted copies of the document on the City of Albany website for over 30 days; and

WHEREAS, the Albany Planning and Zoning Commission held a duly noticed public hearing to receive comments on the Initial Study-Mitigated Negative Declaration (IS-MND) on June 12, 2012; and

WHEREAS, a public hearing notice mailed to property owners within 300 ft. of the subject site and was posted in three public places on Friday, August 31, 2012 pursuant to California Government Code Section 65090;

NOW THEREFORE, BE IT RESOLVED THAT THE ALBANY PLANNING AND ZONING COMMISSION MAKES THE FOLLOWING FINDINGS:

a. The Planning and Zoning Commission has reviewed the record for the Mitigated Negative Declaration for the St. Mary's College High School Conditional Use Permit, including the Initial Study, all written and oral comments and the written responses thereto;

b. The documents and materials that constitute the record of proceedings shall be maintained with the City of Albany Community Development Department, 1000 San Pablo Avenue, Albany, CA 94706.

c. The Mitigated Negative Declaration identifies all potentially significant adverse environmental impacts and feasible mitigation measures or standard conditions of approval that would reduce these impacts to a less-than-significant level.

All of the mitigation measures identified in the Mitigated Negative Declaration, including those in the Mitigation Monitoring and Reporting Program, will be adopted and implemented as Conditions of Approval for the project. The Commission finds that on the basis of the whole record before it, there is no substantial evidence that the Project, as mitigated in the Mitigated Negative Declaration, will have a significant impact on the environment;

d. During the preparation of the Initial Study Checklist, it was determined that the Project would have no impact or have less-than-significant impact on the following environment factors: Aesthetics, Agricultural Resources, Hazards and Hazardous Materials, Land Use and Planning, Mineral Resources, Noise, Population and Housing, Public Services, Recreation, Transportation/Traffic, Utilities/Services System.

e. During the preparation of the Initial Study Checklist, it was determined that the Project would have a potentially significant impact on one or more of the following environmental factors: Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hydrology and Water Quality;

f. Consistent with CEQA Statutes and CEQA Guidelines, the Mitigated Negative Declaration contains a full and complete explanation as to how the potentially significant impact on these environmental factors are reduced to less-than-significant impact level by the incorporation of the required mitigation measures set forth in the Mitigation Monitoring and Reporting Program attached hereto as Exhibit A and incorporated herein;

g. The Mitigated Negative Declaration constitutes an adequate, accurate, objective and complete document prepared, published, circulated and reviewed in accordance with the requirements of CEQA and the City CEQA Guidelines;

h. The Commission has reviewed and considered the information contained within the Mitigated Negative Declaration prior to acting on the proposed Project, and that the Mitigated Negative Declaration reflects the independent judgment and analysis of the City;

i. Based on the independent judgment of the Council, finds that the Mitigated Negative Declaration, supported by the Mitigation Monitoring Program, is the appropriate document to comply fully with the requirements of the California Environmental Quality Act; and

j. The monitoring and reporting of CEQA mitigation measures in connection with the Project will be conducted in accordance with the Mitigation Monitoring and Reporting Program incorporated into the Conditions of Approval for the Project. Adoption of the Mitigation Monitoring and Reporting Plan will constitute fulfillment of the monitoring and reporting requirement set forth in § 21081.6 of CEQA. All proposed mitigation measures are capable of being fully implemented by the Project sponsor

k. The adoption of the Mitigated Negative Declaration by the Planning and Zoning Commission may be appealed to the Albany City Council pursuant to the

procedures established in the Planning and Zoning Code Section 20.100.080 of the Albany Municipal Code.

NOW THEREFORE BE IT RESOLVED, that the Albany Planning and Zoning Commission adopts the Mitigated Negative Declaration for the Saint Mary's College High School Use Permit Application and the Mitigation Monitoring and Reporting Program contained as Exhibit A.

PASSED, APPROVED AND ADOPTED this 26th day of September, 2012 by the following

vote:

AYES-

NOES-

ABSENT-

ABSTENTION-

Planning Commission Chairperson Arkin

ATTEST:

Anne Hersch, City Planner

**ATTACHMENT 2
PLANNING & ZONING COMMISSION
RESOLUTION 2012-03**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ALBANY, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, APPROVING CONDITIONAL USE PERMIT 06-053 ST. MARY'S COLLEGE HIGH SCHOOL 1600 POSEN ST. ALBANY, CA 94706

WHEREAS, the Albany City Council adopted Ordinance 04-09 Chapter 20 "Planning & Zoning" of the Albany Municipal Code on December 6, 2004; and

WHEREAS, Section 20.12.040 of the Albany Municipal Code requires a Conditional Use Permit for a private school in the PF-Public Facilities Zoning District; and

WHEREAS, the subject site is located in the PF-Public Facilities District; and

WHEREAS, St. Mary's College High School filed an application for a new Conditional Use Permit with the City of Albany on August 21, 2007;

WHEREAS, St. Mary's subsequently filed a modified application request on April 27, 2011 which contained a reduction in square footage previously proposed; and

WHEREAS, the Planning & Zoning Commission reviewed the initial application request at its September 27, 2011; and

WHEREAS, the Planning & Zoning Commission conducted a site walk of the St. Mary's campus on October 11, 2012 with School representatives, City staff, and members of the public to view story poles which were installed on-site that illustrate proposed building height; and

WHEREAS, the September 27, 2011 public hearing and October 11, 2011 site walk were publicly noticed and notices sent to residents and property owners within 300 ft. of the subject site pursuant to Government code Section 65090; and

WHEREAS, the application was deemed complete as part of the October 11, 2011 review; and

WHEREAS, the City of Albany authorized Lamphier-Gregory, an environmental consulting firm, to prepare an Initial Study for the proposed project after the October 11, 2011 site walk; and

WHEREAS, Lamphier-Gregory prepared a draft Mitigated Negative Declaration (MND) to analyze potential project impacts associated with the Conditional Use Permit request; and

WHEREAS, mitigation measures as part of the MND are recommended to minimize impacts associated with project development; and

WHEREAS, the MND was circulated for a thirty (30) day public comment period from June 6, 2012-July 6, 2012 pursuant to Section 15073 (a) of the California Environmental Quality Act Guidelines (CEQA); and

WHEREAS, the Planning & Zoning Commission held a public hearing on June 12, 2012 to receive public testimony related the MND during the public comment period; and

WHEREAS, a public hearing notice was sent to residents and property owners within 300 ft. of St. Mary's College High School pursuant to California Government Code Section 65090; and

WHEREAS, the Planning & Zoning Commission has held a public hearing, considered all public comments received, the presentation by City staff, the staff report, and all other pertinent documents regarding the proposed request; and

WHEREAS, Section 20.10.030 (E) grants authority to the Planning & Zoning Commission to impose Conditions of Approval to prevent or minimize impacts upon the public and the City's neighborhoods to ensure compatibility of land uses; and

WHEREAS, the final General Plan and the Zoning Code are incorporated herein by reference, and are available for review at City Hall during normal business hours.

NOW, THEREFORE, the City of Albany Planning & Zoning Commission does hereby **RESOLVE** as follows:

Findings for Conditional Use Permit approval (Per section 20.100.030.D of the AMC)

1. **Necessity, Desirability, Compatibility.** *The project's size, intensity and location of the proposed use will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.*

St. Mary's College High School has been operating the 12.5 acre campus within the same area of Albany since 1903. The General Plan designates this area for Public/Quasi Public Facilities. A private school use is conditionally allowed in the PF-Public Facilities District. The project meets City zoning standards for location, intensity and type of development and has been conditioned to mitigate on-site and off-site impacts.

2. **Adverse Impacts.** *The project's use as proposed will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity, or physically injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:*

- a. *The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;*

The subject site is 12.5 acres. The proposed new construction will be located in the central portion of the campus and will be in scale and harmony with the surrounding area.

- b. *The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;*

The proposed new use permit will not increase enrollment beyond existing numbers of students and will not change access point to the campus. In addition, the new project conditions require approval of a Transportation Demand Management Plan and a Traffic & Parking handbook. Additionally, the City of Berkeley has requested a condition to further study traffic calming measures in their jurisdiction. Stakeholders including City of Berkeley staff, City of Albany staff, St. Mary's representatives and local residents, will convene to assess appropriate measures and implementation.

- c. *The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;*

Standard conditions related to noise, glare, dust and odor have been included as part of the Use Permit. This includes conditions related to project construction as well as on-going operating conditions.

- d. *Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;*

The applicant has concentrated the proposed construction projects to towards the interior of the campus. Existing landscaping will continue to be maintained and any future landscaping is required to go before the Planning & Zoning Commission for review and action.

- 3. ***Consistency with Zoning Ordinance, General Plan and Specific Plan.*** *That such use or feature as proposed will comply with the applicable provisions of this Chapter and will be consistent with the policies and standards of the General Plan and any applicable specific plan.*

The City's current General Plan does not contain specific policies related to St. Mary's. The proposed project will not be detrimental to the health, safety, convenience and welfare of those in the area and would not adversely impact property, improvements or potential future development in the area.

NOW THEREFORE BE IT RESOLVED by the Planning & Zoning Commission of the City of Albany hereby approves Conditional Use Permit 06-053 St. Mary's College High School.

PASSED, APPROVED AND ADOPTED this 26th day of September, 2012 by the following vote:

AYES-

NOES-

ABSENT-

ABSTENTION-

Planning Commission Chairperson Arkin

ATTEST:

Anne Hersch, City Planner

EXHIBIT A
PLANNING COMMISSION RESOLUTION 2012-03
CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT 06-053

A. GENERAL PROJECT CONDITIONS

1. **Project Approval.** This Conditional Use Permit (CUP) approval is for St. Mary's College High School (SMCHS) located at 1600 Posen Avenue (mailing address 1294 Albina Avenue, Berkeley, CA), as substantially shown and described on the CUP date received April 27, 2011 (Application) and plans date received August 23, 2012, as presented to the Planning and Zoning Commission on _____, except as may be modified by conditions herein. The operation of the school and any new construction authorized by this CUP must substantially conform to this CUP.
2. **Effect of CUP.** This CUP is the guiding document for the construction and operation of the SMCHS. This CUP shall supersede all previous conditional use permits for SMCHS.
3. **Design Review Required.** The CUP does not include Design Review entitlement approval for any future new construction, addition or alteration to existing buildings. Future construction will be required to go through the Design Review process pursuant to Section 20.100.050 of the Albany Municipal Code.
4. **Review of CUP Compliance.** The Planning & Zoning Commission reserves the right to review and determine if SMCHS is complying with the CUP. Failure to comply with the CUP may result in revocation of the CUP subject to public notification and formal public hearing pursuant to Albany Municipal Code Section _____.
5. **Hold Harmless Agreement.** Pursuant to Government Code Section 66474.9, SMCHS (including any agent thereof) and Albany Municipal Code Section 20.100.010(N) shall defend, indemnify, and hold harmless, the City of Albany and its agents, officers and employees, from any claim, action, or proceeding against the City or its agents, officers or employees to attack, set aside, void, or annul the City's approval concerning this application, which action is brought within the time period provide for in Section 66499.37. The City will promptly notify SMCHS of any such claim action or proceeding and cooperate fully in the defense.
6. **Procedure for Amendments to the CUP.** Minor changes of a technical nature to the CUP may be approved administratively by the Community Development Department utilizing public notice requirements of the Planning and Zoning Code. Refinements to a particular construction project previously approved in the CUP may be approved pursuant to Design Review procedures or Planned Unit Development procedures contained in the Planning and Zoning Code. The following changes should be considered substantive in nature constituting a major amendment to the CUP, and shall be subject to the appropriate level of CEQA review and Planning and Zoning Commission approval:
 - a. Any changes in the approved use to operate as a private religious high school;
 - b. Any increases in enrollment beyond 630 students;

- c. Material changes in size or location or general function of buildings;
 - d. Material changes in location and amount of parking;
 - e. Material changes in internal automobile circulation system; or
 - f. Material changes in vehicle or pedestrian access from nearby streets onto campus,
7. **Non-Conforming Uses and Structures.** All improvements and uses in place on the Effective Date of the CUP are considered lawful and may be continued in use even if such existing use or structure does not conform to existing standards (e.g., legal non-conforming uses and structures).
8. **Site Regulations.** This CUP does not constitute a granting of any variance or exception to City of Albany requirements. All future improvements associated with the CUP shall be subject to the Planning and Zoning Code requirements in effect at the time of application for Design Review, including site regulations associated with the Public Facilities zoning district. SMCHS may submit an application for a Variance or Planned Unit Development as allowed by the Planning and Zoning Code, and the City has its regular discretion in consideration of any such applications.
9. **Subsequent Conditions of Approval.** The City of Albany reserves the right to impose conditions of approval related to the subsequent approval of Design Review or a building permit. Such additional conditions shall be based on standard city procedures and Federal, State, Regional or City regulatory requirements in effect at the time of the subsequent approval. Subject matter covered by subsequent conditions of approval may include:
- a. general engineering,
 - b. site drainage
 - c. grading,
 - d. infrastructure,
 - e. utility services,
 - f. repair of construction-related damage to public streets and sidewalks
 - g. water quality,
 - h. air quality,
 - i. off-site public improvements,
 - j. pollution controls,
 - k. location of construction staging, access, storage
 - l. construction noise and dust controls
 - m. campus parking during construction
 - n. construction employee parking during construction
 - o. traffic controls during construction
 - p. fire department requirements, and
 - q. police department requirements.
10. **Effective Date.** The issuance of this CUP shall be effective fourteen (14) days after the Planning & Zoning Commission decision.
11. **Severability.** Approval of the CUP would not have been granted but for the applicability and validity of each and every one of the specified conditions and mitigation, and if any

one or more of such conditions and mitigations is found to be invalid by a court of competent jurisdiction this CUP would not have been granted without requiring other valid conditions and mitigations consistent with achieving the same purpose and intent of the CUP.

12. **Fees.** SMCHS shall pay all applicable City and other related fees, as may be modified by conditions herein. Fees shall be based on the fee structure in effect at the time the relevant permits are secured, and shall be paid before issuance of said permit or before any City Council final action approval. Notice shall be taken specifically of Plan Check, Engineering, Fire and Inspection Fees. SMCHS shall also reimburse the City for direct costs of planning; building and engineering plan check and inspection, as mutually agreed between the City and SMCHS.
13. **Requirement for Building Permit.** Approval of this CUP does not constitute a building permit or authorization to begin any construction or demolish an existing structure. An appropriate permit issued by the Community Development Department must be obtained before constructing, enlarging, moving, converting, or demolishing any building or structure within the City.
14. **MMRP.** The applicant shall comply with all mitigation measures associated with the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (MMRP).

B. OPERATING CONDITIONS

1. **Athletic Field.** The conditions of approval associated with the Athletic Field Renovation Project approved by the Planning and Zoning Commission on October 16, 2007 remain in full force and effect, and incorporated below.

A. Weekday Use of the Athletic Field for Practice

- Team practices will end by 6:30 p.m.
- Team practices will cease use of whistles at 6:00 p.m.
- Batting-cage practice will cease at 6:00 p.m.
- On seven (7) occasions in the Spring athletic season (February 1-May 31) team practices may last until 7:15 p.m. Batting practice and use of whistles will cease by 6:00 p.m. on those days.
- No whistles, batting practice, hitting of baseballs, or repetitive shouting will occur before school on the athletic field.

B. Weekend Use of the Athletic Field for Practice

- Organized team practices, including field setup, will begin Saturdays after 9:00 a.m. & end by 3:00 p.m. The Athletic Field will not be used on Sundays by SMCHS's athletic teams or by outside organizations.

C. Use of the Athletic Field for Interscholastic Athletic Contests

(These conditions apply to games held on weekdays and Saturdays.)

- SMCHS's will continue to follow the existing practices of using amplified sound for football games and, when appropriate, at NCS playoff games. Volume will be

kept at a level so that neighborhood impacts are minimized. Amplified music will not be used on the field, with the exception of half-time cheerleader routines at football games. Non-amplified live music (e.g., pep bands) is allowed.

- Litter produced by the crowd during games will be removed immediately following interscholastic athletic contests.
- Activities surrounding Saturday interscholastic athletic contests will begin after 9:00 a.m. and end by 5:30 p.m. unless extended by overtime or extra innings. Exceptions to the ending time may occur if the Bay Shore Athletic League (BSAL), North Coast Section (NCS), or California Interscholastic Federation (CIF), or similar athletic league governing body, determines the starting times for post-season contests (i.e., playoffs).
- The Athletic Field will not be used on Sundays by SMCHS's athletic teams or by outside organizations.
- SMCHS's may host one special athletic event per year sponsored by an outside organization (e.g., CYO, American Cancer Society, etc.).
- Number of CIF Regular-Season Athletic Contests on SMCHS's Athletic Field:
 - 5 Football games per team 6th game is allowed once during a four-year period.)
 - 4 Track-meets (a 5th meet is allowed once during a four-year period.)
 - 24 Baseball games
 - 39 Soccer games (including all teams.)
 - 3 Lacrosse games (including all teams.)
- North Coast Section (NCS) playoff contests may be hosted by SMCHS's in baseball, soccer, football and lacrosse only in those years when SMCHS's teams qualify for the post-season and the team is seeded high enough to host a contest.

D. Summer Program (June 1-August 15) Use of the Athletic Field

- Summer Programs will begin after 9:00 a.m. and end by 5:00 p.m. Only activities involving, SMCHS's students, potential students, and staff will use the field.
 - Summer Sports Camps on the field will include the Sports & Fitness Camp (which runs concurrently with SMCHS's Summer School program), a one-week football camp for elementary- and middle-school-aged students (1 p.m. to 5 p.m.), and a one-week baseball camp for elementary- and middle-school-aged students (9 a.m. to 4 p.m.).
 - The Athletic Field will not be used on Saturdays or Sundays by SMCHS's teams or by outside organizations.
2. **Annual Report Process For Athletic Field Usage:** SMCHS shall prepare and submit an annual report on athletic field usage, no later than July 1st, beginning July 1, 2013, and continue annually thereafter. The Planning and Zoning Commission may change the frequency of annual reports if it makes a finding that SMCHS has operated the athletic fields in substantial compliance with previously approved operating parameters, CUP, and any other future conditions of approval associated with the athletic field. The annual report shall include:
- a. A detailed listing of standard field usage patterns for the forthcoming academic year, including actual hours of operation for each individual team. Detailed listing of special

events drawing more than 50 participants and spectators, or special events generating unusual level of noise or traffic shall also be included. Field use patterns shall conform to the limits and guidelines described in Condition J-1.

- b. A report from an independent licensed arborist, or other appropriate professional, on the condition of approved landscaping and maintenance practices related to landscaping.
 - c. A detailed review of design review, use permit, and other conditions of approval associated with the athletic field, including Special Conditions J-1.
3. **California Environmental Quality Act.** Pursuant to the California Environmental Quality Act (CEQA) requirements, an Initial Study and Mitigated Negative Declaration on the Campus CUP Project dated ____ was prepared and approved by the Planning and Zoning Commission on _____. The MMRP is incorporated by reference and included as Exhibit C.
 4. **Approved Use.** The primary use of the SMCHS campus is a private coeducational high school (grades 9 through 12) operated by a religious corporation under the Nonprofit Religious Corporation Law for religious purposes. SMCHS shall maintain in good standing and accreditation. Other ancillary or temporary uses, shall be limited to activities typically pursued by private East Bay high schools and shall be related to the school's religious purpose, educational mission, or related community service. All ancillary or temporary uses shall comply with all relevant conditions of approval.
 5. **School Calendar.** SMCHS shall operate with a standard school calendar typical of private East Bay high schools, with the start of the school year in August, holiday break in December, and completion of the school year in June. SMCHS shall maintain online one complete, accurate calendar of all events, including those of the athletic fields and the gym or other facilities, for the entire calendar year.
 6. **Enrollment.** St. Mary's College High School (SMCHS) may operate a co-educational high school facility for grades 9 through 12 beginning in September, 1995, for up to 600 total students. The maximum enrollment figures may be exceeded on an absolute basis by up to five percent to allow for attrition and other student body changes.
 7. **Summer Programs.** Other summertime ancillary or temporary uses shall be limited to activities typically pursued by private East Bay high schools and shall be related to the school's religious purpose, educational mission, or related community service. All summer activities shall comply with all relevant conditions of approval. Summer programs should be sized in a manner so that student, guest, and staff parking can be reasonably expected to be absorbed on campus (taking into consideration 44 public parking spaces on Posen Avenue previously included in Resolution 93-47 which were included in the count of total spaces available for school). No summer programs shall be scheduled on weekends or holidays during the summer.

Whenever possible, phasing of major construction should be scheduled so that if possible, major interruptions to the availability of on-campus parking and heavy construction-

related traffic occurs during summer months. During these periods of time, summer programs should be further reduced in scale.

8. **Hours of Operation.** Academic programs shall be scheduled to begin no earlier than 7:00 a.m. Student activities such as athletics and performing arts shall be completed and guests and participants off campus by 10:30 p.m. cleared from the neighborhood by 11 p.m. SMCHS is allowed to schedule six events per year that shall be completed and guests and participants off campus by 12:00 midnight and cleared from the neighborhood by 12:30 a.m. This principle of timely clearing of the campus and the neighborhood shall apply regardless of when any event actually ends. No events shall begin earlier than 9:00 a.m. or end later than 5:00 p.m. during the summer recess. No academic programs shall be scheduled on the weekends or holidays during the summer.
9. **Gross Square Footage.** The total gross square footage of building area on the campus shall be consistent with the plans provided by the applicant date stamped received August 23, 2012. Approximately 652 sq. ft. of classroom space in Cronin Hall previously restricted from use shall be returned to use as a classroom. It is duly noted that the Brothers' Residence expansion has been withdrawn from the application request resulting in a decrease of 2,500 sq. ft. from the project scope.
10. **Emergency Preparation, Response, and Recovery.** St. Mary's shall prepare and submit to the Albany Fire Chief and Emergency Management Plan. The plan shall be prepared based on guidelines for schools published by FEMA and CALEMA (California Emergency Management Agency).

C. CONSTRUCTION REQUIREMENTS

1. **Construction Hours.** Construction activity shall be restricted to the hours of 8:00 a.m. to 6:00 p.m. Mondays through Saturdays, and 10:00 a.m. to 6:00 p.m., Sundays and legal holidays, unless otherwise approved in writing by the City Engineer for general construction activity. (AMC Chapter 8.1 (7) (g)) Failure to comply with construction hours may result in stop work orders or other administrative actions.
2. **Construction Traffic and Parking.** Prior to the issuance of a demolition, grading or building permit, SMCHS and the construction contractor shall meet with appropriate City of Albany agencies to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction and other nearby projects that could be simultaneously under construction. SMCHS shall develop a construction management plan for review and approval by both the Albany and Berkeley Planning and Zoning Departments. The plan shall include at least the following items and requirements:
 - a. A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes.
 - b. Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours and lane closures will occur.

- c. Location of construction staging areas for materials, equipment, and vehicles at an approved location as far as practicable from nearby residences.
 - e. Provision for accommodation of pedestrian and bicycle flow.
 - f. Provision for parking management and spaces for all construction workers and their equipment to ensure that construction workers or construction equipment and vehicles do not occupy on-street spaces nor displace parking for students and school staff.
3. **Storm Water Management.** SMCHS shall obtain all necessary development and land subdivision permits for the portions of the storm water management systems that are located within the City of Berkeley. Storm water management plans shall be consistent with C3 compliance standards.
 4. **Stormwater Pollution Prevention Plan.** The project developer shall submit a Stormwater Pollution Prevention Plan (SWPPP) for review by the City before the issuance of a building or grading and/or building permit. The SWPPP shall be consistent with standards adopted by the Regional Water Quality Control Board and the City of Albany Clean Water Program and implemented by the project general contractor, all subcontractors and suppliers of material and equipment. Construction site cleanup and control of construction shall also be addressed in the SWPPP. The project developer shall be responsible for SWPPP compliance. A copy of the SWPPP shall be kept at the construction site at all times.
 5. **Fire Department Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Albany Fire Department have, or will be, met to the satisfaction of the AFD.
 6. **Engineering Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Public Works Department have, or will be, met to the satisfaction of the City Engineer.
 7. **Archeological Remains.** In the event subsurface archeological remains are discovered during any construction or preconstruction activities on the site, all land alteration work within 100 feet of the find shall be halted, the Community Development Department notified, and a professional archeologist, certified by the Society of California Archeology and/or the Society of Professional Archeology, shall be notified. Site work in this area shall not occur until the archeologist has had an opportunity to evaluate the significance of the find and to outline appropriate mitigation measures, if deemed necessary. If prehistoric archeological deposits are discovered during development of the site, local Native American organizations shall be consulted and involved in making resource management decisions.
 8. **Grading Permit.** Any grading shall require a grading permit from the Community Development Department. To obtain this permit, the applicant shall submit a grading plan, indicating the extent and volumes of earth proposed to be moved. A grading permit is subject to 2001 California Building, Appendix 33.

9. **Demolition Permit.** Site demolition and/or building permits shall not occur until construction (do you mean demolition?) permits are issued. All demolition shall be in accordance with permits issued by the City and Bay Area Air Quality Management District (BAAQMD).
10. **Water on Site.** The site shall be graded so as to prevent rainfall runoff originating from improved areas on the project site from crossing onto adjoining private property. Building floor elevations shall be above the FEMA-mapped 100-year flood plain as established by a licensed civil engineer. Provide the elevation and compaction certificates during and upon the completion of grading required by the Uniform Building Code and in conformance with the recommendations of the geotechnical engineer's report. Shore and dewater all excavations in accordance with the requirements of the geotechnical engineer's report.
11. **Flooding Damages.** SMCHS shall execute an assumption of risk, indemnification and hold harmless agreement as required by the City. The agreement, in substance, shall state that the project developer, and any successor in interest, shall assume all risk for damages to the project and to project improvements, flooding caused by surface water intrusion, stormwater runoff, or water under the ground surface pressing on or flowing or seeping through foundations, walls, floors, or paved surfaces, basements, whether paved or not, or windows, doors or other openings, and shall indemnify and hold the City harmless from any claims of such damages, including third-party claims, of such damage or of such damages or of damages arising from rainfall runoff which is not prevented from leaving the project site in violation of Condition 11.
12. **Dust Control Program.** A dust control program shall be prepared and approved by the Community Development Department and City Engineer before issuance of a grading permit. The dust control plan shall address such items as covering stockpiled material, frequent watering of graded areas, revegetating graded areas, speed limits for grading equipment and similar items.

D. TRANSPORTATION MANAGEMENT

1. **Transportation Coordinator.** SMCHS shall designate a staff person as the school's Transportation Coordinator, responsible for traffic, parking and events. SMCHS shall adopt written parking and traffic rules and procedures, and incorporate rules and procedures by reference in all enrollment contracts with student families.
2. **Traffic Monitors.** The Transportation Coordinator shall retain traffic monitors or assign them from the existing SMCHS community to oversee morning and afternoon school commute traffic and after school events. The traffic monitors shall be responsible for facilitating traffic and enforcing the rules of conduct included in the Handbook and TDM. Morning monitors shall stay in place until the school day begins. Traffic monitors shall be provided with colored safety vests. The traffic monitors shall report violators of the driving and parking rules to the Transportation Coordinator.
3. **Transportation Demand Management Program.** The draft Transportation Demand Management Program (TDM) submitted by SMCHS as part of this application request

shall be evaluated by the Albany Traffic & Safety Commission for adequacy with demand management policies. If the Commission determines that draft TDM is inadequate, the applicant revise the document to the satisfaction of the Traffic & Safety Commission for final approval.

Goals of the TDM shall include but not be limited to the following:

- a. Maximizing pedestrian and vehicle safety
 - b. Minimizing traffic congestion and vehicle queuing
 - c. Minimize adverse impacts on availability of parking on surrounding streets,
 - d. Encouraging students and faculty to take public transportation, carpool, walk/bike to school
 - e. Actively pursue an increase in AC Transit service to the school
 - f. Actively pursue transportation links between campus and BART and/or major AC Transit lines during peak hours
 - g. Provide discounted transit passes
4. **Managing Major Events-** The TDM shall include provisions for Major Events when the on-site parking is not sufficient for the number of guests expected. Measures may include shuttle or valet services and/or off-site over-flow parking options. Traffic monitors shall be positioned during overflow events to intercept and direct traffic to over-flow parking off-site locations prior to its entering Albina and Posen Avenues or Hopkins Court once on-site spaces are occupied. Written copies of overflow parking agreements with the owners of the overflow parking lots shall be submitted to the City to be kept with the file.
5. **Traffic & Parking Handbook-** The applicant shall prepare a Traffic & Parking Handbook which shall include but not be limited to neighborhood parking policies/restrictions, a detailed explanation of the pick-up and drop off process including directions/instructions, traffic & safety rules for students, parents, and faculty, and special events parking information. The draft handbook shall be prepared and submitted to the Albany Community Development Department and reviewed by the Traffic & Safety Commission for adequacy. The applicant shall prepare and submit a draft handbook within sixty (60) days from the date of approval for review by the City of Albany.
6. **Communication of Rules.** Within 30 days of the first semester following approval of the TDM and the Handbook, the Transportation Coordinator shall inform staff and faculty employee or SMCHS contractors as well as each student and his/her parent or guardian, and provide them with the Traffic and Parking Handbook, which shall also be made available on the school's website. The Transportation Coordinator shall describe the rules and policies of the Handbook including detailed explanation of document policies, procedures, and penalties for violation. As a condition of employment or enrollment, employees/contractors, students, and parents/guardians of each student shall be provided and required to sign a contract acknowledging the applicable policies contained in the TDM and Traffic & Parking Handbook.
7. **Annual Report Process.** SMCHS shall prepare and submit an annual report summarizing construction management, event management, transportation management plan, and athletic field usage. The athletic field portion of the annual report shall comply with the condition of approval No. _____ in this CUP. The Planning and Zoning Commission shall hold a public hearing on the annual report. Public notice shall be provided 10 days

before the public hearing to all property owners and residents within 300 feet of the campus. The purpose of the public hearing is to receive public comment on construction management, event management, transportation management plan, and athletic field usage during the prior year and review operating parameters to ensure that SMCHS is operating consistent with CUP and other City requirements. The Planning and Zoning Commission may change the frequency of annual reports if it makes a finding that the school has operated in substantial compliance with the CUP and other operating parameters.

8. **Event Management.** SMCHS shall designate a staff person as the school's Events Coordinator, responsible for preparing and distributing to all staff and faculty written procedures regarding the scheduling of evening and weekend events that may result in exceptional traffic and parking volumes on nearby residents. Particular consideration shall be given to:

- a. Limit large events to functions that are germane to the school's educational mission;
- b. Providing advance notice to neighbors of large events;
- c. Avoid scheduling simultaneous events that cumulatively overwhelm neighborhood roadway and parking capacity; and
- d. Discouraging students and guests from congregating outdoors in parking areas or public right of way close to nearby residences after evening and weekend events.

9. **City of Berkeley Traffic Calming-** An update to previous traffic calming studies shall be undertaken on Albina Avenue and Hopkins Court and should include data collection for speeds, traffic volumes, parking occupancies, and updates on observations of the intersection of Albina Avenue and Hopkins Court. When completed, a comparison and summary should be made with the previous studies (conducted by Korve in 2003 and 2005) and new, if any, recommendations provided. This will provide a longitudinal study that would be the basis for improvements, if any, and any further outreach to the local neighborhood should that become necessary.

City of Berkeley staff will determine the next steps, if any, regarding appropriate traffic calming measures. Upon conclusion of this determination, SMCHS shall provide up to \$20,000 (placed in a mutually acceptable escrow account) for implementation of said measures. If no agreement between Berkeley and the Albina Avenue/Hopkins Court neighbors is reached as to which measures, if any, would be implemented, the money would be returned to the SMCHS within one year of placement of said funds in the escrow account.

E. SCHOOL COORDINATORS AND NEIGHBORHOOD OUTREACH

1. **Construction Management.** The school shall designate a staff person as the school's Construction Coordinator, responsible for neighborhood outreach during the construction projects. Construction management responsibilities include scheduling a preconstruction meeting with neighbors before the start of construction of any significant element as approved by the CUP.

2. **Neighborhood Liaison Committee** - SMCHS shall designate a Neighborhood Liaison Committee to resolve conflicts and maintain communications between SMCHS and the surrounding neighborhood. SMCHS should initiate the Committee formation no later than the first month after approval of the CUP. The Committee shall include the following composition:
 - Up to three neighbors from the Peralta Park Neighborhood Association (PPNA)
 - SMCHS representatives. SMCHS may appoint additional parties to the Committee.
 - Albany Community Development staff will attend the meetings as necessary.

The Committee shall meet at least once a semester to discuss issues related to SMCHS activities. Additional meetings may be held at the discretion of SMCHS as requested by neighborhood participants. The meetings will have an agenda which will be forwarded to Albany Community Development staff.

3. **Point of Contact-** SMCHS shall designate a representative on-site to act as the primary point of contact and as the Complaint Manager for the School. The Complaint Manager shall develop a list of procedures and protocols to track and timely respond to complaints/concerns raised by neighbors related to the school's operations including but not limited to traffic, noise, etc. The procedures and protocols shall include timely review of complaints and the procedures by which the Committee will resolve the issues in a timely manner.

F. DESIGN REVIEW REQUIREMENTS

1. **Application for Design Review.** All new construction and renovation of existing structures, including fencing and other screening, are subject to Design Review, pursuant to Planning and Zoning Code Section 20.100.050, as may be amended from time to time.
2. **Material Samples.** Samples of final exterior materials and the proposed color palette shall be submitted for review and approval by the Community Development Department as part of building permit application.
3. **Exterior Lighting.** As part of the Design Review process, SMCHS shall submit a lighting plan, which shall be reviewed and approved by the Planning and Zoning Commission, prior to processing a building permit application. All exterior lighting shall be installed in such a manner that glare is shielded or directed away from surrounding properties and rights-of-way. If required, exterior light fixtures shall be equipped with "cut off" lenses to minimize light and glare spill over onto adjacent properties.
4. **Interior Lighting.** Interior lighting shall be provided with occupancy and/or time of use controls and installed in a manner to avoid direct illumination or glare outside of the building. A final site lighting plan demonstrating compliance with this standard shall be submitted to the Planning & Zoning Commission as part of Design Review.
5. **Landscape Plan.** As part of the Design Review process, SMCHS shall submit a landscape plan, which shall be reviewed and approved by Planning and Zoning Commission, before

processing a building permit application. The landscape plan shall show existing landscaping, landscaping to be removed, proposed landscaping, and irrigation systems. The landscape plan shall include a landscape maintenance agreement to be completed between the City and SMCHS before installation of landscaping, to guarantee the establishment of new trees and landscaping as approved by design review.

6. **Signage.** All construction/installation of signage shall be subject to the standards and procedural requirements of the Planning and Zoning Code.
7. **Public Art.** As part of the Design Review, SMCHS shall submit to the Arts Committee and the Planning and Zoning Commission a conceptual description of the public art elements of the project, pursuant to the procedures in place at the time of the application for Design Review.
8. **Temporary Buildings and Storage Containers.** No additional storage containers or temporary buildings shall be allowed on campus at any time, unless expressly approved by the City of Albany as part of design review or a building permit. As a condition of approval of the use of shipping containers or temporary building, a fixed date for removal must be established. While in use, square footage of temporary buildings and storage containers shall count towards total square footage allowed in the CUP. No additional storage containers or temporary buildings shall be converted to classroom facilities or to free up other space that could be converted to classroom facilities except as needed arising from an emergency, including but not limited to a fire or natural disaster. (Construction trailer and portable rest rooms associated with an active construction project are not subject to this requirement.) At build-out of the CUP, all such temporary buildings and storage containers must be removed.
9. **Sustainable Building Practices.** As part of an application for design review approval, SMCHS shall meet the requirements of the City of Albany Green Building requirements utilizing the Collaborative High Performance School (CHPS) Best Practices Manual and Scorecard and seek to achieve the maximum feasible number of points.
10. **Codornices Creek.** Codornices Creek should be considered an important campus asset, and student access to the creek should be encouraged and building design should allow for views and access to the creek as applicable. In addition, any construction of structures, grading, landscaping or other site work within 100 feet of the center-line of Codornices Creek shall take into consideration regulatory requirements and best management practices including preservation and enhancement of riparian vegetation, preservation of habitat, improving water quality in the creek, erosion control, etc.
11. **Refuse & Recycling Enclosures**-No refuse or recycling enclosures shall be situated in view of the neighboring properties. All enclosures shall be kept rodent and odor free.

G. PARKING CONDITIONS

1. **Parking.** The general configuration and location of on-campus parking shall conform to the approved CUP plans. As part of the Design Review process, SMCHS shall submit a construction parking and construction access plan, which shall be reviewed and approved by the Planning & Zoning Commission before processing a building permit application. The Community Development Director may approve short term (30-days or less) reduction in on-campus parking or change in construction access.
2. **Parking Dimensions.** Dimensions and landscaping of parking areas shall comply with the requirement of the Planning and Zoning Code and the California Building Code.
3. **Parking of School-owned Vehicles.** The location of parking spaces reserved for school-owned vehicles shall take into consideration the appearance from neighboring properties or the public right-of-way and shall be screened or landscaped where practical.

H. NOISE

1. **Noise General.** The School operation shall comply with Section 8-1 “Noise of the Albany Municipal Code at all times.
2. **Noise Generation.** The installation of any bells or loudspeakers shall comply with the City of Albany’s noise standards, and are subject to review by the Community Development Department and/or the Planning and Zoning Commission.

Appeals: The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council, if such appeal is filed within 14 days of the date of the action. Appeals shall be initiated by completing the required form and paying the required fee to the City Clerk.

**EXHIBIT B
CONDITIONAL USE PERMIT PLANS
(SEPARATE PAGE)**

EXHIBIT C
MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

**ATTACHMENT 3
PLANNING & ZONING COMMISSION
RESOLUTION 2012-04**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ALBANY, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, APPROVING DESIGN REVIEW FOR ST. MARY'S COLLEGE HIGH SCHOOL NEW MUSIC BUILDING 1600 POSEN ST. ALBANY, CA 94706

WHEREAS, the Albany City Council adopted Ordinance 04-09 Chapter 20 "Planning & Zoning" of the Albany Municipal Code on December 6, 2004; and

WHEREAS, Section 20.100.050 of the Albany Municipal Code requires Design Review for new non-residential construction 400 sq. ft. or greater; and

WHEREAS, St. Mary's College High School filed an application for a Design Review for a Music Building on campus with the City of Albany on August 21, 2007;

WHEREAS, the Planning & Zoning Commission reviewed the initial application request at its September 27, 2011; and

WHEREAS, the Planning & Zoning Commission conducted a site walk of the St. Mary's campus on October 11, 2012 with School representatives, City staff, and members of the public to view story poles which were installed on-site that illustrate proposed building height; and

WHEREAS, the September 27, 2011 public hearing and October 11, 2011 site walk were publicly noticed and notices sent to residents and property owners within 300 ft. of the subject site pursuant to Government code Section 65090; and

WHEREAS, the application was deemed complete as part of the October 11, 2011 review; and

WHEREAS, the City of Albany authorized Lamphier-Gregory, an environmental consulting firm, to prepare an Initial Study for the proposed project after the October 11, 2011 site walk; and

WHEREAS, Lamphier-Gregory prepared a draft Mitigated Negative Declaration (MND) to analyze potential project impacts associated with the proposed Music Building; and

WHEREAS, a public hearing notice was sent to residents and property owners within 300 ft. of St. Mary's College High School pursuant to California Government Code Section 65090; and

WHEREAS, the Planning & Zoning Commission has held a public hearing, considered all public comments received, the presentation by City staff, the staff report, and all other pertinent documents regarding the proposed request; and

WHEREAS, Section 20.100.050 (D) grants authority to the Planning & Zoning Commission to evaluate the project application for adherence to standards contained in Section 20.100.050 (D) (1) (a-l) and impose Conditions of Approval to ensure design compatibility; and

WHEREAS, the final General Plan and the Zoning Code are incorporated herein by reference, and are available for review at City Hall during normal business hours.

NOW, THEREFORE, the City of Albany Planning & Zoning Commission does hereby **RESOLVE** as follows:

1. *The project conforms to the General Plan, any applicable specific plan, applicable design guidelines adopted by the City of Albany, and all applicable provisions of this Chapter.*

The General Plan designates this area for Public/Quasi Public uses. A private school use is conditionally allowed in the PF-Public Facilities District. The project meets City zoning standards for location, intensity and type of development.

2. *Approval of project design is consistent with the purpose and intent of this section, which states “designs of projects...will result in improvements that are visually and functionally appropriate to their site conditions and harmonious with their surroundings, including natural landforms and vegetation. Additional purposes of design review include (but are not limited to): that retention and maintenance of existing buildings and landscape features are considered; and that site access and vehicular parking are sufficient.”*

The proposal is in scale and harmony with existing development in the vicinity of the site. The architectural style, design and building materials are appropriate for the setting. The proposed project will provide safe and convenient access to the property.

3. *Approval of the project is in the interest of public health, safety and general welfare.*

The proposed project will modernize and improve the St. Mary’s College High School campus by creating a modern music facility with proper sound-proofing and acoustic insulation. The new Music Building will support the health, safety, convenience and welfare of those in the area and will eliminate music practices/uses currently held in the gymnasium.

4. *The project is in substantial compliance with applicable general and specific Standards for Review stated in Subsection 20.100.050.D.*

The project as designed is in substantial compliance with the standards as stated, including access, architecture, natural features, coordination of design details, retention and maintenance of buildings, and privacy.

NOW THEREFORE BE IT RESOLVED by the Planning & Zoning Commission of the City of Albany hereby approves Design Review for the New Music Building at St. Mary’s College High School.

PASSED, APPROVED AND ADOPTED this 26th day of September, 2012 by the following vote:

AYES-

NOES-

ABSENT-

ABSTENTION-

Planning Commission Chairperson Arkin

ATTEST:

Anne Hersch, City Planner

EXHIBIT A
PLANNING & ZONING COMMISSION RESOLUTION 2012-05
ST. MARY'S COLLEGE HIGH SCHOOL
CONDITIONS OF APPROVAL – DESIGN REVIEW FOR THE NEW MUSIC BUILDING
SEPTEMBER 12, 2012

GENERAL PROJECT CONDITIONS

4. **Project Approval.** This Conditional Use Permit for St. Mary's College High School, as substantially provided in the staff report, may be modified by conditions herein. Plans include the report and project correspondence, as presented to the Planning and Zoning Commission on September 12, 2012. For any condition herein that requires preparation of a Final Plan where the project developer has submitted a conceptual plan, the project developer shall submit final plan(s) in substantial conformance with the conceptual plan, but incorporate the modifications required by the conditions herein for approval by the City.
5. **Project Approval Expiration.** This Conditional Use Permit approval will expire on June 26, 2013 unless a building permit has been issued and construction diligently pursued. The approval may be renewed by the Community Development Director for a period up to an additional two (2) years, provided that, at least ten (10) days prior to expiration of one (1) year from the date when the approval becomes effective, an application for renewal of the approval is filed with the Community Development Department. The Community Development Director may grant a renewal of an approval where there is no change in the original application, or there is no request to change any condition of approval.
6. **Fees.** The applicant shall pay all City and other related fees applicable to the property, as may be modified by conditions herein. Fees shall be based on the current fee structure in effect at the time the relevant permits are secured, and shall be paid prior to issuance of said permit or prior to any City Council final action approval. Notice shall be taken specifically of Plan Check, Engineering, Fire and Inspection Fees. The project developer shall also reimburse the City for direct costs of planning; building and engineering plan check and inspection, as mutually agreed between the City and developer.
7. **Appeals.** The Albany Municipal Code provides that any action of the Planning staff may be appealed to the Planning and Zoning Commission, and any action of the Planning and Zoning Commission may be appealed to the City Council as per the procedures described in Section 20.100.080. The City Clerk will then schedule the matter for the next available City Council meeting.
8. **Requirement for Building Permit.** Approval granted by the Planning and Zoning Commission does not constitute a building permit or authorization to begin any construction or demolish an existing structure. An appropriate permit issued by the Community Development Department must be obtained prior to constructing, enlarging, moving, converting, or demolishing any building or structure within the City.

9. **Fire Department Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Albany Fire Department have, or will be, met to the satisfaction of the AFD.
10. **Engineering Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Public Works Department have, or will be, met to the satisfaction of the City Engineer.
11. **Construction Hours.** Construction activity shall be restricted to the hours of 8:00 a.m. to 6:00 p.m. Mondays through Saturdays, and 10:00 a.m. to 6:00 p.m., Sundays and legal holidays, unless otherwise approved in writing by the City Engineer for general construction activity. Failure to comply with construction hours may result in stop work orders or other administrative actions.
12. **Archeological Remains.** In the event subsurface archeological remains are discovered during any construction or preconstruction activities on the site, all land alteration work within 100 feet of the find shall be halted, the Community Development Department notified, and a professional archeologist, certified by the Society of California Archeology and/or the Society of Professional Archeology, shall be notified. Site work in this area shall not occur until the archeologist has had an opportunity to evaluate the significance of the find and to outline appropriate mitigation measures, if deemed necessary. If prehistoric archeological deposits are discovered during development of the site, local Native American organizations shall be consulted and involved in making resource management decisions.
13. **Modifications to Approved Plans.** The project shall be constructed as approved. Planning staff may approve minor modifications in the project design, but not the permitted land use (per Municipal Code Section 20.12). A change in an item requiring discretionary approval and any other changes deemed appropriate by the Planning staff shall require further Planning and Zoning Commission approval through the Design Review process.
14. **Hold Harmless Agreement.** Pursuant to Government Code Section 66474.9, the applicant (including any agent thereof) shall defend, indemnify, and hold harmless, the City of Albany and its agents, officers and employees, from any claim, action, or proceeding against the City or its agents, officers or employees to attack, set aside, void, or annul the City's approval concerning this application, which action is brought within the time period provide for in Section 66499.37. The City will promptly notify the applicant of any such claim action or proceeding and cooperate fully in the defense.
15. **Public Improvements Standards.** Public improvements shall be designed and constructed in accordance with the City's Standard Specifications and Standard Details, unless specifically waived in writing by the City Engineer.
16. **Title 24 Standards.** All construction shall be designed and built in accordance with California Title 24 disabled accessibility standards. Appropriate details and specifications shall be incorporated into the plans and submitted at time of building permit application.

- 17. **Energy Conservation Standards.** All buildings shall be designed in accordance with the State of California energy conservation standards for non-residential buildings. The necessary plans and documentation shall be submitted at time of building permit application.

Architecture Condition

- 1. **Material Samples.** Samples of final exterior materials and the proposed color palette shall be submitted for review and approval by the Community Development Department as part of building permit application.
- 2. **Final Architectural Drawings.** The applicant shall submit final architectural elevations, details and revisions for the review and approval of the Community Development Department as part of building permit application.

Lighting Conditions

- 1. **Exterior Lighting.** All exterior lighting shall be installed in such a manner that glare is directed away from surrounding properties and rights-of-way. If required, exterior light fixtures shall be equipped with “cut off” lenses to minimize light and glare spill over onto adjacent properties.
- 2. **Shielding of Lighting.** All accent lighting shall be directed downward and, if necessary, fixed with cut-off lenses to ensure that no glare spills onto neighboring properties.

Landscaping Conditions

- 1. **Tree Preservation.** All existing trees on the site shall be preserved to the fullest extent practicable. Removal will be allowed only upon prior written approval from the Community Development Department.
- 2. **Water Efficient Landscaping.** The project shall comply with the requirements of Section 12-7 of the Albany Municipal Code “Water Efficient Landscaping” and the latest Bay Friendly Basics policy. The applicant shall submit landscape plans for plan check at the time of building permit submittal to be reviewed for consistency.
- 3. **Landscape Plan Review.** The landscape plan shall be submitted with the building permit application and reviewed by staff.

PUBLIC WORKS DEPARTMENT CONDITIONS

General Engineering Conditions

- 1. **Title Report.** A recent preliminary title report for the property, prepared within six months of the date of application, shall be submitted to the City Engineer for review. If any interior lot line(s) exist, the applicant must obtain approval of a minor lot line adjustment from the City to remove the interior lot line(s), and cause that lot line adjustment to be recorded before any building permits will be issued.

2. **Geo-Technical Report.** The applicant shall submit, as part of a building permit application, a geotechnical investigation report prepared by a California certified engineering geologist and geotechnical engineer, if determined necessary by the City Engineer. The investigation shall specifically address any hazards of surface fault rupture in accordance with the Alquist-Priolo Special Study Zones Act. Any mitigation measures or conditions requiring further review noted during the Planning process shall be fully addressed prior to plan check.
3. **Backflow Device.** Any required water service for fire protection purposes shall be equipped with a City approved backflow device. Services for irrigation purposes also require a separate City approved backflow prevention device.

GRADING CONDITIONS

1. **Grading Permit.** Any grading required in association with the project shall require a grading permit from the Community Development Department. To obtain this permit, the applicant shall submit a grading plan, indicating the extent and volumes of earth proposed to be moved. A grading permit is subject to 2001 California Building, Appendix 33.
2. **Demolition Permit.** Site demolition shall not occur until construction permits are issued for the development project. All demolition shall be in accordance with permits issued by the City and Bay Area Air Quality Management District (BAAQMD).
3. **Water on Site.** The site shall be graded so as to prevent rainfall runoff originating from improved areas on the project site from crossing onto adjoining private property. Building floor elevations shall be above the FEMA-mapped 100-year flood plain as established by a licensed civil engineer. Provide the elevation and compaction certificates during and upon the completion of grading required by the Uniform Building Code and in conformance with the recommendations of the geotechnical engineer's report. Shore and dewater all excavations in accordance with the requirements of the geotechnical engineer's report.
4. **Flooding Damages.** The project developer shall execute an assumption of risk, indemnification and hold harmless agreement as required by the City. The agreement, in substance, shall state that the project developer, and any successor in interest, shall assume all risk for damages to the project and to project improvements, flooding caused by surface water intrusion, stormwater runoff, or water under the ground surface pressing on or flowing or seeping through foundations, walls, floors, or paved surfaces, basements, whether paved or not, or windows, doors or other openings, and shall indemnify and hold the City harmless from any claims of such damages, including third-party claims, of such damage or of such damages or of damages arising from rainfall runoff which is not prevented from leaving the project site in violation of Condition GRAD-3.
5. **Dust Control Program.** A dust control program shall be prepared by the project developer and approved by the Community Development Department and City Engineer before issuance of a grading permit. The dust control plan shall address such items as covering stockpiled material, frequent watering of graded areas, revegetating graded areas, speed limits for grading equipment and similar items.

6. **Stormwater Pollution Prevention Plan.** The project developer shall submit a Stormwater Pollution Prevention Plan (SWPPP) for review by the City before the issuance of a building or grading and/or building permit. The SWPPP shall be consistent with standards adopted by the Regional Water Quality Control Board and the City of Albany Clean Water Program and implemented by the project general contractor, all subcontractors and suppliers of material and equipment. Construction site cleanup and control of construction shall also be addressed in the SWPPP. The project developer shall be responsible for SWPPP compliance. A copy of the SWPPP shall be kept at the construction site at all times.

Infrastructure Conditions

1. **Sewer System Requirements.** The sewer system for the subject building shall comply with Chapter 15 of the Albany Municipal Code and to the satisfaction of the City Engineer before Final Inspection approval of the construction permit.
2. **Two-Way Cleanout.** Installation of a two-way curbside cleanout shall be required per Chapter 15 of the Albany City Code. This applies to all properties, including properties with a valid upper sewer lateral certificate of compliance. All 2-way curbside clean outs shall be fitted with a loose cap in accordance with the City's standard detail SS6.
3. **Property Run-off Requirements.** All runoff from impervious surfaces shall be intercepted at the project boundary and shall be collected and conducted via an approved drainage system through the project site to an approved storm drain facility, as determined by the City Engineer. Development that contributes additional water to the existing drainage system shall be required to complete a hydraulic study and make improvements to the system as required to accommodate the expected ultimate peak water flow and to stabilize erosive banks that could be impacted by additional storm water flow.
4. **Roof Drainage.** Roof drainage from the structure shall be collected via a closed pipe and conveyed to an approved storm drain system off the street curb. No concentrated drainage of surface flow across sidewalks shall be permitted. Alternative natural treatment measures are subject review and approval by the City Engineer.
5. **Hydraulic Calculations.** The applicant shall submit hydraulic calculations, prepared by a California licensed civil engineer, necessary to determine if the existing water and sewer mains that serve this lot have available capacity for the addition of the proposed development. If capacity is not available, sewer and water mains of adequate size shall be designed and secured prior to issuance of building permits and constructed in a manner acceptable to the City Engineer prior to occupancy release, unless determined otherwise by the City Engineer.
6. **Completion of Off-Site Improvements.** Off-site improvements, as required by the City Engineer, shall be complete before issuance of a Certificate of Occupancy unless alternatives are approved in writing by the Albany City Engineer.

Public Improvements Conditions

1. **Encroachment Permit.** The applicant shall obtain an encroachment permit from the Engineering Division before commencing any construction activities within any public right-of-way or easement.
2. **Debris Removal.** All mud, dirt or construction debris carried off the construction site onto adjacent streets shall be removed each day. No materials shall be discharged onto a sidewalk, street, gutter, storm drain or creek.
3. **Damage to Street Improvements.** Any damage to street improvements now existing, done during construction on, or adjacent to the subject property, shall be repaired to the satisfaction of the City Engineer at the full expense of the applicant. This shall include sidewalk repair, slurry seal, street reconstruction or others, as may be required by the City Engineer.
4. **Right-of-Way Construction Standards.** All improvements within the public right-of-way, including curb, gutter, sidewalks, driveways, paving and utilities, shall be reconstructed in accordance with approved standards and/or plans and shall comply with the standard plans and specification of the Community Development Department and Chapter 14 of the City Code.

Fire Department Conditions

1. **Construction of 1,500 Square Feet or Greater.** 1500 sq. ft. or more or any addition, remodel, rehabilitation, etc. is 50% of the existing sq. ft.:
 - a) This dwelling will be required install an Automatic Fire Extinguishing System throughout the entire dwelling. Ordinance No. 94-010, Albany Municipal Code, Chapter 11, Section 11-2.3a(3)(a).
 - b) Plans, information sheets on all sprinkler components and hydraulic calculations are required.
 - c) A 110-volt interconnected smoke alarm system with a 10-year lithium battery back-up is acceptable with a fire suppression system.
2. **Fire Rated Construction.** Any portion of a building five (5) feet or less from the property line shall comply with fire-rating requirements of the CBC.
3. **Gallons-per-Minute Requirement.** The water system for fire protection shall comply with City of Albany Fire Department standards. Fire flow test data and water system plans must be provided at time of building plan check. The plans must include all equipment, components and layout of the system. Private fire protection water systems shall be supplied through an approved backflow device per City Engineering Division standards.
4. **Distance From Fire Hydrant.** Before building permit issuance the distance from existing fire hydrants to the building shall be verified and if necessary, a new hydrant shall be shown on the plans and installed prior to combustible construction.

Structural Control Measures

1. **Illegal Dumping to Storm Drain Inlets and Waterways.** On-site storm drain inlets shall be clearly marked with the words “No Dumping! Flows to Bay,” or equivalent, using methods approved by the City of Albany.
2. **Pesticide/Fertilizer Application.** Landscaping shall be designed to minimize irrigation and runoff, promote surface infiltration where appropriate, and minimize the use of fertilizers and pesticides that can contribute to stormwater pollution. If a landscaping plan is required as part of a development project application, the plan shall meet the following conditions related to reduction of pesticide use on the project site:
 - a) Where feasible, landscaping shall be designed and operated to treat stormwater runoff by incorporating elements that collect, detain, and infiltrate runoff. In areas that provide detention of water, plants that are tolerant of saturated soil conditions and prolonged exposure to water shall be specified.
 - b) Plant materials selected shall be appropriate to cite specific characteristics such as soil type, topography, climate, amount and timing of sunlight, prevailing winds, rainfall, air movement, patterns of land use, ecological consistency and plant interactions to ensure successful establishment.
 - c) Existing native trees, shrubs, and ground cover shall be retained and incorporated into the landscape plan to the maximum extent practicable.
 - d) Proper maintenance of landscaping, with minimal pesticide use, shall be the responsibility of the property owner.

Operational Best Management Practices (Bumps)

1. **Stormwater Pollution Prevention Control Measures.** The project plans shall include stormwater pollution prevention and control measures for the operation and maintenance of the project during and after construction for the review and approval of the City or County Engineer. The project plan shall identify Best Management Practices (Bumps) appropriate to the uses conducted on-site in order to limit to the maximum extent practicable the entry of pollutants into stormwater runoff.
2. **Erosion Control Measures.** The project plan shall also include erosion control measures to prevent soil, dirt and debris from entering the storm drain system, in accordance with the practices outlined in the *BAG Erosion and Sediment Control Handbook*, California Storm Water Best Management Practice Handbooks, and Regional Water Quality Control Board’s *Erosion and Sediment Control Field Manual*
3. **Responsibility of Contractors.** The applicant is responsible for ensuring that all contractors and subcontractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction Bumps shall result in the issuance of correction notices, citations and/or a project stop order.
4. **Paved Sidewalks and Parking Lots.** Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. Debris resulting from pressure washing shall be trapped and collected to prevent entry into the storm drain system. Wash water containing any soap, cleaning agent or degreaser shall be collected and discharged to

the sanitary sewer and shall not be discharged to a storm drain. The applicant shall contact the City Engineer for specific connection and discharge requirements.

5. **Private Streets, Utilities and Common Areas.** The owner of private streets and storm drains shall prepare and implement a plan for street sweeping of paved private roads and cleaning of all storm drain inlets.

General Construction Best Management Practices

1. **Construction Access Routes.** Construction access routes shall be limited to those approved by the City Engineer and shall be shown on the approval grading plan.
2. **Collection of Construction Debris.** Gather all construction debris on a regular basis and place them in a dumpster or other container that is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to stormwater pollution.
3. **Removal of Waste.** Remove all dirt, gravel, rubbish, refuse and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work.
4. **Sweeping of Public Right-of-Way.** Broom sweep the sidewalk and public street pavement adjoining the project site on a daily basis. Caked on mud or dirt shall be scraped from these areas before sweeping.
5. **Filter Materials at Storm Drain Inlet.** Install filter materials (such as sandbags, filter fabric, etc.) at the storm drain inlet nearest the downstream side of the project site prior to:
 - a) start of the rainy season (October 1);
 - b) site dewatering activities;
 - c) street washing activities;
 - d) saw cutting asphalt or concrete; and
 - e) order to retain any debris or dirt flowing into the City storm drain system.Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding. Dispose of filter particles in the trash.
6. **Containment of Materials.** Create a contained and covered area on the site for the storage of bags of cement, paints, flammables, oils, fertilizers, pesticides, or any other materials used on the project site that have the potential for being discharged to the storm drain system by wind or in the event of a material spill.
7. **Cleaning of Equipment.** Never clean machinery, tools, brushes, etc., rinse containers into a street, gutter, storm drain, or stream. See the *Building Maintenance/ Remodeling* flyer for more information.
8. **Minimize Removal of Natural Vegetation.** Minimize removal of natural vegetation or ground cover from the site in order to minimize the potential for erosion and sedimentation problems. Replant the area as soon as possible. All cut and fill slopes shall be stabilized as soon as possible after grading is completed. No site grading shall occur between

October 1 and April 15 unless approved erosion and sedimentation control measures are in place.

Parking Conditions

1. All parking solutions shall conform to the approved plans as shown in the plans, as described in condition GEN-1 and maintained available for parking as shown on approved plans.

Appeals:The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council, if such appeal is filed within 14 days of the date of the action. Appeals may be filed in the Community Development Department by completing the required form and paying the required fee. The City Clerk will then schedule the matter for the next available City Council meeting.

SEP 12 2012

COMMUNITY DEVELOPMENT
DEPARTMENT



Ms. Anne Hersch
City Planner
City of Albany
1000 San Pablo Avenue
Albany, CA 94706

September 10, 2012

SUBJECT: REVIEW OF FINAL INITIAL STUDY FOR THE PROPOSED ST. MARY'S COLLEGE HIGH SCHOOL USE PERMIT PROJECT

Dear Ms. Hersch;

Grassetti Environmental Consulting (GECO) has been retained by the Peralta Park Neighborhood Association (PPNA) to review the California Environmental Quality Act (CEQA) Initial Study (IS) for the St. Mary's College High School Conditional Use Permit Project. In July 2012, I provided the City with comments on the Draft Initial Study. I have reviewed the responses to comments and revisions made in the Final Initial Study, and my comments on that document are summarized in this letter.

The information reviewed indicates that the CEQA documentation for the project remains inadequate and incomplete. Most comments are responded to with a non-informative "the comment is noted" statement. Therefore, most of the specific deficiencies noted in my July 2012 review remain, including failure to adequately consider cumulative impacts, inadequate project description, and numerous defective technical analyses. It is my professional opinion that these deficiencies are of sufficient magnitude to render the IS inadequate to meet CEQA's basic goals of full disclosure, informed decision-making, and minimizing the project's environmental impacts. Major deficiencies in the document are discussed below.

MAJOR ISSUES

Failure to Assess Cumulative Impacts of the Project.

Previous Comment: St. Mary's submitted an application for a Master Plan in 2006 that included the proposed CUP projects along with the previously approved athletic field project and a number of other likely future projects, some of which are still shown as "future projects" on the CUP application materials (see Figure 3 on Appendix A to the IS). Later, as the overall Master Plan processing slowed in response to questions from the City and local community, the City made the decision to conduct independent CEQA reviews first of the

athletic fields project and then of the of the five CUP-project buildings, in effect piecemealing review and approval of the larger Master Plan through incremental approvals of its components. We understand that the school proposes staged implementation of the various projects included in the former Master Plan. In that case, the proper CEQA review sequencing would be to first conduct the programmatic analysis of the Master Plan. Then, if the analysis therein is not specific enough to fully address the various building projects, a separate IS should "tier" off of the Master Plan IS or EIR.

The IS is required to analyze the cumulative impacts of the Use Permit project and the Master Plan Project. CEQA Guidelines Section 15130 requires that impacts of past, present, and probable future projects be analyzed in CEQA documents. This requirement is reflected in question XVII (b) in the City's CEQA checklist. The response to this question in the IS is "Since development under the Use Permit would not result in any substantive increase in the use of the campus relative to current use patterns, there would be no "cumulatively considerable" impacts associated with the project." This statement appears to be in error in three areas: 1) the project would include new uses on the site associated with the proposed chapel, with potential new impacts on noise and traffic; 2) the project would have construction impacts that may overlap with other construction impacts; and 3) the project would alter the visual character of the site. All of these project impacts could overlap with cumulative impacts associated with buildout of the unanalyzed "future projects".

Final IS/MND response: The IS remains deficient in that it provides no information regarding the cumulative impacts of potential full buildout of the site.

It also fails to assess the incremental cumulative impact of the project in the context of past development on the site. This is particularly important because of the ongoing impacts that past expansions of the school have had on the neighborhood. Noise, traffic, parking, and aesthetic impacts have repeatedly been documented in numerous letters from the neighbors to the City and school. The proposed expansion of the project would, as acknowledged in the IS/MND, have some impact on these factors. The IS concludes that these impacts would be individually less than significant, however it fails completely to consider these impacts in a cumulative context. If, as documented by the neighbors, certain impacts from the overall school facility are already significant, then the project's incremental addition is likely to be cumulatively considerable. The IS is incomplete in not assessing these cumulative impacts.

Inadequate Project Description. The IS's project description is inadequate to allow meaningful assessment of the impacts of the Use Permit project itself. The Use Permit application includes plans and elevations for some of the proposed buildings - yet the IS fails to address those either in its project description or impacts analyses. As written, the current IS contains inadequate detail (both project description and impact analysis) to permit its use for the approval of any subsequent buildings.

The IS project description's failures in providing adequate detail on the proposed buildings included in the CUP application are summarized below:

- **Previous Comment:** The description of the chapel fails to include any quantified description of proposed uses that can support subsequent impact analyses, or any floor plans or elevations of the structure. It is not possible to accurately identify the project's impacts without those descriptions and plans. That discussion needs to include an estimate of maximum permitted use of the chapel and expanded dining facilities, including anticipated numbers of evening and weekend events and the number of people potentially attending each event as determined by maximum permissible occupancy levels. It should clearly state whether outside (i.e. non-school) uses may occur at the chapel and, if they would, how often and at what times of the day. Absent this information, it is not possible for the IS to adequately assess noise and traffic impacts.

Final IS/MND Response: The responses to comments state that the City considers the requested information to be speculative. The IS, however, provides no evidence that this information is speculative. In fact, the only reason the analysis would be speculative is because the City has failed to obtain the needed information on chapel use from the school. The City could establish limits on the chapel use, thereby making assessment possible. Alternately, the City could assume a reasonable worst-case use of the chapel based on the uses of other similar facilities in the region. The City has failed to even attempt to do the requisite assessment under the claim of 'speculation'. This is not a case of speculation – it is a case of lack of analytical effort/rigor, which is not permitted under CEQA (see Laurel Heights Neighborhood Assn v. UCSF [Laurel Heights I case]).

- **Previous Comment:** The description of the rain garden fails to address the critical issue of the details of the outlet structure and associated potential for erosion in Codornices Creek.

Final IS/MND Response: The Final IS/MND provides a little more information regarding the rain garden, but still fails to describe its effectiveness in addressing peak runoff, which is the greatest concern. In fact, the IS/MND now states that the rain garden is not intended to address peak runoff. This lack of mitigation, combined with the IS/MND's failure to describe the SWPPP or SWCP, results in inadequate information from which to identify the project's impacts on runoff.

- **Previous Comment:** The IS implies (and the Use Permit Application specifically states) that the project is necessary to meet minimum space requirements for 630 students. Yet the school is only permitted for 600 students (with a temporary permitted fluctuation up to 630 to allow for attrition, etc). According to the space-needs factors presented in the Application (Appendix A, p. 2), the school has adequate space for 600 students. Therefore the Application's stated need for overall expansion is unsupported. If the school is proposing an expansion to 630 permanent students, this increase should be specifically called out in the Project Description.

Final IS/MND Response: The City now considers 630 the permitted maximum enrollment, and does not consider this to be a change from existing conditions. Clearly, this is a 5% increase from previously permitted conditions. Additionally, it is an approximately 3% increase compared with actual enrollment numbers, which is the required CEQA baseline. As described above, the IS/MND fails to address the potential cumulative impacts associated with this increase in enrollment (in addition to past increases).

- **Previous Comment:** The Project Description fails to include plans and elevations of the buildings essential to consideration of aesthetic impacts (some of these are included in the application, but they are not carried over to/evaluated in the IS). Deferral of analysis of known information to future review is not permissible under CEQA.

Final IS/MND Response: The IS/MND again claims that this information is "speculative" and fails to include it. In 30 years of preparing EIRs, I have conducted numerous analyses where no more information on project designs is available than for this project – this is entirely feasible and therefore not speculative. The approach generally taken is to combine the building footprints (which are in the application) with the building heights (which are either in the application or established by City maximums) to develop building envelopes/massings. Those massings are then placed into the site photographs from prominent and/or sensitive viewpoints to create a photo-simulation of the project's generalized impacts. Impact analysis can proceed from those massing simulations. Again, assessing these impacts in this document is not precluded by speculation, but rather by a lack of analytical rigor/will.

- **Previous Comment:** The discussion of parking spaces says that no new spaces would be required because no enrollment increase is proposed. However the statement also fails to account for possible additional staff at the expanded school; and it fails to address possible additional parking needs associated with new uses at the proposed Chapel or expanded kitchen facilities used individually or in tandem.

Final IS/MND Response: The Final IS fails to provide any substantive information addressing this issue.

Previous Comment: Given this vague Project Description, the IS should consider the worst-case potential use of the site, including potential nighttime, summer, and expanded enrollment uses. Alternately, the IS Project Description should be augmented to address these deficiencies.

Final IS/MND Response: The Final IS fails to provide any substantive information addressing this issue.

Previous Comment: In addition, the Project Description (as well as the technical sections) include vague statements regarding various impact-avoidance and reduction strategies, yet

they are not specifically described in the IS as either part of the project or mitigation measures. For example, the IS (p. 11) states, "...the Applicant will work with the City to tailor other measures that will be taken to minimize construction impacts." The IS must disclose those measures in order for the reader to understand whether an impact is fully mitigated. Mere compliance with regulations does not assure reduction of impacts to less-than-significant levels. Deferral of mitigation to future studies is prohibited under CEQA case law applicable to Initial Studies (see for example, *Sundstrom v. County of Mendocino*).

Final IS/MND Response: The Final IS fails to provide any substantive information addressing this issue.

The end result of these deficiencies is a Project Description that is vague, unstable, and not well enough defined to facilitate meaningful environmental review.

Technical Issues. In addition to the above structural issues, several of the IS technical analyses are deficient in fully assessing and describing actual project impacts. These are summarized below:

Aesthetics: Conclusions of "less than significant" impact must be clearly documented and supported by evidence. With respect to visual quality (and also noise), the general public's experiences must be considered in determining significance (see *Pocket Protectors v. City of Sacramento*). The aesthetics analysis lacks any photographs, photo-simulations, photos of story poles, or light-trespass evaluation of the project site and proposed new facilities. Given that the project would involve substantial expansion of campus structures as well as vegetation removal/replanting, those changes should be carefully evaluated in the IS. The CUP application includes building plans, elevations, and landscape plans for some of the proposed new development yet the IS does not show or evaluate the potential effects of those plans. The IS characterizes these new features in a single sentence, stating that "...basic visual elements of the campus...would remain generally similar in visual appearance to what's currently seen on the campus, although placement of buildings and parking areas on some portions of the campus would be modified to some extent." This is "bolstered" by a statement that "the school has indicated that the Use Permit projects are intended to improve and enhance the visual elements of the campus...". The light and glare discussion is similarly vague and unsupported by evidence. Further, it also relies on unsupported intentions of the school, stating, "...the proposed increase of existing floor space under the Use Permit would not be expected to represent a new source of substantial light and glare, given the intent of Saint Mary's College High School to maintain its current approach to lighting..." CEQA does not deal in intentions, it deals in facts. This "analysis" does not address views of the site at all, nor is it supported by evidence in the document.

In order to address this deficiency, we suggest the IS be expanded to include detailed photosimulations of the project as viewed from representative sites along the surrounding streets, as well as a light trespass analysis. The CUP application shows that the proposed buildings are in various states of design. For the not-yet-

designed buildings, massings could be used. As written, the discussion does not contain sufficient evidence to support its conclusions of non-significance.

Final IS/MND Response: The Final IS fails to provide any substantive information addressing this issue. It should be noted that members of the Planning Commission also requested lighting studies be done, yet the Final IS/MND failed to address that request.

Air Quality. The air quality analysis focuses on emissions from the music building as representative of a "worst-case" scenario. Given the vague schedule for the remaining structures, it is possible that their construction may overlap. This should be addressed in the analysis.

Final IS/MND Response: The Final IS fails to provide any substantive information addressing this issue.

The air quality impact analysis indicates that cancer risk from diesel emissions would be significant if not mitigated and then includes a very generic mitigation that says, in effect, the project should reduce these emissions by 50%. In order for this mitigation to be adequately documented, the feasibility of this reduction should be evaluated and supported by evidence. As it is written, the mitigation does not offer adequate evidence supporting its feasibility or effectiveness. Similarly, construction-related air quality mitigation is vague and unenforceable.

Final IS/MND Response: The Final IS fails to provide any substantive information addressing this issue.

Finally, the greenhouse gas reduction plan under air quality is based upon the assumption of no new enrollment (and not actual facilities), which is an erroneous metric. Also, this analysis assumes conformance with Climate Action Plan based upon compliance with existing building codes, which is also erroneous.

Final IS/MND Response: The Final IS fails to provide any substantive information addressing this issue.

Biological Resources. The biological resources assessment includes no description of existing site resources. Trees are not described or located, potential species that may nest in the trees are not identified, nesting seasons are not identified, and any existing nests are not discussed. Absent this setting information, it is not possible to identify the project's potential impacts.

The impacts discussion is similarly inadequate. Specific trees to be removed or disturbed are not identified. Sensitive species that may be affected also are not identified. The MBTA is discussed, but this discussion should be expanded to include applicable species protected by the Bald Eagle Protection Act (which also applies to other raptors) and state and federal Endangered Species Acts. Tree removal should be assessed for all of the proposed buildings to determine potential

impacts to visual and biological resources. The mitigation should be clarified/expanded to address construction noise disturbance of off-site nests. It also should address whether the buffer requirement for nesting birds is feasible and what buffer distance would be appropriate.

With respect to Codornices Creek, the analysis assumes that compliance with RWQCB requirements would reduce any impacts to a less-than-significant level. However there is no discussion of the habitat that may be affected or the potential effects. This problem is compounded by the lack of detail on increased runoff from the site and the failure of the project to include a draft SWPPP for evaluation in the IS.

The IS should ensure that the recent Codornices Creek fishery enhancements and restoration are not adversely affected by the proposed school expansion (e.g., additional flows or nonpoint pollution from runoff would not harm fish, no new fish barriers, no increase in trash). Fisheries agencies (e.g., California Department of Fish and Game, National Marine Fisheries Service, and US Fish and Wildlife Service) may need to be consulted by Saint Mary's if anadromous fish (steelhead trout, salmonids) have been seen using the creek for spawning, migration, resting, etc.

Final IS/MND Response: The Final IS fails to provide any substantive information addressing this issue.

Hazardous Materials. This section should be revised to address the potential for asbestos insulation and lead-based paints that may enter the environment as a result of demolition/modification of existing older buildings.

Final IS/MND Response: The Final IS discusses demolition contaminants but fails to provide any mitigation.

Hydrology and Water Quality. The hydrologic assessment includes a great deal of discussion of impervious surfaces and the proposed rain garden, but fails to answer the basic questions of how much more additional runoff will be generated by the proposed Use Permit development, and whether the proposed rain garden and other detention/storage features would have adequate capacity/effectiveness to result in no net increase in peak runoff or contaminants in the design storm. Additionally, the required Stormwater Pollution Prevention Plan has not yet been prepared, therefore its adequacy is not evaluated in the IS. Similarly, the long-term Stormwater Control Plan has not been developed or described, nor have the Low Impact Development treatment measures to be used on the site been identified. Absent this information, there is no evidence to support the IS's conclusions that the project would have no potential to significantly affect sensitive resources in Codornices Creek, including impacts from erosion/sedimentation, increased runoff, and increased urban pollutants. A conceptual drainage plan (including pre-and post- project runoff calculations and a discussion of the adequacy of the proposed rain garden in reducing/treating flows) and draft SWPPP should be prepared and analyzed for adequacy in the IS. The change in outflow and any changes in the

discharge structure to Codornices Creek also should be evaluated for potential erosion issues, and any resulting impacts to biological resources.

As written, the section fails to provide adequate discussion of hydrologic and water quality impacts or mitigation.

Final IS/MND Response: The Final IS fails to provide any substantive information addressing this issue. It considers deferral of the SWPPP and SCP acceptable, despite the inability to address project impacts absent that information.

Land Use.

The Use Permit application also states that the chapel "will likely not be used for regular Sunday services." If it will not be so used it should be stated as such in the project description. Otherwise, it also could conflict with the PF Zoning, which does not allow Religious Assemblies.

Final IS/MND Response: The Final IS fails to provide any substantive information addressing this issue.

Noise. The IS's noise assessment fails to analyze the key noise sources of concern to the sensitive receptors (neighbors), and uses inappropriate noise parameters, metrics, and methodologies, which downplay the project's potential impacts. Numerous documented noise complaints to the City and St. Mary's have not been disclosed or assessed. In addition, the IS uses criteria of significance that are inapplicable to assessment of this type of noise impact. These issues are described below:

Failure to Address Key Noise Sources of Concern: As documented in numerous letters, emails, and phone calls of complaint to the City and school, neighbors have experienced repeated disturbance from noise associated with school activities. The specific noise sources of concern with respect to the non-athletic-field school sources are repeated single event noise from traffic and students. These noise concerns are central to an adequate impact assessment, yet they have not been discussed or documented in the IS. Given that the proposed Chapel and Music Building may result in additional evening and weekend activities occurring on campus, it is important that the existing and post project noise environments be described/evaluated.

Final IS/MND Response: The Final IS fails to provide any substantive information addressing this issue.

Use of Inappropriate Noise Parameters and Criteria of Significance. CEQA case law has repeatedly determined that repeated single-event noise can constitute a significant impact requiring mitigation, and that neighbors who have experienced past noise of similar types and from similar sources as project noise

can be considered "experts" with respect to those noise impacts. (See *Berkeley Keep Jets Over the Bay v. Board of Port Commissioners*, 2001, and *Oro Fino Gold Mining Corp. v. County of El Dorado*, 1990). In *Berkeley KJOB*, the court specifically found that it is state legislative policy to "take all action necessary to provide the people of the state with...freedom from excessive noise", and to "require governmental agencies at all levels to consider qualitative factors as well as technical ones", and further noted that the lead agency "cannot simply ignore the CEQA standard of significance for assessing noise [could it disturb people]...the impact of single event noise, and public concern over the noise created [by the project]". The analysis of potentially significant impacts in this IS, instead focuses primarily on time-averaged noise levels (Leq).

In *Oro Fino* the court was willing to treat as substantial evidence citizens' personal observations about how the proposed project could affect their neighborhoods, since the observations were based on the neighbors' past experience with single-event noise from a similar project in the same area. This is exactly the same situation as with the St. Mary's IS. Further, the *Oro Fino* case declared that mere compliance with general plan noise standards cannot be used to determine impact significance but, rather, significance of an impact must be determined by the actual effects of the noise on the local population. Contrary to this dictum, the St. Mary's IS repeatedly uses the City of Albany's exemption of school activities from its noise ordinance as part of the reason to find less than significant impacts.

The IS uses a time-averaged 3-dBA increase as its only noise significance metric. This metric is inadequate to address potential impacts of ongoing, repeated single event noise sources such as construction truck and equipment noise, noise from students late at night, and late-night traffic noise. The IS should include an additional metric for evaluating the significance of repeated single-event noise impacts. In addition, noise impacts resulting from additional evening and weekend activities associated with the chapel should be evaluated. This is especially important given that the existing noise generated by school activities has been documented as disturbing the neighbors.

Final IS/MND Response: The Final IS fails to provide any substantive information addressing this issue. Instead it claims that, because enrollment would not increase, noise would not increase. This claim is unsupported by substantial evidence, particularly in light in the proposed expansion of enrollment and uses on the site.

Problems with Music Building Noise Study. Noise was measure coming through the doors of the one-story building at 2:30 in the afternoon. The new building will be 40' high, much larger than the test building, have two potential sources of simultaneous noise, and will be ventilated with high windows and skylights, which may allow more noise to escape than currently. There does not appear to be any restriction on hours of use of the building, which means that noise could be emanating from it during the evening, when the ambient noise is reduced and

the noise coming from the building would be more prominent. One neighbor on Monterey reported that he did, in fact, clearly hear the acoustic test, despite the fact that the IS says the ambient level stayed at 45 dBA with or without the band playing.

Final IS/MND Response: The Final IS fails to provide any substantive information addressing this issue.

Traffic. The traffic analysis relies on a 2005 traffic study that may be outdated. Given that the 2005 study noted increased traffic from 2003, it is possible that traffic has increased further in the seven years since 2005. The IS should include an update to this study. Field observations of traffic also were conducted in 2008. The 2008 study states, "Based on observations of existing conditions, more consistent school enforcement of traffic rules and regulations is recommended." This makes it clear that the current traffic control plan was not effective in mitigation traffic and parking impacts. In addition, the neighbors have noted that days sampled in the 2008 study may have been partial school days when exams were being given, and which let out early, which may have resulted in reduced afternoon traffic parking and traffic levels. Finally, the traffic analysis fails to address the impact of greatest concern to Albina Street residents, namely that school-related congestion results in repeated long queues on Albina Street and may interfere with emergency access to that street. These issues should be specifically addressed in the IS, and any increase in the frequency and/or magnitude of these queues associated with the use of the new/expanded buildings/uses should be documented.

Final IS/MND Response: The Final IS fails to provide any substantive information addressing this issue.

The traffic mitigation discussion is also vague and should be tightened up. Specifically, the paragraph on p. 78 starting "It should also be noted..." appears to be mitigation but is not included as a formal mitigation measure. We suggest revising that in the form of a mitigation measure to assure that truck traffic is clearly limited to off-peak hours and that a Construction Traffic Management Plan be reviewed by both the City of Albany and the City of Berkeley be required, not merely a possibility.

Final IS/MND Response: The Final IS fails to provide any substantive response addressing this issue.

With respect to the parking discussion, the chapel uses discussion makes assumptions on use levels and timing that are not supported by any limitations in the proposed Use Permit. That discussion also says that visitors should be encouraged to use on-campus parking. This should be revised in the form of a mitigation measure to say that the school shall be required to provide on-campus

parking for these events and shall notify event attendees that they must park on campus.

Traffic and parking impacts from possible overlapping uses of the chapel and other school functions should be evaluated.

Final IS/MND Response: The Final IS fails to provide any substantive response addressing this issue.

The traffic and parking management plan provisions for non-athletic events limits those events to "an average of ten per year". This seems unenforceable and provides no information regarding the averaging period. The limit should be a clearly specified number and not a vague average. In addition, since the IS does not include any baseline on event frequency, it is unknown whether this is, in fact, and increase to the number of large events on campus.

Final IS/MND Response: The Final IS fails to provide any substantive response addressing this issue.

The last paragraph on p. 81 of the IS appears to include general discussions of possible speeding impacts and mitigation measures, but is couched in vague and unenforceable language such as "...would seem to benefit all stakeholders..." and "if speeding is perceived as a serious issue". We request that this information be reworded in the form of specific impacts and accompanying enforceable, monitorable mitigation measures. Further the effectiveness of these proposed measures should be evaluated in the IS. Neighbors have commented that the speed monitors are ineffective when they are present and they are not present often; a three way stop at Albina and Hopkins Ct. could result in substantial traffic impacts, which need to be evaluated in the IS; and the proposed measures make the neighbors the de facto enforcers, requiring them to continue complaining before the school will post a monitor. It ends with a suggestion of speed bumps that might work but that requires concurrence from Berkeley to happen, and provides no other mitigation possibility should Berkeley not approve speed bumps, which are unenforceable.

Final IS/MND Response: The Final IS fails to provide any substantive response addressing this issue.

Construction traffic access and associated impacts to congestion, safety, and parking should be described in detail. This impact has been entirely omitted from the traffic analysis (it is obliquely referenced in the noise discussion). How many truck and worker trips are expected during which hours? What is the anticipated construction duration of all of the buildings proposed in the Use Permit? Will there be overlapping construction for the various buildings? Will construction traffic overlap with school event traffic? What will the impacts be to parking and emergency access? What are the impacts to congestion and safety on Albina and other nearby streets?

Final IS/MND Response: The Final IS fails to provide any substantive response addressing this issue.

Infrastructure/Utilities/Services. The project proposes an increase in floor area of over 30,000 square feet. The IS assumes no new service or utility demand because of an assumed no-increase in enrollment. The new buildings will be used and will, therefore, add to service and utility needs, including possible police and fire calls, and use of energy, water, and sewer services. The IS needs to assess the potential impacts of the proposed Use Permit development on these resources.

Final IS/MND Response: The Final IS fails to analyze this issue.

Growth Inducement. The project would increase the size of the school by nearly 30%. While the school maintains that no increase in enrollment is proposed, this increase in capacity would physically facilitate an increase in enrollment. The overall floor area would be well in excess of that required for 600 students. The IS should discuss the potential for growth in enrollment at the campus associated with this large increase in floor area (and potential future expansion shown on the plans), and generally assess the potential impacts associated with such growth.

Final IS/MND Response: The Final IS fails to analyze this issue.

CONCLUSIONS

The responses to comments fail to address the vast majority of the comments provided to the City in our July 2012 letter. Therefore, it continues to be my professional opinion that the deficiencies described above are substantial and render the IS inadequate to meet basic CEQA analysis and disclosure standards. In addition, it appears that the project could potentially result in significant environmental impacts triggering preparation of an EIR, *particularly in the areas of noise, traffic, and aesthetics.* The City should prepare a revised IS addressing the deficiencies identified in this letter and recirculate it for public review. I appreciate the opportunity to review this document and am available to answer any questions that you may have regarding these comments.

Sincerely



Richard Grassetto
Principal
Grassetto Environmental Consulting

CITY OF ALBANY

1316 Albina Avenue
Berkeley, CA 94706
September 12, 2012

SEP 12 2012

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Honorable Commissioners Arkin, Moss, Maass, and Panian
Planning and Zoning Commission
City of Albany
1000 San Pablo Ave.
Albany, CA 94706

Re: Saint Mary's College High School – 9/12/12 Meeting

Dear Commissioners:

This is a continuation of the Peralta Park Neighborhood Association's listing of issues inadequately addressed in the staff report and proposed conditions. We consider rectifying these items to be vital to reducing impacts from St. Mary's on the neighborhood surrounding the campus.

Square Footage

Operating Condition B9 refers to plans dated August 23, 2012, but fails to list the actual limit on overall square footage, as the City has consistently done in the past as an explicit limit on the size of the School. It is unnecessary to refer future readers of the CUP to a separate document to determine what the allowable gross square footage of the campus is.

Music Building

We have spoken in the past about the inadequacy of the noise study performed for the new Music Building (see explanation in our Condition 16). Because at the site visit Vivian Kahn had said that the building would not be used for performances, we considered that the study would be adequate as long as the building was conditioned to preclude evening, weekend, and summer use. The proposed CUP includes no conditions at all on the building, yet accepts the noise study as being adequate. It is our contention that, as such, the noise effects of the building have not been adequately measured for CEQA purposes. Our Condition 17 contains language that would implement needed restrictions. In the absence of those restrictions, our Condition 16 would be needed to protect the neighborhood from unwanted sound.

Athletic Field

Due to the extremely close proximity of homes to the athletic field, the 2007 Athletic Field Renovation CUP included a condition that there be no lighting on the field. The City allowed the School to install electrical wiring, but explicitly precluded lighting on the field. Staff has failed to carry that condition forward in the new CUP. Certainly this was a simple oversight by staff, which the Commission will want to correct.

Also in 2007, the School and the neighbors negotiated an Athletic Field Agreement, which has been incorporated into this CUP. One component of that agreement was that on Sundays the field was to remain quiet. St. Mary's was concerned that the Brothers in residence would not be able to use the track for jogging or otherwise use the space individually for their own health and well-being if the agreement stated that the athletic field was not to be used on Sundays. Therefore, the following language was adopted:

Organized team practices, including field setup, will begin Saturdays after 9:00 a.m. & end by 3:00 p.m. The Athletic Field will not be used on Sundays by SMCHS's athletic teams or by outside organizations.

This language has proved to be insufficient, as it exempts unaffiliated groups of individuals from the restriction, and people often take advantage of the loophole. We request that the language be restored to the original intent:

Organized team practices, including field setup, will begin Saturdays after 9:00 a.m. & end by 3:00 p.m. The Athletic Field will not be used on Sundays, except for individual use by those residing on the campus.

The same loophole needs to be plugged for summertime use. The language currently states:

The Athletic Field will not be used on Saturdays or Sundays by SMCHS's teams or by outside organizations. (Page 23 1B of the proposed CUP)

It needs to be changed to:

The Athletic Field will not be used on Saturdays or Sundays, except for individual use by those residing on the campus. (Page 24D of the proposed CUP)

Surely St. Mary's will agree to this change, since the School knows that this was the original intent of the agreement.

Parking

Responsibility for developing traffic and parking management procedures has been turned over to the TSC, apparently without guidelines from the Commission. Throughout the CUP, there are conditions which require St. Mary's to complete an action within a given number of days of approval of the CUP. Many of them have to do with issues for which the TSC will be responsible, and therefore St. Mary's will be unlikely to be able to satisfy the CUP requirements if the CUP is adopted before the TSC researches, holds hearings, and submits its report to the Commission for approval. (Example: creation of the Traffic and Parking Handbook)

Independent Monitor

Over the past decade it has become apparent that staff has neither the time nor the means to monitor the School's compliance with the CUP. This forces a complaint-driven process, which only adds to the acrimony between the neighbors and the School. PPNA has proposed a condition to have an independent monitor relieve the staff of that responsibility (our Condition 31). Staff has decline to include such a condition, yet offers nothing to assure us that it is suddenly able to handle monitoring responsibilities.

Lack of Specificity and Definitions

The Staff Report and CUP are filled with rather meaningless words. For instance, General Project Condition 6, Procedure for Amendments to the CUP, allows staff to make minor changes of a technical nature to the CUP administratively. However, changes considered substantive in nature constitute a major amendment to the CUP, and are subject to the appropriate level of CEQA review and Planning and Zoning Commission approval. Four of the six changes that are considered substantive are defined as ‘material changes in...’ In other words, something is substantive if it is material. And what is material? That, we suppose, is left to individual interpretation.

Very truly yours.

A handwritten signature in black ink that reads "Chris Hamilton". The signature is written in a cursive, flowing style with a long, sweeping tail on the final letter.

Christopher Hamilton
For PPNA



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September 12, 2012

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Statistics

Sustainable Schools

Master Planning and School Building

Research Clearinghouse

By: Patrick F. Bassett
Published: February 3, 2005
Updated: May 30, 2007

Demographic Center

Survey Center

The following outline indicates the key steps in the planning and execution of a school or campus building plan:

Listserves

Find a Company/Consultant

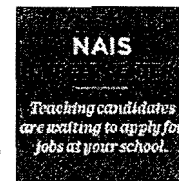
- **Mission and Program Review:** Refine and recommit to the mission and vision statements as well as the strategic plan of the school. These documents should guide all planning and be the theoretical blueprints for any building plan. Note especially challenges and opportunities of the uses of educational spaces, technology, and long-range development scenarios.
- **Survey of Constituents:** A survey is recommended to determine current satisfaction levels and areas needing improvement in program and operation, some of which may well have facilities ramifications.
- **Building Feasibility Study:** Assess the current facilities (or any facilities one is considering to purchase or lease) to determine the extent to which renovations and additions can meet the future needs of the program and vision as outlined above: inventory of current space; assessment of structural/mechanical condition of facilities; determination of current code issues; flexibility for future modifications and growth; etc. Develop a projection of square footage requirements based on per/pupil ratio (check on local code and public school requirements), multiplied by typical local construction costs per square foot. (See [The National Clearinghouse for Educational Facilities](#) website for current data on typical classroom and building sizes, constructions costs, etc.) For the project costs, multiply construction price times 130 percent, to include site development (not site purchase), architectural and engineering costs, fees for consulting services, furnishings, contingency budget, etc. Even if current class sizes are restricted to 15-20, figure on 25 per class times 30 square feet per pupil per self-contained classroom (i.e., 750-900 square feet per classroom), as a general rule of thumb. Multiply designated space requirements (classrooms, offices, gymnasium, library, cafeteria, etc.) times 125 percent at a minimum to determine total square footage inclusive of hallways, stairwells, storage, restrooms, etc. Realistically, school buildings cost in the neighborhood of some multiple of \$1 million dollars, depending on the number of classrooms/facilities built. Square-foot-per-pupil totals for overall space in the public school domain (classroom, offices, libraries, gyms, storage, etc.) are 100' (elementary), 125' (middle school), 150' (secondary school), at a minimum. Current independent school standards frequently in the 175-250 square-foot-per-pupil range.
- **Develop the Master Plan:** Often schools hire a campus planner to develop a two- or three- dimensional plot plan of site and buildings. At this point, the school/campus planner would plan focus group discussions with faculty, trustees, and parents to explore varying priorities and preferences for space utilization, movement patterns, common spaces, etc. in an attempt to create structures that are reflective of the mission and culture of the school as well as meeting the projected needs of the program. A planning committee would also visit other schools that have recently completed construction projects to glean ideas and to discuss problems that arose in the process.
- **Selection of an Architect:** Determine a short list of prospective architectural firms, especially those with experience in school design and solicit interest, eventually inviting up to three firms to make a presentation before the planning committee. Two-hour interviews should address a firm's philosophy, examples of its work, fee structure, and general questions and answers: What are its trademark flourishes, the "catch your breath" touches (the Palladium entranceway, the corridor crannies, etc.)?
- **Site Selection:** Establish a site selection committee to secure a suitable site. ISM recommends a range of 40-100 acres to provide for the exigencies of the next 100 years. Schools that cannot afford the entire land package should secure an option and first right of refusal on contiguous acreage. Minimum requirements: 500 square feet per pupil for building site (i.e., including covered areas, courtyards, approachways, etc.). Site criteria include demographics of neighborhood and area, zoning and planning considerations, environmental matters (water table, soil samplings), utilities, road access, affordability, fire and police services, etc. The planning committee should camp out on the site for a day and night, just to get the feel

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Cost to NAIS member schools to post jobs and search resumes



$600 \times 150 \approx 90,000$
 $630 \times 150 = 94,500$

Anne Hersch

From: Angie Garling [garling@gmail.com]
Sent: Tuesday, September 11, 2012 9:41 PM
To: Anne Hersch
Subject: CUP for St. Mary's

Dear Albany Planning and Zoning Commission members and staff:

My name is Angie Garling and my husband and I own the duplex at 1302 Albina. Between our two units there are four children under the age of seven who live here, and we are all affected by the activities at St. Mary's.

I have lived here for 10 years and just this week reported an incident to St. Mary's staff. I was having trouble pulling out of my driveway Monday morning because nobody would slow down to let me out so I could take my daughter to preschool. When I finally pulled out a driver still refused to stop and almost hit me and didnt listen when I asked her to slow down.

The city MUST continue to have some traffic mitigation and calming requirements for St. Mary's.

Unfortunately, I will not be able to attend the Planning and Zoning Commission hearing on Sept. 12 when the proposed CUP for St. Mary's application for expansion will be discussed.

However, I do wish to convey my strong support for the positions put forth in the Peralta Park Neighborhood Association letter (signed by Chris Hamilton) to Commissioners and dated 9/11/12. I do not wish my absence to be interpreted as a lack of concern about the omissions and errors in the staff report and CUP.

Please consider the needs of the children and families who live near and are greatly affected by St. Mary's.
Thank you.

Angie Garling

Anne Hersch

From: Emily Marthinsen [emilymarthinsen@comcast.net]
Sent: Tuesday, September 11, 2012 11:42 PM
To: Anne Hersch
Subject: St. Mary's Conditional Use Permit

Dear Ms. Hersch,

Unfortunately, I cannot attend the Planning and Zoning Commission hearing on Sept. 12 when the proposed CUP for St. Mary's application for expansion will be discussed. However, I am in agreement with the Peralta Park Neighborhood Association letter (signed by Chris Hamilton) to Commissioners and dated 9/11/12. Although I will not be in attendance, I am sending this email to express my concern about errors and omissions in the staff report. Please do not consider my absence as support in any way for the conditional use permit recommended in the staff report.

Emily Marthinsen
1334 Albina Avenue

Anne Hersch

From: Pauline Wong [pww99999@yahoo.com]
Sent: Tuesday, September 11, 2012 8:24 PM
To: Anne Hersch
Subject: Sept. 12 meeting

Dear Planning and Zoning Commission,

Unfortunately, I will not be able to attend the Planning and Zoning Commission hearing on Sept 12 when the proposed CUP for St. Mary's application for expansion will be discussed. However, I do wish to convey my strong support for the positions put forth in the Peralta Park Neighborhood Association letter [signed by Chris Hamilton] to Commissioners and dated 9/11/12. I do not wish my absence to be interpreted as a lack of concern about omissions and errors in the staff report and Cup.

Sincerely, Pauline Wong
1312 Albina Ave.

Anne Hersch

From: jeannette.grogan@comcast.net
Sent: Tuesday, September 11, 2012 3:39 PM
To: Anne Hersch
Subject: St. Mary's Expansion plans

Dear City of Albany Planning Commission:

I am a neighbor of Saint Mary's College High School. I live at 23 Hopkins Court. I cannot attend tomorrow's meeting because I am in Houston, However I wanted to let you know how concerned I am about St. Mary's expansion plans. I want you to know that I strongly support the positions of the Peralta Park Neighborhood Association's letter that was signed by Chris Hamilton and given to the Planning Commissioners on September 11, 2012.

In spite of the fact that I am not at the meeting I want you to know that I am very interested in this planning process. The results of future expansion plans will have a great consequences for my neighborhood. I have lived on Hopkins Court for 26 years and have felt impacted in many ways. While I realize that St. Mary's may want to be good neighbors, these new proposals for growth need more study and careful analysis.

Thank you for your consideration.
Jeannette Y. Grogan
23 Hopkins Ct.
Berkeley, CA 94707

Anne Hersch

From: Michael Tompkins [mchltmpkns7@yahoo.com]
Sent: Tuesday, September 11, 2012 2:39 PM
To: Anne Hersch
Subject: St Mary's High School

Dear Ms Hersch,

I have read the letter from our neighborhood association to the Commissioners dated 9/11/12 and strongly support its findings and positions. Due to family obligations I will be unable to attend Wednesday's meeting but would like to have my support underlined here for the PPNA in its efforts to safeguard our neighborhood. I've read the staff report relating to St Mary's proposals and found little or no regard there for the quality of life of St Mary's neighbors. It's my hope that the Commission will see the need for real protections and safeguards an act accordingly.

Sincerely,

Michael Tompkins
1230 Monterey Ave

Anne Hersch

From: Julie Quiroz [julie@movementstrategy.org]
Sent: Wednesday, September 12, 2012 7:35 AM
To: Anne Hersch
Subject: Support the Peralta Park Neighborhood Association letter!

To the members of the Planning and Zoning Commission.

I will be unable to attend tonight's hearing regarding the proposed CUP for St. Mary's application for expansion will be discussed. **However, I want to express my strong support for the positions put forth in the 9/11/12 Peralta Park Neighborhood Association letter (signed by Chris Hamilton).** I do not wish my absence to be interpreted as a lack of concern about the omissions and errors in the staff report and CUP.

As a nearby resident, I hope you do everything possible to ensure no negative impact on our community.

Thank you,

Julie Quiroz
1304 Albina, #3
Berkeley, CA 94706
510.712.4135

Anne Hersch

From: DONNA DEDIEMAR [dediema@sbcglobal.net]
Sent: Friday, September 07, 2012 4:32 PM
To: Anne Hersch
Subject: Conditions for St. Mary's Proposed Chapel
Attachments: Proposed Conditions- Chapel Aug 2012 Final.docx

Anne.

Having seen that no conditions are proposed for the chapel, we feel it necessary to send the attached proposed conditions. We do not believe that the City of Albany would approve any other newly proposed structure with no conditions whatever.

Chris

. **Chapel.** The chapel shall be considered an accessory building to the School, and it shall be sized to accommodate a maximum of sixty people, whether seated or standing or in combination. Worship services or academic events may be held there only for current students and their family and for faculty/employees and only during the regular school day (7:00 a.m. - 4:00 p.m. Monday through Friday), and in no case may they be held on weekends or during the Summer break. In the chapel, the School shall not hold or allow any such events or assemblies that are generally open to the public, nor shall any other non-school events be held in the chapel at any time.

The chapel may constitute a maximum of one additional classroom above the 31 total proposed classrooms.

Sizing the chapel this small comports with the number Brother Edmond gave at the March 25, 2003 commission meeting as the lower of the size range to be proposed. More importantly, it would by size alone pose far fewer use problems for neighbors.

Here's the bottom line on the 60-person capacity of the chapel: we don't care if the school wants to seat 60 people or have a larger number of people stand; we care that the building only be used during the school day by people currently attending working at the school. If that restriction can be agreed to, the language about standing, sitting or in combination can be removed and replaced with "The Chapel shall be designed to accommodate a maximum of 60 people."

PPNA hasn't found any religious schools in the East Bay that have a chapel on campus that will accommodate a full grade level, as St. Mary's proposes. Here is the information we have gleaned from our research:

- Bishop O'Dowd (Oakland - coed) - 1130 students, avg. class size 24. Has chapel, which Donna thinks is large (the woman she was talking to had to think for a minute before she said that she didn't think it would accommodate the entire freshman class, which is 300 students).
- DeLaSalle (Concord - boys only) - 1000 students. Has chapel, which is small. It is not available to outside parties.
- Moreau (Hayward - coed) - 900 students. Has small ministry chapel that fits 15 (25 tightly).
- Valley Christian (Dublin - coed) - 900 students. Has no chapel: uses gym.
- Salesian (Richmond - coed) - 550 students. Has small chapel in the Brothers residence (like St. Mary's currently has).
- Holy Names (Oakland - girls only) - 300 students (extrapolated from school website: it didn't state size). Has chapel: size unknown (call unreturned).
- Carondolet (Concord - girls only) - 800 students. Has chapel: size is unknown, but it isn't allowed to be rented out or used for outside events.

We don't believe that St. Mary's itself has ever had a chapel as large as the one proposed, even though according to the School it had an enrollment of 790 students when it operated a combined elementary and high school campus with resident students and more

resident brothers than now. Thus, it cannot convincingly claim that one of the size proposed is essential for meeting the religious or education needs of its current students. It makes sense that the chapel, as an accessory building to the school, would be used only during the school day and year. Allowing its use outside of that time for non-educational school related purposes would cause the chapel to function like a church, a use not permitted in the PF district. Parsing words about whether it actually is or isn't a church is not the point. The zoning ordinance is about use and its impacts. If it looks like a church, were to function like a church and have impacts like a church, it seems like a stretch to suggest that it is permissible because it is called a chapel.

It is our understanding that there is one religious event per year that the entire student body is required to attend in block, for which a 200-person chapel would still be inadequate. We have also been led to believe that the School also has three or four additional all-school events per academic year that require attendance in two blocks from the upper and lower classes. At the 200-person capacity, the chapel as proposed would be inadequate for that particular purpose as well.

Obviously, those assumptions are speculatively formed upon indirectly obtained information. But in absence of a fuller explanation in the application material, it is the best basis that we have to assess this feature. Moreover, absent floor plans or disclosure of whether the chapel would have fixed seats, or whether there would be rooms (classrooms?) additional to a sanctuary in the building makes it difficult to determine what its actual capacity or use potentials could be. Without fixed seats, or depending on their arrangement, a building of the size proposed could by code accommodate far more than 200 people. We just don't know.

The building will serve not only as a focal point for the campus, but for the neighborhood as well. At 40 feet high and 4400 square feet, it is over-sized for the site and intrusive for the neighborhood.

A 200-person capacity would have the potential to have a great impact on the neighborhood without restrictions on uses. At full capacity those coming to any event held there would overflow the on-site parking, would bring unnecessary unwanted traffic into the neighborhood, and would likely have noise impacts. None of those effects were evaluated in the environmental review phase and they shouldn't be imposed on the neighborhood.

Finally, at the 200-person capacity, the chapel would seem to irresistibly call for eventually being used as a fund-raising extra-school day venue. If not now than certainly later in the "if you build it they will come" sense.

September 12, 2012

Honorable Commissioners Arkin, Moss, Maass, and Panian
Planning and Zoning Commission
City of Albany
1000 San Pablo Ave.
Albany, CA 94706

Re: Saint Mary's College High School – 9/12/12 Meeting

Dear Commissioners:

In 1994 when the current CUP (CUP 93-27) was adopted, the City Council implicitly found that the School was operating at its maximum acceptable level for its location. At that time, in order to ensure that physical plant didn't allow for increased intensity of uses, the Council capped the amount of allowable classroom facilities and even required the closure of an existing classroom to fit under that cap. It also capped enrollment at 600 total students [Albany City Council Resolution # 94-37, par. G-2. : "St. Mary's College High School (SMCHS) may operate a co-educational high school facility for grades 9 through 12 beginning September, 1995. for up to 600 total students."]. Understanding that it would be unlikely that the School would always have an acceptance rate of 100% of those it admitted, the Council added the following sentence to its Resolution: "The maximum enrollment figures may be exceeded on an absolute basis by up to five percent to allow for attrition and other student body changes."

In 2005, when the City Council denied a request by SMCHS to reopen a closed classroom in Cronin Hall, it reemphasized that the School was operating at its maximum level of intensity and that the limitation of available physical plant was necessary to maintain that intensity limit (Res. 05-46).

The neighbors strongly support that precedent as they feel that the School is indeed currently operating at its maximum acceptable level and that no increase in the intensity of activities at the School should be permitted. If the Commission agrees with this long established principle, it is requested to explicitly state that in the findings and condition any approval of new buildings accordingly, in order to clearly communicate that assessment to future school administrations, city staff, and other decision makers.

The case has also been made that the application is too vague and should not be relied upon to create an entitlement for the applicant. In order to determine, and fix for the record, if the layouts of buildings truly match their use descriptions, the neighbors have repeatedly asked for more information about St. Joseph's Hall, the Residence and the Chapel. There must be some basis upon which the School relied when it determined, for instance, that it needed to nearly double the size of St. Joseph's to accommodate its administrative offices. That rationale should be provided so that the Commission can make a reasoned determination if the space is warranted before it grants an entitlement to it. It goes without saying that neighbors are concerned that some of the space in St. Joseph's could, in fact, be re-purposed to classrooms.

Staff has described the chapel as being an accessory use to the School not an independent stand alone use such as a religious institution which would not be allowable in the PF District. As an accessory structure its use should be restricted to activities directly related to and part of the regular educational programs and activities of the School, and should be conditioned as such. It should not provide commercial or revenue generating functions, nor enable new events that would draw large numbers of people to the campus in the after-school hours, over the weekends, or in the summer, and it should also be conditioned thusly. It is inappropriate to assert that the building cannot be conditioned or questioned at all. Moreover, in a letter dated March 27, 2012, responding to questions posed by Chris Hamilton, Anne Hersch states that the proposed new full kitchen in the Shea Center "may be used to handle food service for the larger gatherings identified in the application." The only gatherings noted in the application are in the "specific uses may include" listing for the chapel. Since use of the building outside of school hours has not been evaluated under CEQA, it cannot rightfully be utilized in that manner.

It is my understanding that an equivalent at least to existing chapels at several other East Bay Area Catholic high schools already exists within the Brothers Residence's ample 11,400 SF and currently provides several of the functions listed in the application for the new chapel. Given that the School would have two chapels, should the

proposed one be approved, the question arises as to how the existing one would be re-purposed? By relocating its functions elsewhere, this space then becomes a functional additional part of the school facilities.

It is crucial that the Commissioners have sufficient information about the project that they are being asked to consider in order for them to make a truly informed and considered decision and that however they chose to act, a) they do so with complete information on the scope and consequences of the proposal and b) that project conditions be comprehensive and crafted with clear performance metrics, specific parameters of operation and established reporting and accountability systems.

The abbreviated and partial (given the late date) discussion of a select few conditions below is meant to supplement the communication sent just earlier by Chris Hamilton regarding the full adequacy of the staff recommendation.

Traffic Management

The school's traffic plan is a good start, but the neighbors feel that in the spirit of the Climate Action Plan, it needs to go further in developing more vigorous programs to achieve automobile trip reductions and to support alternate modes of transportation, as well as to develop more detailed good-neighbor driving and access policies. Since the school staff probably does not have the expertise or the motivation to develop such a plan it is strongly recommended that they retain outside expertise to develop such a plan under the guidance of the TSC. Moreover, we believe that the Commission must give the School some specific achievement criteria in regards to trip reduction, something akin to the maximum of 30% of the school community driving to the campus in the existing permit least the limitations of the existing CUP be weakened. Otherwise, TSC will lack guidance from the Commission. Vague language like "pursue links to BART and AC Transit in the staff recommended conditions must be replaced with mandatory wording. Requiring annual or semi-annual surveys of modes of travel by students and staff in order to assess achievement of automobile trip reduction is also vital. (PPNA Conditions 21, 22, 23, 24, 25, 26, 27, 28, 29 & 32)

Performance measures

Many of the staff's recommended conditions lack adequate performance requirements or leave the actual designs of the conditions to School's discretion. That will likely perpetuate pressure on staff to assess conformance that they cannot measure or prescribe. As an example of this, the Point of Contact condition (E.3) leaves to the School complete discretion on how to handle complaints, with only vague references to timely responses and referral to the Neighborhood Liaison Committee who have no mandated authority on the School's procedures, and certainly not in a timely manner.

For example, the concerns of the neighbors require more comprehensive descriptions of complaint management, spelling out specific duties such as providing staffed contact phone numbers for complaints especially during special events. (PPNA conditions 18 and 20)

Neighborhood Liaison Committee provisions should include requirements that the School's point of contact and transportation coordinators attend and that special meetings be held at the community's request rather than the School's (staff condition E.2; PPNA's condition 19).

Independent monitors The neighbors had suggested in their conditions recommendation that the School retain an independent monitor to oversee condition and performance compliance in order to relieve staff of an obligation that they are not well able to fulfill. This measure was inspired by a very similar one that was placed upon the Bentley School in Oakland by that City. (PPNA Condition 31)

Construction hours: Taking into consideration that the site sits check and jowl with a residential neighborhood and that the construction of a number of relatively large institutional buildings will be a long term affair, we feel that construction noise protection measures beyond the standard City ones need very much to be put in place. In particular, weekend, holiday and evening hour construction activities need to be limited in order to avoid prolonged disturbances in the neighborhood. Some specific recommendations in this regard are also attached (PPNA Conditions #7 & 8).

Events schedule mailing: The existing use permit requires (cond. G.4) that: "Prior to the beginning of each school

year. SMCHS shall send an information notice to neighbors within 300 feet of the campus boundaries informing them of anticipated, scheduled campus events and activities during the year including those events that exceed the hours of operation restrictions set forth in Condition N-3 of this resolution. This information shall include but not be limited to dates, hours, the types of event and an available contact person in the event of a problem." Simply having SMCHS post a schedule on line puts the burden on individuals to obtain this information rather than receive it from the School. Most people post the printed schedule on their refrigerators for access, but they would have to take extra steps to achieve the same if in fact they even have computer access. We believe that SMCHS should continue to mail out schedules (PPNA Condition #3).

Very truly yours,

J. Light, on behalf of the PPNA

1316 Albina Ave.
Berkeley, CA 94706
September 13, 2012

Honorable Commissioners Panian, Moss, and Maass
Planning and Zoning Commission
City of Albany
1000 San Pablo Ave.
Albany, CA 94706

Re: September 12, 2012 Commission Hearing

Commissioners:

I would like to apologize to all of you, and to Commissioner Moss in particular, for speaking out after the public comment portion of the hearing had closed last night. It is very difficult to realize that one's comments have been misunderstood, and not be able to correct that misunderstanding on the spot. However, I know that the hearings must have a set procedure to be able to function properly and that I violated that decorum.

So I will take this opportunity, which I should have realized was open to me before I spoke out last night, to correct what I believe to be Commissioner Moss's misunderstanding of my position on the enrollment cap established by Council Resolution 94-37. The wording in the resolution is as follows: "St. Mary's College High School (SMCHS) may operate a co-educational high school facility for grades 9 through 12 beginning in September, 1995 for up to 600 total students." [Emphasis added]

The sentence that is always cited by staff occurs at the end of the paragraph: "The maximum enrollment figures may be exceeded on an absolute basis by up to five percent to allow for attrition and other student body changes." [Emphasis added.] Thus, the maximum is clearly 600, with an allowance for admitting enough extra students to assure that normal attrition would allow the school to achieve the 600 maximum.

If, as Commissioner Moss stated last night, the Commission is powerless to change a condition set by the City Council (particularly, I assume, when the school did not request the change), it cannot adopt the language proposed by staff, which changes the maximum enrollment from 600 to 630 (and is, obviously, a change in the language of the condition). If, however, the Commission does have the power to act, it would need to recognize that it is granting an increase in enrollment, however insignificant it might judge the increase to be, that was not sought by the applicant. The language proposed by staff guarantees the school the ability to have 630 students enrolled; the language of the City Council Resolution only gives the school the potential to admit 630 students if it needs to, in order to be able to assure itself an enrollment of 600.

Commissioner Moss's lecture about the sanctity of the City Council's resolution was precisely my point, and that is why I spoke out. I will do my best to behave with more civility in the future.

Sincerely,

Donna DeDiemar
City Council Resolution 94-37 Attached

ALBANY CITY COUNCIL
Resolution No. 94-37

A Resolution of the Albany City Council Denying the Appeal and Upholding the Planning and Zoning Commission's Approval of the Negative Declaration and Conditional Use Permit No. 93-27, Amending the Master Plan For St. Mary's College/Highschool (CUP # 587), Allowing for Co-educational and Increased Enrollment; Approving the Design Review Application for the Gymnasium Expansion, Parking Lot Improvements and Other Physical Improvements on Posen Avenue; and Approving a 4Ft. Height Variance for the Western Elevation of the Gymnasium Expansion and Making the Required Findings By Law.

Whereas, St. Mary's College/Highschool has applied for a conditional use permit, design review and variance application to provide for co-educational and increased enrollment starting in September, 1995, and to allow for physical modifications of the campus including parking lot improvements off of Posen; a 26,000 sq.ft. expansion of the existing gymnasium and modification of existing classroom and campus facilities that do not involve an increase in the total amount of gross square footage beyond what presently exists for the campus classrooms; and

Whereas, the new application requires an amendment to the existing master plan (which was approved by the City in 1982 as Conditional Use Permit No. 587) for the site with a new project description which is attached to this resolution as Exhibit A and hereby incorporated by reference; and

Whereas, the Planning and Zoning Commission held duly and properly noticed public hearings on these applications on September 14, 1993, March 8, 1994 and April 13, 1994 and also held a scoping and informational meeting on November 23, 1994; and

Whereas, the Planning and Zoning Commission on September 14, 1993 held a duly and properly noticed public hearing on the proposed negative declaration and held another duly and properly noticed public hearing on a revised negative declaration on April 13, 1994; and

Whereas, the Planning and Zoning Commission took action to unanimously approve the negative declaration, Conditional Use Permit No. 93-27 and the associated design review and variance applications for the St. Mary's College High School project including co-educational and increased enrollment, the gymnasium expansion and parking lot and numerous other improvements both on and off site, and this approval is contained in Planning and Zoning Commission Resolution No. 94-01.

Whereas, on April 25, 1994 an appeal was filed by Bonnie and Richard Miller, 1521 Posen Avenue, concerning the visual impacts of the proposed gymnasium; and

Whereas, the City Council held a duly and properly noticed public hearing on May 23, 1994 to consider the appeal of the Planning and Zoning Commission action, closed the public hearing and directed staff to revise Resolution No. 94-37 be revised to reflect modified conditions pertaining to landscaping requirements, traffic and parking mitigation measures, creek protection and storm water and urban runoff and setback requirements;

NOW THEREFORE BE IT RESOLVED THAT:

Section I. The Albany City Council hereby acknowledges that the appeal filed by Bonnie and Richard Miller, 1521 Posen was primarily focused on the visual impacts of the gymnasium expansion. The Council hereby denies the appeal of this project and finds that the Commission acted within their authority under Section 20-4.1 and 20-10.1 of the Albany City Code and did not abuse their discretion in approving the expansion of the gymnasium project. The Council further finds that the visual impacts associated with the gymnasium have been comprehensively analyzed through both architectural and visual simulation work and have been adequately and appropriately mitigated to a level of insignificance.

Section II. The Albany City Council hereby upholds the Planning and Zoning Commission approval of Conditional Use Permit No. 93-27, as revised., and confirms that the permit shall be subject to the following conditions:

General.

G-1. This conditional use permit supersedes and incorporates all the previous use permits for the St Mary's College/Highschool campus and shall act as the master document for the operation of and improvements of the campus facilities. Specifically, this use permit authorizes the construction of a gymnasium expansion and new parking lot on Posen Avenue, pursuant to a detailed project description contained in Exhibit A.

G-2. St. Mary's College High School (SMCHS) may operate a co-educational high school facility for grades 9 through 12 beginning in September, 1995, for up to 600 total students. Prior to September, 1995, the school is permitted to operate as a male-only school for grades 9 through 12 with a total enrollment not exceeding 420 students. The maximum enrollment figures may be exceeded on an absolute basis by up to five percent to allow for attrition and other student body changes.

In addition to the academic year activities, SMCHS may authorize the operation of summer programs for teacher training and for K-12 children. All conditions and requirements concerning traffic and parking, noise and activity limitations shall apply to these summer programs.

The following enrollment limitations and restrictions on operation and activity are placed on the school:

- a. Enrollment increases on a per year basis from 1995-1999 shall not exceed the approved on and off-street parking capacity for the campus (163 spaces total) for students, faculty and staff. (Please refer to Traffic, Circulation and Parking Section, Condition TCP-6.)
- b. Modifications to or expansion of classroom facilities including Cronin Hall and St. Joseph's Hall, shall not exceed the total, existing gross square footage as of April, 1994, including the two temporary classroom buildings. Prior to the issuance of an occupancy permit for the gymnasium expansion, or prior to any construction activity to modify classroom space, whichever occurs first, SMCHS shall submit a detailed., phased construction schedule to the Planning Department for modifying the classroom facilities to the Planning Department for review and approval. This plan shall include the total, existing classroom square footage on campus and plans for how and when existing classrooms will be modified., demolished or newly constructed. At the discretion of the applicant, temporary buildings may be used to account for required classroom space between the time of building demolition and the completion of a new facility. These arrangements, including time frames, shall also be included in the phased construction plan.

As per Conditional Use Permit No. 587, SMCHS shall be permitted to construct new classroom buildings to replace Cronin Hall and the two temporary buildings. Prior to the issuance of a building permit for these facilities, they shall be reviewed and approved by the Planning and Zoning Commission through a design review process. The property owners around the campus shall receive public notice of the design review process and when it is scheduled. No further amendment to the Master Plan shall be required for these modifications. The design review criteria shall focus on assuring architectural compatibility with existing campus buildings and confirming that the gross square footage of the new construction does not exceed the existing classroom square footage as of April, 1994. Further, all construction activity associated with the classroom modifications and rebuilding shall conform to the construction requirements section of this Resolution (Conditions CR-1 through CR-8.)

PPNA's Proposed Language for Admission Cap
Requested by Planning and Zoning Commission at the 6/12/12 Hearing

The maximum enrollment at St. Mary's College High School is capped at 600. Each fall the school shall calculate the average attrition rate (in whole numbers, not as a percentage) from the prior three years, and may admit up to that many extra students to account for expected attrition. It is intended that the school operate at a level not to exceed 600 students.

Marci A. Hamilton, Esq.

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CITY OF ALBANY

SEP 20 2012

**COMMUNITY DEVELOPMENT
DEPARTMENT**

September 19, 2012

Sent via email and U.S. mail

Planning and Zoning Commission
City of Albany
1000 San Pablo Ave.
Albany, CA 94706

RE: Application of St. Mary's School for Conditional Use Permit

Dear Commissioners:

Thank you for permitting me to speak on behalf of Peralta Park Neighborhood Association ("PPNA") during the meeting of the Planning and Zoning Commission on Wednesday, September 12, 2012. As I mentioned, I have been retained by PPNA for my expertise on the Religious Land Use and Institutionalized Persons Act ("RLUIPA") and the related constitutional issues raised by St. Mary's application for a Conditional Use Permit to cover numerous new buildings and uses, and in particular the addition of a 40-foot tall, 4,400 square foot chapel.

My biography is attached for your reference. Most relevant to this application, I represented the City of Boerne, Texas, in its successful constitutional challenge at the United States Supreme Court to the Religious Freedom Restoration Act ("RFRA") in *Boerne v. Flores*, 521 U.S. 507 (1997). RFRA was the statutory predecessor to RLUIPA. I also testified during the hearings related to RLUIPA, Marci A. Hamilton, *Letter to House Subcommittee on Constitution*, <http://judiciary.house.gov/legacy/ham0512.htm>, and I have advised numerous cities and neighborhoods in federal cases involving RLUIPA and related constitutional issues. In the Ninth Circuit, I currently represent the City of San Leandro, and I represented the League of Residential Neighborhood Advocates in its successful challenge to the City of Los Angeles's approval of a synagogue in a neighborhood zone without following ordinary land use procedures and taking the neighbors' concerns into account. In that case, the threat of RLUIPA led the City to make the mistake of assuming that it was required to defer completely to the religious landowners' requests, without consideration of the neighborhood's requests or needs. *League of Residential Neighborhood Advocates v. City of L.A.*, 498 F.3d 1052 (9th Cir. 2007). Not only did LRNA prevail in that case, but the City also was required

to pay the neighbors' attorneys fees. *League of Residential Neighborhood Advocates v. City of L.A.*, 633 F. Supp. 2d 1119, 1124 (C.D. Cal. 2009).

After clerking for Justice Sandra Day O'Connor at the United States Supreme Court, I started teaching at Cardozo Law School, where I have taught constitutional law for over 20 years.

The public hearing brought to the forefront several serious deficits in the Staff Report regarding St. Mary's Conditional Use Permit application. By way of context, this is a successful and ambitious school that has been steadily growing and adding uses that impact the surrounding neighborhoods for decades. Neither the school nor the neighbors are going to disappear, and so this body should consider all needs on all sides before reaching a final determination on the appropriate conditions for the CUP.

First, there is obviously a serious traffic problem, which requires more serious study and attention. Given the long history of traffic problems with St. Mary's and the number of people speaking to the issue during the Public Hearing, it is odd that the Staff Report would treat the issue with such brevity and without serious consideration of mediating conditions. The failure to treat the issue more seriously or to investigate the issue raises legitimate concerns regarding the Staff's and ultimately the Commission's and City's attitude toward the entire CUP application. The hands-off approach of the Report indicates favoritism toward a religious applicant, which is unwarranted, and unconstitutional, as I will discuss below.

Second, CEQA concerns did not appear to be taken seriously by Staff. Were the Commission to adopt the Staff Report, it would create potential legal liability for the City both on CEQA grounds, but also First Amendment grounds, as I will discuss below.

Third, the Staff Report, on the advice of counsel, imposed no conditions on the construction and operation of a new accessory use to the school, namely, a chapel. As I testified during the Public Hearing on Sept. 12, 2012, I have never seen another staff recommendation that is so devoid of ordinary, appropriate, and reasonable land use restrictions. Restrictions on the number of people permitted, the timing of events, the frequency of larger events, and to mitigate the impact of such events on neighbors and the community are standard conditions placed on buildings used for religious exercise, including even houses of worship, across the country. *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643 (10th Cir. 2006) (upholding Cheyenne's denial of a license request by church to operate a day care center at a residentially zoned location). Moreover, cities have prevailed despite outright denials of church proposals. *Trinity Evangelical Lutheran Church v. City of Peoria*, 591 F.3d 531 (7th Cir. 2009) (finding that city of Peoria did not err in denying church's request to demolish city landmark in order to build a community center); *Redwood Christian Schools v. County of Alameda*, WL 781794 (N.D. Cal. 2007) (ruling as a matter of law that Alameda County acted appropriately in denying church's application to build a high school on unincorporated county land); *Petra Presbyterian Church v. Village of Northbrook*, 489 F.3d 846 (7th Cir.

2007) (finding that Northbrook's denial of church's rezoning request for the building of a church, intended for worship services, was not a violation of RLUIPA).

The fact that a building may be put to some religious uses does not preclude this body from placing reasonable conditions on the use. Counsel to the Commission seemed to imply that RLUIPA precludes the Commission from even considering the uses to which a building for religious exercise can be put. That is a serious misreading of RLUIPA's language, legislative history, and the relevant case law. RLUIPA does not provide immunity for religious landowners. Speaking of RLUIPA prior to its enactment, Sen. Orrin Hatch stated that, "[i]t is important to note that this legislation does not provide a religious assembly with immunity from zoning regulation. If the religious claimant cannot demonstrate that the regulation places a substantial burden on sincere religious exercise, then the claim fails without further consideration." 146 Cong. Rec. S6678-02, WL 966493 (2000). Following the enactment of RLUIPA, many courts have reinforced the necessity of a substantial burden on a religious institution in order for RLUIPA to be applied. "[F]or a land use regulation to impose a 'substantial burden,' it must be 'oppressive' to a 'significantly great' extent. That is, a 'substantial burden' on 'religious exercise' must impose a significantly great restriction or onus upon such exercise" *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1034 (9th Cir. 2004). See also *Guru Nanak Sikh Soc'y of Yuba City v. Cnty. of Sutter*, 456 F.3d 978 (9th Cir. 2006); *Int'l Church of the Foursquare Gospel v. City of San Leandro*, 634 F.3d 1037 (9th Cir. 2011). To be sure, the City may not tell the applicant what to believe or how to pray, but those are not issues of concern to the neighbors. The neighbors' appropriate concern is with the impact of the new uses contemplated, and the Staff Report's failure to place any limits on the use and impacts of the chapel.

RLUIPA simply does not apply particularly when an anticipated use itself is not religious. For example, a day care center operated out of a Methodist Church was held to be a use that is not religious exercise. Thus, there was no substantial burden imposed when the City denied approval for the day care in the church. See *Grace United Methodist*, 451 F.3d at 654-55 ("while Grace United has a right to operate a daycare in Cheyenne, it has no right to build its daycare exactly where it pleases. '[T]he record contains no evidence that building a [daycare center] or building a [daycare center] on the particular site is intimately related to the religious tenets of Grace United"). In *Westchester Day School v. Mamaroneck*, 504 F.3d 338 (2d Cir. 2007), the Second Circuit pointed out that there were uses in a religious school that were not religious and, therefore, were not covered by RLUIPA. *Id.* at 347.

For purposes of this CUP, the chapel is an accessory use to a religious school, which means it is "subordinate" to the school use.¹ Therefore, it may not be used as a house of worship.

¹ Sec. 20.08.020 of Chapter XX of the Albany Zoning Ordinance states: "Use, Accessory means a subordinate use that is incidental to the principal use of a site, structure, or dwelling unit." It further states: "Use, Principal means the primary purpose for which a site or structure is arranged, designed, intended, constructed, erected, moved, altered or enlarged or for which either a site or a structure is or may be occupied or maintained." Section 20.12.040, regarding permitted land uses by district contains a table

The conditions should state this straightforward application of the law clearly, and failure to do so seems odd to say the least.

As an accessory use, the chapel must operate under the limitations of the school use and not beyond that use. Therefore, the Commission may and even must deny uses for the general public, e.g., use as a catering hall or as a rental space for the general public to hold events, including parties, baptisms, weddings, and funerals.

As an accessory use, the chapel should also be limited by limits placed on the number of large events/year. Currently, the school hosts 8 large events, and has proposed adding 2, which would take it to of 10 Large Events per year. Whether 8 or 10 are approved, they should apply to the whole campus, including the chapel.

Under RLUIPA, even if the land use law burdens religious exercise, the religious landowner must prove that the law imposes a “substantial burden” on religious exercise. With respect to the chapel, St. Mary’s is going to have great difficulty proving that even outright denial of the chapel imposes a substantial burden. All of the uses proposed by the school have been held in school buildings until now. The chapel is a convenience to the school, at best, and inconvenience is insufficient by itself to constitute a substantial burden. Specifically, the Ninth Circuit recently stated that “a substantial burden must place more than inconvenience on religious exercise.” *San Leandro*, 634 F.3d at 1044-45.

The Commission certainly can impose a limitation on the number of persons permitted in the chapel at a time, the size of the building, the timing of events, and the intensity of the use. PPNA submitted a suggested set of reasonable conditions taking into account the needs of the neighborhood and the needs of the school.²

Thus, PPNA has begun the discussion that should occur between it and the school, and the Commission. To the extent that the school refuses to participate or to find a middle ground, it is the obligation of this body to serve the neighbors and the school, not just the school.

The Staff Report, If Adopted, Would Be a Violation of the Separation of Church and State

showing that in the Public Facility District, the land use classification for St. Mary’s, public and private schools are permitted, but religious institutions are not. Section 20.16.050 of the same chapter, regarding Public and Quasi-Public Use Classification, allows in sub-section J: “Religious Institutions. Facilities for religious worship and incidental religious education, but not including private schools.”

² “___ . Chapel. The chapel shall be considered an accessory building to the School, and it shall be sized to accommodate a maximum of sixty people, whether seated or standing or in combination. Worship services or academic events may be held there only for current students and their family and for faculty/employees and only during the regular school day (7:00 a.m. - 4:00 p.m. Monday through Friday), and in no case may they be held on weekends or during the Summer break. In the chapel, the School shall not hold or allow any such events or assemblies that are generally open to the public, nor shall any other non-school events be held in the chapel at any time. The chapel may constitute a maximum of one additional classroom above the 31 total proposed classrooms.”

The Staff Report's recommendations on the chapel gave the school complete latitude to determine the intensity of the use, variety of use, and the impact of the chapel. It amounts to an abdication of the Commission's responsibility to apply land use law to CUP applicants, and delegates its decision making power to the school. The Supreme Court has made clear that this sort of delegation of governing authority to a church is unconstitutional. "[A] statute, by delegating a governmental power to religious institutions, inescapably implicates the Establishment Clause.... The Framers did not set up a system of government in which important, discretionary governmental powers would be delegated to or shared with religious institutions." *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 123, 127 (1982) (invalidating Mass. statute that provided religious institutions quasi veto power over businesses applying for a liquor license).

The government must be neutral as to religion and may not prefer religion to irreligion. *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968). RLUIPA explicitly states that the Establishment Clause "is unaffected," 42 U.S.C. § 2000cc-6 (2000), and, therefore, in full force and effect in all RLUIPA cases, which was true regardless of this language, because the Constitution trumps a mere statute. When the Staff Report's complete deference on chapel conditions is combined with the failure to treat the documented and agreed-upon traffic problems seriously and the non-responsiveness to the CEQA issues, it would appear that the Staff Report abandoned the "wholesome neutrality" required by the First Amendment's Establishment Clause. *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 222 (1968). RLUIPA is no excuse for unconstitutional deference.

Finally, it was suggested at the end of the Public Hearing that the decision on this application should be considered as expeditiously as possible, despite its many deficiencies. Given the incompleteness of the Staff Report, and the fact the school has refused to meet with the neighbors its new project will affect, this sounded a bit like Mussolini keeping the trains on time. In any event, it also fit into the larger pattern of an undue deference to a religious applicant at the expense of its residential neighbors and the community at large. This Commission has an obligation to serve the people and land use plan of Albany, and a needless rush to a decision based on inadequate work by Staff further undergirds the argument that the application is being given preferential treatment that amounts to a violation of the separation of church and state.

Before rushing to a decision, the school needs to sit down with the neighbors to hammer out mutually agreeable conditions on the chapel. In fact, the School refused to engage in discussions with the neighbors until it received approvalEmail of V. Kahn to J. Light, Re: SMCHS/PPNA Meeting, (Monday, July 23, 2012 1:31PM).

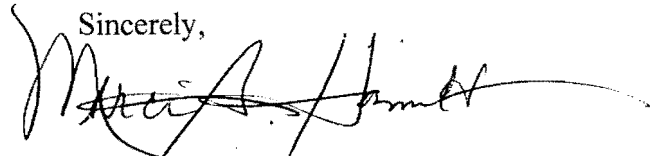
This Commission can level the playing field here by encouraging both sides to talk and produce suggested, agreed-upon conditions. To the extent that the school refuses to enter into such discussions, or that neither side is satisfied with the proposals debated, it is the Commission's obligation to craft reasonable, appropriate, and neutral land use limitations on the use and impact of the chapel.

The Staff Report, If Adopted, Would Require Albany to Give the Same Extreme Level of Deference to Future School and Religious Applicants

Were the Commission and ultimately the City to adopt the Staff Report as it stands, future religious land use applicants could and would demand the same level of deference and immunity from Albany's land use law. This body may not prefer St. Mary's School to future religious applicants. The best path for Albany is the path of neutrality, which requires this body to apply Albany's land use law neutrally to each applicant, which in turn requires it to take into account the many legitimate concerns of the neighbors.

I would be happy to answer any questions you may have regarding this letter and/or my comments before the Commission on Sept. 12, 2012.

Sincerely,

A handwritten signature in black ink, appearing to read "Marci A. Hamilton", with a long horizontal flourish extending to the right.

Marci A. Hamilton

MARCI A. HAMILTON is one of the United States' leading church/state scholars and holds the Paul R. Verkuil Chair in Public Law at the Benjamin N. Cardozo School of Law, Yeshiva University. She is the author of **JUSTICE DENIED: WHAT AMERICA MUST DO TO PROTECT ITS CHILDREN** (Cambridge University Press 2008, 2012) and **GOD VS. THE GAVEL: RELIGION AND THE RULE OF LAW** (Cambridge University Press 2005, 2007), and the co-editor of **FUNDAMENTALISM, POLITICS, AND THE LAW** (Palgrave Macmillan 2011). She is currently a bi-monthly columnist for www.justia.com and was a bi-for www.findlaw.com. She has been a visiting professor at Princeton University, New York University School of Law, Emory University School of Law, and the Princeton Theological Seminary.

Professor Hamilton has served as constitutional and federal law counsel in many important religious land use and clergy sex abuse cases in state and federal courts, and has been invited to testify before numerous legislatures on constitutional issues and on the reform of the laws to prevent childhood sex abuse. She was lead counsel for the City of Boerne, Texas, in *Boerne v. Flores*, 521 U.S. 507 (1997), before the United States Supreme Court in its seminal federalism and church/state case holding the Religious Freedom Restoration Act unconstitutional.

Professor Hamilton clerked for Associate Justice Sandra Day O'Connor of the United States Supreme Court and Judge Edward R. Becker of the United States Court of Appeals for the Third Circuit. She received her J.D., *magna cum laude*, from the University of Pennsylvania Law School where she served as Editor-in-Chief of the *University of Pennsylvania Law Review*. She also received her M.A. in Philosophy and M.A., High Honors, in English from Pennsylvania State University, and her B.A., *summa cum laude*, from Vanderbilt University. She is a member of Phi Beta Kappa and Order of the Coif.

CITY OF ALBANY
SEP 20 2012
COMMUNITY DEVELOPMENT
DEPARTMENT

Anne Hersch

From: DONNA DEDIEMAR [dediemar@sbcglobal.net]
Sent: Friday, September 21, 2012 11:34 AM
To: Anne Hersch
Cc: Jeff Bond; Joe Light
Subject: Negotiations with St. Mary's

Anne,

I've been mulling over the conversation I had with you at the time of the meeting between Marci Hamilton and Patricia Curtin. You made a comment about receiving one-sided information from PPNA about proposed negotiations with the school. Together with Jeff's urging the commissioners at the Sept. 12 meeting to hurry the pending application along, I feel the need to clarify some facts.

PPNA has stood ready for months this year to sit down with St. Mary's to discuss all aspects of the application that trouble us. Jeff knows that we even wanted to negotiate with St. Mary's about the school's proposals long before that, because we met with him over four sessions with school representatives and PPNA leaders in 2008-09 over the then pending master plan proposals. Those proposals included the same projects now proposed, plus others. Discussions ended only because the school's representatives declined to discuss any resolutions to PPNA's concerns.

At the commission meeting on Sept. 12, 2012, Donna tried to be diplomatic in her comments on the failure of the parties to negotiate their differences before the meeting. However, we don't in fact believe that PPNA bears any share of responsibility for not having met yet with the school's representatives. We shared the email exchanges with you on the subject (I'm including them here below my signature, for ease of reference).

You suggested when we met with the lawyers that St. Mary's unwillingness to sit down with PPNA representatives before the commission meeting somehow justified not negotiating with PPNA because we wanted to reduce the scope of the school's proposals. It is true that we did want to reduce the scope by eliminating the expansion of the Brothers' residence. The city concluded, as PPNA was arguing, that the residence, a non-conforming use, can't be expanded. Thus, the city agreed that the school had to reduce the scope of the application.

How PPNA's justified position that the scope of St. Mary's application should be so circumscribed could warrant school representatives refusing to sit down with us long ago eludes us. If the school had done so months ago, as we urged, we could have discussed the non-conforming nature of the residence expansion along with other issues. Instead, Vivian Kahn took the position that the school would wait until the Sept. 12 meeting to find out what parts of the St. Mary's application the commissioners expressed concern about and then talk to PPNA only about those. That led to PPNA urging the commissioners to take no action whatever on any part of the application until the parties negotiated, to force St. Mary's to meet with PPNA first, perhaps relieving the commissioners of responsibility for addressing some aspects of the application. As we understand the commission's marching orders to the parties over many years, the school and the neighbors were supposed to endeavor to resolve any disputes possible without forcing the commission to do so.

In PPNA's view, the school kept moving the goal post about meeting with our representatives. First, they wanted a facilitator present in some capacity rather than talking directly with PPNA. We reluctantly agreed. Second, they wanted to use SEEDS. Again, PPNA reluctantly agreed, despite serious reservations about objectivity. We'd had previous experience with a SEEDS-appointed mediator who couldn't see any conflict of interest in acting as mediator when she acknowledged that her seventh grader wanted to attend St. Mary's, an unjustifiable position supported by SEEDS itself. Third, Vivian wanted to await release of the Initial Study

before meeting. Then, Vivian wanted a SEEDS representative with whom she already had a working relationship from her time as a Berkeley planner to be the facilitator. Suspicious that an acquaintance proposed by her might not be neutral, we nevertheless agreed to meet with him. He did not impress the PPNA group of eight or ten that met with him as capable of undertaking the assignment. He lost his train of thought several times and did not seem to understand well what we were asking about the role he would assume in neutrally mediating between PPNA and the school. PPNA nevertheless agreed in order to keep the process moving and have some opportunity to meet with school representatives as the commission apparently wanted. Vivian then said she wanted a list of what our concerns were before meeting. We agreed to provide one, and asked that St. Mary's provide a list of what it was willing to talk about. At that point PPNA had agreed to every single one of the St. Mary's demands and there were 1.5 months left in which to negotiate. However, on July 23 Vivian shut the entire process down by declaring that it would be unproductive to meet before the Commission tipped its hand on September 12.

It seems quite unfair in light of the facts discussed above to hurry this process through. Some unavoidable obstacles stand in the way of haste. Vivian was unable to make herself available until Sept. 25 to meet with you about how to set up negotiations. Both Donna and I will be unavailable from Sept. 29 until Oct. 8. Then I leave for a three-week trip from Oct. 19 through Nov. 13. Joe Light will be gone during approximately the same time period. All of these trips were scheduled long ago. Both Donna and I are the major PPNA leaders for the pending application. We possess indispensable knowledge of the proposed projects, history of the city's past dealings with the school, and proposals that may or may not be acceptable to neighbors whom we're representing.

We urge the city to take the application off calendar and then set up a process for negotiations between PPNA and St. Mary's representatives. We will make knowledgeable PPNA representatives available within the parameters mentioned above. We commit to sustained, prompt efforts to determine what conditions we might be able to negotiate with the school and to the process that will result in removing issues from the Commission's deliberations. We don't think that jamming through action at this juncture is either just or reasonable.

We would appreciate it if you would distribute this message to the commissioners.

Chris Hamilton for PPNA

Appended email string below. It is listed, of course, exactly as it occurred, with most recent emails shown first. We have underlined particularly relevant portions of each email.

----- Forwarded Message -----

From: Vivian Kahn <vkahn@kmort.com>
To: J Light <lightplng@yahoo.com>
Cc: Brother Edmond <elarouche@STMCHS.ORG>
Sent: Monday, July 23, 2012 1:31 PM
Subject: Re: SMCHS/PPNA Meeting

Joe,

I am not available during the day on Monday, July 30. I would be available during the day or in the evening next Wednesday or Thursday.

It would be premature for the school to propose changes to the application until we have more specific information about the neighbors concerns and hear from the City staff and Planning Commission as well. I think it would be more appropriate to begin discussing solutions after the Planning Commission has opened the public hearing, received testimony, and indicated which issues are of concern to the City.

Vivian

Vivian Kahn, FAICP
KAHN/MORTIMER/ASSOCIATES
737 Second Street #307
Oakland, CA 94607-3007
(510) 842-0542

On Jul 23, 2012, at 1:22 PM, J Light wrote:

> Vivian,

>

> Yes, the PPNA has agreed to try out the mediation process that you have asked for in the hope that it will lead to an actual discussion with the School. Based upon Mr. Herbert's description of this first meeting as an information exchange only, I will be attending on behalf of the Neighborhood Association and will forward you in the next day or two a listing of general concerns about the School's proposal as you requested. In return, in advance of the meeting PPNA would like the School to identify and send to me the specific issues and aspects of the application they would be willing to negotiate with their neighbors and which they will not.

>

> Mr. Herbert is apparently still available on the 30th. Since Anne Hersch has expressed an interest in being present, I would suggest a day time meeting. What time would be convenient for you?

>

>

> From: Vivian Kahn <vkahn@kmort.com>

> To: J Light <lightplng@yahoo.com>

> Sent: Monday, July 23, 2012 12:01 AM

> Subject: Re: SMCHS/PPNA Meeting

>

> Joe,

>

> Has PPNA made any decision about having a facilitated meeting? Please let me know so I can add the date to my calendar.

>

> Vivian

> -----

> Vivian Kahn, FAICP

> KAHN/MORTIMER/ASSOCIATES

> 737 Second Street #307

> Oakland, CA 94607-3007

> (510) 842-0542

>

>

> On Mar 9, 2012, at 4:20 PM, J Light wrote:

>

>>

>> Dear Vivian,

>>

>> Perhaps I erred by not making the PPNA's vision and purpose in proposing a meeting with SMCHS clear at the start. Yes, the PPNA's proposal could well be characterized as negotiations (making proposals and seeking agreements). They have no interest in merely having "a friendly chat." Obviously, the neighbors have doubts about the project, particularly its potential scope and the concomitant impacts that it might have on them.

Equally obvious is the poor state of relations between the parties. The hoped for outcome of a "new and fresh" encounter between the parties, as the neighbors proposed, would be to reestablish a cordial and trusting relationship between them (after all, they are always going to be neighbors) first off and then, if that were successful, to develop mutually agreeable metrics and procedures on managing potential impacts that could be incorporated into the Conditional Use Permit. Assuming such an outcome, the neighbors could very well drop their current opposition to the project. I should have made that vision clearer in our initial conversation.

>>
>> Also, the PPNA had not made any arrangements to bring attorneys to the meeting, hoping that, at the very least, the outlines of agreements could be made directly. Attorneys could always be brought in later to encode measures of concurrence, if necessary.

>>
>> Although the PPNA would still prefer to start off with a face-to-face dialogue, they are considering your suggestion now, as they take your concerns and wants seriously. That said, perhaps, as you suggested earlier, it would be best at this point to await the release and mutual assessment of the Initial Study, prior to revisiting the format and scheduling of potential discussions and the drafting of meeting agendas.

>> .
>>
>>
>> From: Vivian Kahn <vkahn@kmort.com>
>> To: J Light <lightplng@yahoo.com>
>> Cc: Brother Edmond <elarouche@STMCHS.ORG>
>> Sent: Wednesday, March 7, 2012 10:42 AM
>> Subject: Re: SMCHS/PPNA Meeting

>>
>> Dear Joe,
>>
>> I was not involved in what you call "previous facilitated encounters" but based on what I have heard from others, I don't believe they were the type of session that I was recommending. My direct experience with the type of services that SEEDS provides are based on my familiarity with the Berkeley Dispute Resolution Service, which the City of Berkeley heavily relied upon for just this type of land use discussion. Because of the positive results, the City of Berkeley has gone so far as to codify the mediation process. To be honest, I don't understand why your clients would object to having an impartial third party participate.

>>
>> If the intent is to have a friendly chat, I'm not sure why you describe the participants in the proposed meeting as "a small group of negotiators". Do your clients intend to have an attorney present? Once you have given us a list of the issues your clients would like to discuss, we will have a better idea of what information we can provide to clarify the proposed project or even who should attend the meeting. If the intent is to "negotiate" rather than to exchange information, the need for facilitation by a third party is even greater.

>>
>> Vivian
>> On Mar 7, 2012, at 10:11 AM, J Light wrote:

>>
>>>
>>>
>>> Dear Vivian,
>>>
>>> I have spoken to the PPNA about SMCHS's preference to have a third-party facilitated meeting rather than a face to face discussion and they have taken the last couple of days to consider it. To take up the last matter first though, the PPNA would like the meetings to consist of a small group of negotiators from each side focusing on specific issues. They do not envision, nor do they want, the meetings to drift into general grievance airing exercises.

>>>

>>> As to the facilitation issue, while the neighbors do appreciate Brother Edmond and your preference on this matter, they feel just as strongly that they would like the meetings to be face to face. In their experience, previous facilitated encounters have been consistently unproductive, or even, counterproductive, and that direct discussions have been the only ones that have resulted in a negotiated agreement and an improvement in the relationship between the school and the neighbors. Rather than getting stuck here, arguing over the shape of the negotiating table, as the neighbors who are quite sensible to the unproductive nature of such an impasse put it, why don't we try out a face to face meeting and, if it appears to be unruly, as you seem to fear, then use a SEEDS-type approach as a fall back?

>>>

>>> Also, Chris Hamilton and Donna DeDiemar have offered their home as a meeting place as perhaps a more comfortable alternative to the Shea Center.

>>>

>>> Joe Light

>>>

>>> From: Vivian Kahn <vkahn@kmort.com>

>>> To: J Light <lightplng@yahoo.com>

>>> Cc: Brother Edmond <elarouche@STMCHS.ORG>

>>> Sent: Friday, March 2, 2012 4:04 PM

>>> Subject: Re: SMCHS/PPNA Meeting

>>>

>>> Dear Joe,

>>>

>>> Sorry for not responding yesterday but I needed to check with Brother Edmond before committing to a meeting. He agrees with me that a meeting prior to the official City process may be helpful but there are several issues that do need to be resolved.

>>>

>>> I have contacted Anne Hersch to find out when the City will be responding to Chris Hamilton's letter and when the revised environmental study will be released. As mentioned, I think it would be extremely helpful for all parties if the factual information in these documents is available before any meeting. Although there doesn't appear to be any reason for the City to delay release of either of these items, if they will not be available in the next week or so we can talk about proceeding without having this valuable information in hand. We do feel strongly that the meeting needs to be facilitated by an independent third party such as SEEDS. We are not proposing mediation, which is a different process that may be appropriate at sometime in the future. What we are requesting is that the meeting be conducted by a person who is capable of and committed to keeping the discussion on-track and fair. I see no reason why the neighbors would object to such an approach if it would help to establish a cordial relationship.

>>>

>>> I am glad that you agree that it would be helpful for us to have a list of issues that your clients would like to discuss before we meet and look forward to receiving this information. We are not in a position to request that the neighbors "rescind" their request for a detailed listing of on-campus events outside of regular school hours but, as I said when we spoke, it is simply not possible to provide a more detailed or longer list than what the school already provides to the City, on its website, and to the neighbors. The school does not maintain such a list and it would be extremely difficult and time-consuming, if not impossible, to create one.

>>>

>>> There are two additional matters that I neglected to raise when we spoke but do need to be resolved. One concerns the location of the meeting and the second relates to who will be invited to participate. Will an invitation be tendered to all residents who live in the immediate neighborhood? As you may know, there are families living in the neighborhood with members who are currently enrolled at Saint Mary's or who are alumni. Will they be able to participate? The selection of a meeting place may be easier to resolve. Brother Edmond has offered the use of Shea Student Center because off its convenience. If this is not acceptable, we need to identify

another location.

>>>

>>> Please don't hesitate to contact me if you need clarification of any of the points covered.

>>>

>>> Vivian

>>> -----

>>> Vivian Kahn, FAICP

>>> KAHN/MORTIMER/ASSOCIATES

>>> 737 Second Street #307

>>> Oakland, CA 94607-3007

>>> (510) 842-0542

>>>

>>>

>>> On Mar 1, 2012, at 2:49 PM, J Light wrote:

>>>

>>>> Dear Ms. Kahn:

>>>>

>>>> This is to confirm my understanding of the outcome of our discussion on Tuesday. Rather than scheduling a direct meeting this week or early next between representatives of the PPNA and SMCHS as the neighbors suggested, you felt strongly that any discussions between the parties must be mediated by an independent third-party such as SEEDS, and that any such meeting await the issuance of the IS and CoA's letter in response to the PPNA's request for additional information.

>>>>

>>>> You also were insistent that the neighbors rescind past requests for a detailed listing of on-campus events outside of regular school hours as a precondition of meeting, referring to the performance metrics and project information provided in the Project Application as fulfilling that need. As we discussed, the neighbors are open to such an approach in principle, but do not feel the Project Application itself fulfills that metric, preferring to collaboratively explore avenues to agreement on those metrics and the project scope, if possible, as well as the means of their institutionalization in any eventual permits.

>>>>

>>>> As you suggested, we will await the City's response to the additional information request and release of the Initial Study prior to scheduling an actual meeting between the parties. Also, I agree with your request that it would be appropriate for the PPNA to provide an outline of issues of concern to SMCHS prior to any meeting. I have conveyed that to them and one will be provided.

>>>>

>>>> I did want to reiterate, however, that the neighbors emphasized that they would like to enter direct discussions with SMCHS in a spirit of open neighborliness, and if I understood you correctly, you will convey to the school the offer to forgo third party mediation and attempt to establish a directly cordial relationship from this time forward.

>>>>

>>>> I believe that in a matter like this, perception of intentions can be as disruptive as reality, and I do think that providing a full and open description of purposes and potential uses of proposed project features could go a long way towards allaying suspicions of true intentions and satisfactorily resolving potential differences or conflicts between the school and its neighbors.

>>>>

>>>> Sincerely,

>>>>

>>>> Joe Light