

Location: Bentley School; 1 Hiller Drive, 245, 251, and 261 Tunnel Road
APN: 048H-7576-001-04, 048H-7576-030-02, 064 -4231-015 through 064 -4231-017

Proposal: Reconsideration of the Planning Commission's February 16, 2011 decision to:

Clarify the Transportation Demand Management (TDM) methodology for counting vehicles such that the Independent Rule Enforcers shall count vehicles from 7:15 to 8:45 in the morning and from 2:00 to 5:00 in the evening during each monitoring period. However, once a trimester the Independent Rule Enforcers shall count vehicles from 7:15 to 8:45 in the morning and from 2:00 to 6:00 in the evening.

(This action was associated with the Conditional Use Permit to increase the student enrollment from 200 to 360 students; change the school operation hours; and allow for childcare, physical education and extracurricular sports classes; and weekday evening, weekend, and summer events at the school. This proposal also included the number of on-site faculty, as well as the option to change the grade levels from K-8th grade to K-5th grade.)

Applicant: Bentley School
Contact Person/Phone Number: Arlene Hogan (510) 843-2512

Owner: Bentley School

Case File Number: A11033 (related to CM04-411; ER07-006; REV10-0003)

Planning Permit Required: Reconsideration of the February 16, 2011 decision by the Planning Commission.

General Plan: Hillside Residential

Zoning: R-30 One-Family Residential Zone

Environmental Determination: An Environmental Impact Report was previously certified by the Planning Commission on October 21, 2009. As a separate and independent basis, the project was also found exempt from CEQA pursuant to CEQA Guidelines sections 15301, 15061(b)(3), 15378(a) and/or 15183. No further environmental review is required.

Service Delivery District: II – North Oakland

City Council District: 1

Action to be Taken: Decision based on the staff report.

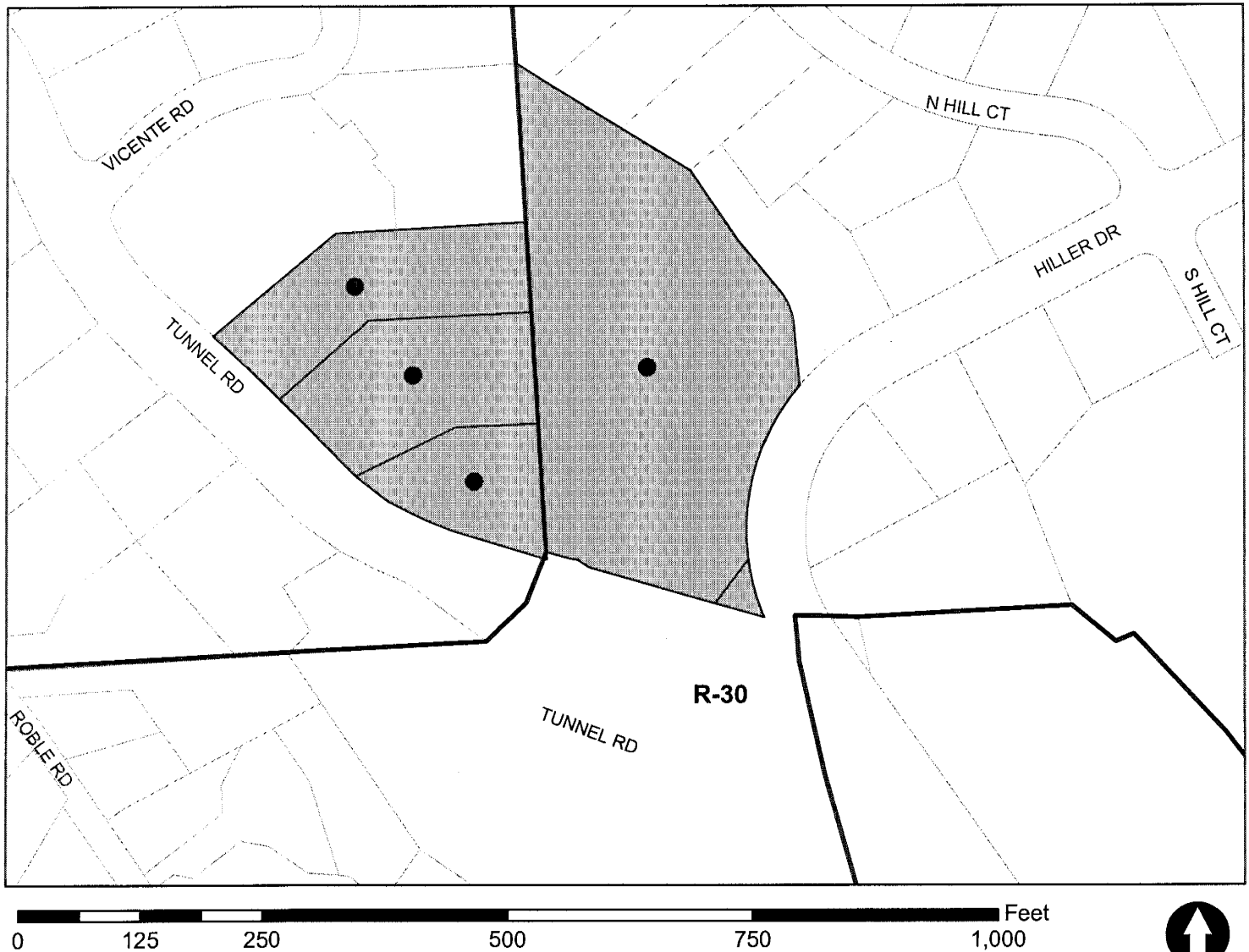
Finality of Decision: If the Planning Commission grants the Request for Reconsideration, then staff will schedule another Planning Commission public hearing to consider the entire item that was previously before the Commission in February 16, 2011, including:

- 1) Approval of the final two sections of the Transportation Demand Management (TDM) Program (Condition of Approval #14; Case File CM04-411) for Bentley School:
 - a) A portion of Section A related to additional onsite parking spaces, and
 - b) A portion of Section J related to an alternative to the Memorandum of Understanding (MOU) with the Police Department; and
- 2) Review of the School's Condition of Approval compliance record since the project was approved by the Planning Commission on October 21, 2009 and potentially revise/clarify language related to the Conditions of Approval, including #14 (the TDM) and specifically #14d.

If the Planning Commission denies the Request for Reconsideration, then Bentley School's Appeal shall be forwarded to City Council for its consideration at a future public hearing.

For Further Information: Contact case planner **Heather Klein** at 510 238-3659 or by e-mail at hklein@oaklandnet.com.

CITY OF OAKLAND PLANNING COMMISSION



Case File: A11-033 (related to CM04-411; ER07-006; REV10-0003)
Applicant: Bentley School
Address: 1 Hiller Drive, 245, 251, & 261 Tunnel Road
Zone: R-30

SUMMARY

Bentley School has filed an Appeal of the Planning Commission's February 16, 2011 decision clarifying the Transportation Demand Management (TDM) methodology for counting vehicles. The decision required the Independent Rule Enforcers to count vehicles from 7:15 to 8:45 in the morning and from 2:00 to 5:00 in the evening during each monitoring period. However, once a trimester the Independent Rule Enforcers shall count vehicles from 7:15 to 8:45 in the morning and from 2:00 to 6:00 in the evening. The Appeal documents also included a Request for Reconsideration of the Planning Commission's decision.

The Appeal and the Request for Reconsideration includes the assertion that there was improper notice of action taken by the Planning Commission and that the School had no notice that enlarging the timeframes for monitoring or changing the trip counting methodology would be discussed, considered, or modified. The Appeal and Request for Reconsideration asserts that the action taken by the Planning Commission was improper and done without any supporting findings or evidence. Furthermore, the Appeal states that the action constituted a substantial modification of the existing Conditional Use Permit (CUP) granted to Bentley on October 21, 2009. Attachment A provides the grounds for the Appeal and the Request for Reconsideration set forth on the Appeal form and accompanying letter.

DISCUSSION AND ANALYSIS

Staff believes that the Planning Commission's February 16, 2011 action to extend the monitoring timeframes in Condition #14d was more specific than the actual notice of the hearing. The notice only stated, in relevant part, "[i]n addition, to review the School's Condition of Approval compliance record since the project was approved by the Planning Commission on October 21, 2009"(Attachment B). The notice provided for the February 16, 2011 meeting was thus too general for the specific and detailed actions the City Planning Commission took on the floor. Therefore, staff is recommending approval of the Request for Reconsideration, so that the item can be more specifically noticed.

PROCESS FOR A REQUEST FOR RECONSIDERATION

1. A Commissioner who voted to approve the February 16, 2011 decision (in this case Commissioners Colbruno, Galvez, or Truong) may make a motion to grant the Request for Reconsideration. All Commissioners will then vote to either deny or approve the Request for Reconsideration.

If the Planning Commission **grants** the Request for Reconsideration, then staff will schedule another Planning Commission public hearing to consider the entire item that was previously before the Commission in February 16, 2011 (as indicated above).

2. If the Planning Commission **denies** the Request for Reconsideration, then Bentley School's Appeal, as submitted, shall be forwarded to City Council for its consideration at a future public hearing.

RECOMMENDATION

Staff recommends that the Commission:

Take public testimony, close the hearing, approve the Request for Reconsideration, and direct staff to schedule a noticed public hearing.

Approved for forwarding to the
City Planning Commission:



ERIC ANGSTADT

Deputy Director

Community and Economic Development Agency

Prepared by:



Heather Klein

Planner III

Attachments:

- A. Reconsideration/Appeal Documents submitted by Bentley School dated February 28, 2011, minus attachments including the EIR, all post October 21, 2009 studies and reports, staff reports, agendas and determination letter.
- B. February 16, 2011 notice posting, agenda, and staff report, minus attachments
- C. Public Comments on the Appeal and Request for Reconsideration



CITY OF OAKLAND
REQUEST FOR APPEAL OF DECISION TO
PLANNING COMMISSION, CITY COUNCIL OR
HEARING OFFICER (REVISED 12/20/10)

PROJECT INFORMATION

Case No. of Appealed Project: CMD4-411 / ERD7-006

Project Address of Appealed Project: 1 Hiller Drive ; 245, 251 and 261 Tunnel Road

APPELLANT INFORMATION:

Printed Name: BENTLEY SCHOOL

Phone Number: _____

Mailing Address: _____

Alternate Contact Number: _____

City/Zip Code _____

Representing: _____

An appeal is hereby submitted on:

- ☐ **AN ADMINISTRATIVE DECISION (TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)**

YOU MUST INDICATE ALL THAT APPLY:

- ☐ Approving an application for an Administrative Project
- ☐ Denying an application for an Administrative Project
- ☐ Administrative Determination or Interpretation by the Zoning Administrator
- ☐ Other (please specify) _____

Pursuant to the Oakland Municipal and Planning Codes listed below:

- ☐ Administrative Determination or Interpretation (OPC Sec. 17.132.020)
- ☐ Determination of General Plan Conformity (OPC Sec. 17.01.080)
- ☐ Design Review (OPC Sec. 17.136.080)
- ☐ Small Project Design Review (OPC Sec. 17.136.130)
- ☐ Minor Conditional Use Permit (OPC Sec. 17.134.060)
- ☐ Minor Variance (OPC Sec. 17.148.060)
- ☐ Tentative Parcel Map (OMC Section 16.304.100)
- ☐ Certain Environmental Determinations (OPC Sec. 17.158.220)
- ☐ Creek Protection Permit (OMC Sec. 13.16.450)
- ☐ Creek Determination (OMC Sec. 13.16.460)
- ☐ City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
- ☐ Hearing Officer's revocation/impose or amend conditions (OPC Secs. 15.152.150 & 15.156.160)
- ☐ Other (please specify) _____

- ☒ **A DECISION OF THE CITY PLANNING COMMISSION (TO THE CITY COUNCIL)** ☒ Granting an application to: **OR** ☐ Denying an application to:

Approve 2 sections of TDM

(continued on reverse)

(Continued)

A DECISION OF THE CITY PLANNING COMMISSION (TO THE CITY COUNCIL)

YOU MUST INDICATE ALL THAT APPLY:

Pursuant to the Oakland Municipal and Planning Codes listed below:

- ☐ Major Conditional Use Permit (OPC Sec. 17.134.070)
- ☐ Major Variance (OPC Sec. 17.148.070)
- ☐ Design Review (OPC Sec. 17.136.090)
- ☐ Tentative Map (OMC Sec. 16.32.090)
- ☐ Planned Unit Development (OPC Sec. 17.140.070)
- ☐ Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- ☐ Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- ☒ Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- ☐ Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- ☒ Other (please specify) ACTION TAKEN WITHOUT PROPER NOTICE

An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision.

You must raise each and every issue you wish to appeal on this Request for Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Request for Appeal Form (or attached additional sheets), and provide supporting documentation along with this Request for Appeal Form, may preclude you from raising such issues during your appeal and/or in court.

The appeal is based on the following: (Attach additional sheets as needed.)

See attached

☒ **Supporting Evidence or Documents Attached.** (The appellant must submit all supporting evidence along with this Appeal Form.)

X Arlene F. Hogan
Signature of Appellant or Representative of
Appealing Organization

2/28/11
Date

Date/Time Received Stamp Below:

Below For Staff Use Only

Cashier's Receipt Stamp Below:

8/14/02
8:14 02

APPEAL

This letter is submitted in support of Bentley School's appeal of the Decision of the Planning Commission on February 16, 2011.

PLANNING COMMISSION RECONSIDERATION

In the alternative, Bentley School hereby requests that the Planning Commission reconsider the action taken at the February 16, 2011 meeting for the reasons set forth herein.

BASIS FOR APPEAL/RECONSIDERATION

Improper Notice for Action Taken

The Notice of the Hearing ("Notice") stated that the hearing was to "review and approve the final two section (sic) of the Transportation Demand Management (TDM) Program ... for Bentley School, including and limited to: a) A portion of Section A related to additional onsite parking spaces, and b) A portion of Section J related to an alternative to the Memorandum of Understanding (MOU) with the Police Department."

Although the Notice was, by its terms, limited to two specified matters, the Commission adopted a draconian reduction in the number of allowable trips by enlarging the time for the traffic counts to be made beyond the adopted practice of tracking "peak period" counts and applying limits to those counts only. Bentley School had no notice the enlarging of time or changing of trip count methodology would be discussed, considered, or modified.

Improper Action Taken

The draconian reduction of allowable trips was done without any supporting finding and without any basis in the planning documents including the environmental analysis. Moreover, it constitutes a substantial modification of the existing conditional use permit granted to the Bentley School as modified and approved by the Planning Commission on October 21, 2009. The approval and all actions taken since the approval established and implemented the measuring of trips based on peak period traffic only and did not limit non-peak period traffic. Peak period traffic occurs at morning drop-off and, to a lesser degree, afternoon pick-up. Non-peak period traffic is minimal and is spread over a larger period of time, but including these trips in the total trip limit is unprecedented and unnecessary for purposes of limiting impacts.

The measuring of peak period traffic is consistent with all planning practices. Enlarging time for traffic counts and limits is unprecedented and contrary to planning practices.

The measuring of traffic counts during peak periods only against the limits adopted pursuant to the October 21, 2009 approval has been the practice of the City and all interested parties during the implementation of the approved modified use permit. The course of conduct for implementing and monitoring the conditions of approval establish that peak period traffic counts were subject to limits and not the enlarged time adopted by the commission on February 16, 2011.

Bentley School reserves the right to augment this appeal and request for reconsideration.

Attachments

EIR

All post October 21, 2009 studies, reports, etc.

2/16/11 staff report and agenda

Determination letter

Bentley School reserves the right to submit additional documentation.

CITY OF OAKLAND



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

Community and Economic Development Agency
Planning & Zoning Services Division

(510) 238-3941
FAX (510) 238-6538
TDD (510) 839-6451

February 22, 2011

Arlene Hogan
Bentley School
1 Hiller Drive
Oakland, CA 94618

*payable to city of
oakland.*

RE: Case File No. CM04-411; REV10-0003, ER07-006; 1 Hiller Drive, 251 Tunnel Road, 245 Tunnel Road, and 261 Tunnel Road

Dear Ms. Hogan,

The City Planning Commission **APPROVED** Bentley School's Major Conditional Use Permit Conditions of Approval #14a related to additional onsite parking spaces, and 14j related to an alternative to the Memorandum of Understanding (MOU) with the Police Department at the meeting of **February 16, 2011**. In addition, the City Planning Commission also required the School to:

- 1) Submit an application to the City of Berkeley, no later than April 16, 2011 for approval of the additional parking spaces at the Headmasters House and the tandem spaces in the lower parking lot and implement construction of these spaces. Progress on this Condition shall be added to the TDM monitoring reports. If the City of Berkeley denies these permits then the School will have complied with this Condition; and
- 2) Increase the transit subsidy program and coordinating and arranging an off-site carpool location amongst families of similar aged students in order to reduce the SOV trips to 242 by April 2011.

Furthermore, the City Planning Commission also clarified the TDM methodology of counting vehicles in order to arrive at a more accurate number of the vehicles coming to the School and conformance with the Condition of Approval 14d: Single Occupancy Vehicle (SOV) Trip Reductions (Formerly Minimum Bus Ridership) and the previously approved SOV reductions. The Independent Rule Enforcers shall count vehicles from 7:15 to 8:45 in the morning and from 2:00 to 5:00 evening during each monitoring period. However, once a trimester the Independent Rule Enforcers shall count vehicles from 7:15 to 8:45 in the morning and from 2:00 to 6:00 evening.

This action becomes final ten (10) days after the date of the meeting on **February 16, 2011** unless an appeal to the City Council is filed by **February 28, 2011**.

With respect to Condition 14a above and the construction of additional on-site parking, it is staff's reasonable interpretation that these spaces would be constructed within 60 days of approval from the City of Berkeley.

This decision is appealable to the Oakland City Council and such appeals must be filed by no later than ten (10) days from the date of the announcement of the decision (no later than 4:00 pm on Monday, February 28, 2011). An appeal shall be on a form provided by the Planning and Zoning Division of the Community and Economic Development Agency, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of **Heather Klein**. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Planning Commission or wherein its decision is not supported by substantial evidence and must include payment of **\$1352.91** in accordance with the City of

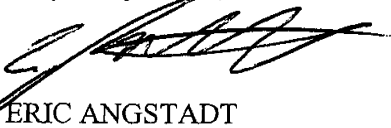
Oakland Master Fee Schedule. Failure to timely appeal will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court.

A signed Combined Notice of Exemption and Determination is enclosed certifying that the project has been found to be exempt from CEQA review, and although not legally required, an Environmental Impact Report was prepared for the project. You **must** record the NOE/NOD, the Environmental Declaration, and the De Minimis Impact Findings at the Alameda County Clerk's office at 1106 Madison Street, Oakland, CA 94612, at a cost of ~~\$50.00 made payable to the Alameda County Clerk~~. Please bring the original NOE/NOD related documents and five copies to the Alameda County Clerk, and return one date stamped copy to the Zoning Division, to the attention of **Heather Klein, Planner III**. Recordation of the NOE/NOD reduces the statute of limitations on challenges to your project, based on environmental issues, to 35 days after the NOE/NOD is recorded with the County. In the absence of a recorded NOE/NOD, the statute of limitations for challenges extends to 180 days.

If you have any questions, please contact the case planner, **Heather Klein** at (510) 238-3659 or hklein@oaklandnet.com.

(X) Granted with required conditions. (Vote: 4 ayes (Boxer, Colbruno, Galvez, and Truong), 0 noes, 3 absent, Gibbs, Huntsman, Zayas-Mart))

Very Truly Yours,



ERIC ANGSTADT
Deputy Director
Community and Economic Development Agency

cc: Neighbors for Safety Hiller Highlands
Howard Matis
Ray Derania, Building Services Division
Bill Quesada, Inspection Services

notice of PLANNING COMMISSION PUBLIC HEARING

7. **Location:** Bentley School; 1 Hiller Drive, 245, 251, and 261 Tunnel Road
APN: 048H-7576-001-04, 048H-7576-030-02, 064 -4231-015 through 064 -4231-017

Proposal: To review and approve the final two section of the Transportation Demand Management (TDM) Program (Condition of Approval #14; Case File CM04-411) for Bentley School, including and limited to:

- a) A portion of Section A related to additional onsite parking spaces, and
- b) A portion of Section J related to an alternative to the Memorandum of Understanding (MOU) with the Police Department.

And to review the School's Condition of Approval compliance record since the project was approved by the Planning Commission on October 21, 2009.

These Conditions were associated with the Conditional Use Permit to increase the student enrollment from 200 to 360 students; change the school operation hours; and allow for childcare, physical education and extracurricular sports classes; and weekday evening, weekend, and summer events at the school. This proposal also included the number of on-site faculty, as well as the option to change the grade levels from K-8th grade to K-5th grade.

Applicant: Bentley School
Contact Person/Phone Number: Arlene Hogan or Duncan Lyon / (510) 843-2512
Owner: Bentley School
Case File Number: CM04-411; ER07-006; REV10-0003
Planning Permit Required: Review and approval of the remaining Transportation Demand Management (TDM) Program, Sections A and J. The TDM was Condition of Approval #14; Case File CM04-411). Review of Compliance with the Conditions of Approval.

General Plan: Hillside Residential
Zoning: R-30 One-Family Residential Zone
Environmental Determination: An Environmental Impact Report was previously certified by the Planning Commission on October 21, 2009. As a separate and independent basis, the project was also found exempt from CEQA pursuant to CEQA Guidelines sections 15301, 15061(b)(3), 15378(a) and/or 15183. No further environmental review is required.

Service Delivery District: II - North Oakland
City Council District: 1
Action to be Taken: Decision on the TDM measures based on staff report
Finality of Decision: Appeale to City Council
For Further Information: Contact case planner Heather Klein at 510 238-3659 or by e-mail at hklein@oaklandnet.com.

The public hearing will be heard on Wednesday, February 16, 2011, at Oakland City Hall, Hearing Room One, 1 Frank H. Ogawa Plaza, Oakland, California 94612. The public hearing will be heard at 6:30 p.m.

If you challenge the public hearing in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice of in written correspondence delivered to the Community and Economic Development Agency on, or proper to, the public hearing. If you wish to be notified of the decision of this case, please indicate the case number and submit a self-addressed stamped envelope for each to the Community and Economic Development Agency/Zoning Division, 250 Frank H. Ogawa Plaza, 2nd Floor, Oakland, California 94612-2031.

AT SUCH HEARING, FACTS MAY BE PRESENTED FAVORING OR OPPOSING THIS PROPOSAL

IT IS UNLAWFUL TO ALTER OR REMOVE THIS NOTICE on or before the hearing date indicated above. Such an act is punishable by fine or imprisonment or by both fine and imprisonment.

SECRETARY, City Planning Commission
City Hall, Oakland, California 94612

ATTACHMENT B



Oakland City Planning Commission

AGENDA

Doug Boxer, Chair
Vien Truong, Vice Chair
Michael Colbruno
Sandra E. Gálvez
Vince Gibbs
C. Blake Huntsman
Madeleine Zayas-Mart

February 16, 2011

Regular Meeting

MEAL GATHERING **5:15 P.M.**

Saigon Restaurant, 326 Frank Ogawa Plaza, Oakland

Open to the public (Members of the public may purchase their own meals if desired. Consumption of food is not required to attend.)

BUSINESS MEETING **6:00 P.M.**

Hearing Room 1, City Hall, One Frank H. Ogawa Plaza

Persons wishing to address the Commission on any item on the agenda, including Open Forum and Director's Report, should fill out a speaker card and give it to the Secretary "*Agenda items will be called at the discretion of the Chair not necessarily in the order they are listed on the Agenda*". Speakers are generally limited to two minutes at the discretion of the Chair. Applicants and appellants are generally limited to five minutes.

The order of items will be determined under "Agenda Discussion" at the beginning of the meeting. With the exception of Open Forum, a new item will not be called after 10:15 p.m., and the meeting will adjourn no later than 10:30 p.m. unless the meeting is extended by the Chair with the consent of a majority of Commissioners present.

Please check with the Planning Department prior to the meeting regarding items that may be continued. Any agenda item may be continued, without the hearing on the matter being opened or public testimony taken, at the discretion of the Chair. Persons wishing to address the continued item may do so under Open Forum.

For further information on any case listed on this agenda, please contact the case planner indicated for that item. For further information on Historic Status, please contact the Oakland Cultural Heritage Survey at 510-238-6879. For other questions or general information on the Oakland City Planning Commission, please contact the Community and Economic Development Agency, Planning and Zoning Division, at 510-238-3941.

♿ This meeting is wheelchair accessible. To request materials in alternative formats, or to request an ASL interpreter, or assistive listening device, please call the **Planning Department at 510-238-3941** or **TDD 510-238-3254** at least three working days before the meeting. Please refrain from wearing scented products to this meeting so attendees who may experience chemical sensitivities may attend. Thank you.



**New web-site staff report
download instructions**

Staff reports for items listed on this agenda will be available by 3:00 p.m. the Friday before the meeting, to any interested party, at the Community and Economic Development Agency, Planning and Zoning Division, 250 Frank

H. Ogawa Plaza, Oakland, California 94612. Reports are also available at the Strategic Planning Division on the 3rd floor (Suite 3315), which closes at 5:00 p.m.

Staff reports are also available on-line, by 3:00 p.m. the Friday before the meeting, at www.oaklandnet.com. Select the "Government" tab, scroll down and click on "Planning & Zoning" (under CEDA), click on "visit the Boards and Commissions page" under "Planning Commission". You will need to ensure that your computer will accept pop-ups from the host site (oaklandnet.com) and that your computer has a later version of Adobe Acrobat Reader installed. For further information, please call **510-238-3941**.

If you challenge a Commission decision in court, you will be limited to issues raised at the hearing or in correspondence delivered to the Zoning Division, Community and Economic Development Agency, at, or prior to, the hearing. Any party seeking to challenge in court those decisions that are final and not administratively appealable to the City Council must do so within ninety (90) days of the date of the announcement of the final decision, pursuant to Code of Civil Procedure Section 1094.6, unless a shorter period applies.

Please note that the descriptions of the applications found below are preliminary in nature and that the projects and/or descriptions may change prior to a decision being made.

While attending Planning Commission Meetings, parking in the Clay Street Garage is free. Attendees should see staff at the meeting for validation of parking tickets.

Applicants or members of the public that plan power point presentations: Please contact Cheryl Dunaway at cdunaway@oaklandnet.com or 510-238-2912 or Gwen Brown at gbrown@oaklandnet.com or 510-238-6194 at least 48 hours prior to the meeting.

ROLL CALL

WELCOME BY THE CHAIR

COMMISSION BUSINESS

Agenda Discussion

Director's Report



Committee Reports

Commission Matters

City Attorney's Report

OPEN FORUM

At this time members of the public may speak on any item of interest within the Commission's jurisdiction. Speakers are generally limited to two minutes or less if there are six or less speakers on an item, and one minute or less if there are more than six speakers.

CONSENT CALENDAR

The Commission will take a single roll call vote on all of the items listed below in this section. The vote will be on approval of the staff report in each case. Members of the Commission may request that any item on the Consent Calendar be singled out for separate discussion and vote.

1.	Location: 1076 Amito Avenue (APN: 048H-7612-016-00)
	Proposal: To install two 15-ft. high steel poles located about 25-ft. to the east and 60-ft to the northeast of the EBMUD water tank, 1 pole containing 1 concealed panel antenna and the other pole containing 2 panel antennas including the installation of ground-mounted equipment cabinets located about 20-ft to the southeast of the existing utility building.
	Contact Person: T-Mobile West Corporation, Steve Christenson
	Phone Number: (530) 368-0730
	Owner: East Bay Municipal Utility District (EBMUD)
	Case File Number: CMD10-206
	Planning Permits Required: Major Conditional Use Permit to operate a Monopole Telecommunications facility in a residential zone; Regular Design Review to install a Telecommunications Facility
	General Plan: Hillside Residential
	Zoning: R-30 One-Family Residential Zone
	Environmental Determination: Exempt, Section 15301(e) of the State CEQA Guidelines: Existing Facilities (additions to existing structures); Section 15183 of the State CEQA Guidelines: Projects consistent with a Community plan, General Plan or Zoning
	Historic Status: None; Survey Rating: None
	Service Delivery District: 2
	City Council District: 1
	Date Filed: July 26, 2010(revised plans submitted on 01/27/11)
	Action to be Taken: Decision based on staff report
	Finality of Decision: Appealable to City Council within 10 days
	For Further Information: Contact case Planner Mike Rivera at (510) 238-6417, or by email at mrivera@oaklandnet.com



2. **Location:** 2825 Park Boulevard APN: (023 -0404-012-00)
Request for a Major Conditional Use Permit and Design Review to modify an existing unmanned micro telecommunications facility consisting of adding 2 additional panel antennas and four new RRU's on the roof of the existing Buddhist Temple, adding a 1 equipment shelter along the interior side of building consisting of 1 equipment cabinet.
- Proposal:**
- Applicant:** AT&T / Realcom Assoc.
Contact Person/ Phone: David Snypes
Number: (925) 519-5081
Owner: Amitabha Temple of International
- Case File Number:** CMD10-209
- Planning Permits Required:** Major Conditional Use Permit to modify an existing wireless telecommunication micro facility within 100' of a residential zone and Regular Design Review to add 2 panel antennas and add a new equipment shelter.
- General Plan:** Urban Residential
Zoning: C-28 Commercial Shopping District Zone
- Environmental Determination:** Exempt, Section 15303 of the State CEQA Guidelines; new construction of small structures, 15301 existing facilities; 15183 Projects consistent with the General Plan or Zoning.
- Historic Status:** Not Potential Designated Historic Property (PDHP); Survey rating: F3
- Service Delivery District:** 3
City Council District: II
Date Filed: 8/2/10
- Finality of Decision:** Appealable to City Council within 10 days
- For Further Information:** Contact case planner **Jose M. Herrera-Preza** at (510) 238-3808 or jherrera@oaklandnet.com

3. **Location:** 400 Perkins Street (APN: 010-0777-015-01)
Proposal: To install two (2) telecommunication antennas and six (6) enclosed equipment cabinets inside the electric room of the building.
Applicant: T-Mobile, Dayna Aguirre
Contact Person/Phone Number: Dayna Aguirre /(925)784-7888
Owner: 400 Mayfair, LLC
Case File Number: CMDV10-280
Planning Permits Required: Regular Design Review to install two (2) telecommunication antennas, and six (6) enclosed equipment cabinets.
 Major Conditional Use Permit for the installation of a Mini telecommunication facility within 100 feet of a residential zone.
 Minor Variance to mount the antennas approximately 17' -6" above the roof where a maximum of 15' -0" above the roof is permitted.
General Plan: Urban Residential
Zoning: R-60 Medium-High Density Residential Zone
 S-12 Residential Parking Combining Zone
- (continued on page 5)



(continued from page 4)	
Environmental Determination:	Exempt, Section 15301 of the State CEQA Guidelines; minor additions and alterations to existing structures.
	Section 15183 of the State CEQA Guidelines; projects consistent with a community plan, general plan or zoning.
Historic Status:	Designated Historic Property; Survey Rating: B+3
Service Delivery District:	3
City Council District:	3
Status:	Pending
Action to be Taken:	Decision of Application
Finality of Decision:	Appealable to City Council within 10 days
For Further Information:	Contact case planner Michael Bradley at (510) 238-6935 or by email: mbradley@oaklandnet.com

PUBLIC HEARINGS

The hearing provides opportunity for all concerned persons to speak; the hearing will normally be closed after all testimony has been heard. If you challenge a Commission decision in court, you will be limited to issues raised at the public hearing or in correspondence delivered to the Zoning Division, Community and Economic Development Agency, at, or prior to, the public hearing.

The Commission will then vote on the matter based on the staff report and recommendation. If the Commission does not follow the staff recommendation and no alternate findings have been prepared, then the vote on the matter will be considered a "straw" vote, which essentially is a non-binding vote directing staff to return to the Commission at a later date with appropriate findings and, as applicable, conditions of approval that the Commission will consider in making a final decision.

If you wish to be notified on the decision of an agenda item, please indicate the case number and submit a self-addressed stamped envelope, for each case.

Planning Commission decisions that involve "major" cases (i.e., major variances, major conditional use permits) are usually appealable to the City Council. Such appeals must be filed within ten (10) calendar days of the date of the announcement of the Planning Commission decision and by 4:00 p.m. An appeal shall be on a form provided by the Planning and Zoning Division of the Community and Economic Development Agency, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of the Case Planner. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Planning Commission or wherein their decision is not supported by substantial evidence and must include payment in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal will preclude you from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so will preclude you from raising such issues during your appeal and/or in court.

Any party seeking to challenge a final decision in court must do so within ninety (90) days of the date of the announcement of a final decision, pursuant to Code of Civil Procedure section 1094.6, unless a shorter period applies.

Interested parties are encouraged to submit written material on agenda items in advance of the meeting and prior to the close of the public hearing on the item. To allow for distribution to the Commission, staff, and the public, 25 copies of all material should be submitted. Material submitted at least ten days prior to the meeting may be included as part of the agenda packet; material submitted later will be distributed at or prior to the meeting. To ensure that material is distributed to Commissioners, it should be received by the Commission.



4. **Location:** 4868 Calaveras Avenue APN: (037 -2552-030-01)
Proposal: To construct 3 multi-family residential buildings containing 28 affordable for-rent dwelling units in total on a vacant 31,213 square-foot site.
- The project was previously approved September 17, 2003 (#DV03280) and that entitlement as well as approved Building Permits and extensions have expired. A nonresidential building has been demolished (#B0102156) and protected trees have been removed (#T03073) by City permit. A gas station formerly located on the southeast corner which has been remediated. An approved Parcel Map Waiver to merge 3 lots (#PMW03022) must be recorded with the County of Alameda.
- Applicant:** Teresa Clarke/Affordable Housing Associates
Phone Number: (510) 649-8500 x 24
Owner: Community Assets
Case File Number: DV11-005
Planning Permits Required: Regular Design Review to construct new dwelling units in the C-30 Zone exceeding 25,000 square-feet in total new floor area (OMC Sec. 17.136.040(C)(1)); Minor Variances (3) height of 41' -6" where 40-feet is allowed, right side yard of 5-feet where 10-feet is required, rear yard of 5-feet where 10-feet is required (OMC Sec. 17.46.150(B), 17.146.160(C), (D))
General Plan: Neighborhood Center Mixed Use
Zoning: C-30 District Thoroughfare Commercial Zone/
S-4 Design Review Combining Zone
Environmental Determination: Exempt, Section 15332 of the State CEQA Guidelines: In-Fill Development Projects; Section 15183 of the State CEQA Guidelines: Projects consistent with a community plan, general plan or zoning
Historic Status: Non-historic properties
Service Delivery District: IV
City Council District: 4- Schaaf
Date Filed: January 11, 2011
Action to be Taken: Approve with conditions
Finality of Decision: Appealable to City Council within 10 days
For Further Information: Contact case planner Aubrey Rose, Planner II at (510) 238-2071 or arose@oaklandnet.com

5. **Project Name:** Revisions to the Arcadia Park Residential Project
Location: 98th Avenue @ San Leandro Street (854 - 92nd Avenue; 860 - 92nd Avenue; and 999 - 98th Avenue)
Assessor' s Parcel Numbers: Various (044-5078- and 044-5080-)
Proposal: Modify access to a previously approved residential development (currently under construction), specifically restricting access to the site at "F" Street, "G" Street, and Ellington Way.
Applicant: Arcadia Park Owners Association

(continued on page 7)



(continued from page 6)

Contact Person/Phone Number: Arcadia Park Owners Association / (510) 830-7411
Owner: Pulte Homes
Case File Numbers: REV10-0016 (PUD05-335)
Planning Permits Required: Revision to a previously approved Planned Unit Development
General Plan: Housing and Business Mix
Zoning: R-30 One-Family Residential Zone (portion of site) and R-50 Medium Density Residential Zone (portion of site)
Environmental Determination: An Environmental Impact Report (EIR) was prepared and certified for the residential project in 2005. No further environmental review is required for the proposed revisions.
Historic Status: No rating
Service Delivery District: 6
City Council District: 7
Status: The project was previously approved in 2005 and is currently under construction. The decision on the proposed revisions to the project is currently pending.
Action to be Taken: Decision on application
Finality of Decision: Appealable to City Council within 10 days
For further information: Contact the case planner, **Darin Ranelletti**, at (510) 238-3663 or by e-mail at dranelletti@oaklandnet.com.

6. **Location:** Citywide
Proposal: Planning Code Amendment to include Temporary Conditional Use Permit regulations
Project Sponsor: Planning Commission
Owner(s): NA
Case File Number(s): ZT100007
Planning Permits Required: Planning Code Amendment
General Plan: All
Zoning: All
Environmental Determination: The proposal relies on the previously certified Final Environmental Impact Report (EIR) for the Land Use and Transportation Element of the General Plan (1998); the FEIR for the 1998 Amendment to the Historic Preservation Element of the General Plan; the Housing Element Update Initial Study/Mitigated Negative Declaration (2004); and CEQA Guidelines Section 15183, "Projects Consistent with a Community Plan, General Plan or Zoning"
Historic Status: All, including Areas of Primary Importance (APIs), Areas of Secondary Importance (ASIs), landmark properties, and other historically rated properties.
Service Delivery District: All
City Council District: All
Status: Item continued by the Planning Commission to February 16, 2011 agenda.
Action to be Taken: Consider recommendation to City Council.
Finality of Decision: Decision by City Council.
For further information: Contact **Catherine Payne** at 510-238-6168 or by e-mail at cpayne@oaklandnet.com



PLEASE NOTE: ITEM NO.7, BELOW, WILL NOT BE HEARD PRIOR TO 7:00 P.M

7. **Location:** Bentley School; 1 Hiller Drive, 245, 251, and 261 Tunnel Road
APN: 048H-7576-001-04, 048H-7576-030-02, 064 -4231-015 through 064 -4231-017
- Proposal:** To review and approve the final two section of the Transportation Demand Management (TDM) Program (Condition of Approval #14; Case File CM04-411) for Bentley School, including and limited to:
- a) A portion of Section A related to additional onsite parking spaces, and
 - b) A portion of Section J related to an alternative to the Memorandum of Understanding (MOU) with the Police Department.
- And to review the School' s Condition of Approval compliance record since the project was approved by the Planning Commission on October 21, 2009.
- These Conditions were associated with the Conditional Use Permit to increase the student enrollment from 200 to 360 students; change the school operation hours; and allow for childcare, physical education and extracurricular sports classes; and weekday evening, weekend, and summer events at the school. This proposal also included the number of on-site faculty, as well as the option to change the grade levels from K-8th grade to K-5th grade.*
- Applicant:** Bentley School
Contact Person/Phone Number: Arlene Hogan or Duncan Lyon / (510) 843-2512
Owner: Bentley School
Case File Number: CM04-411; ER07-006; REV10-0003
Planning Permit Required: Review and approval of the remaining Transportation Demand Management (TDM) Program, Sections A and J. The TDM was Condition of Approval #14; Case File CM04-411). Review of Compliance with the Conditions of Approval.
- General Plan:** Hillside Residential
Zoning: R-30 One-Family Residential Zone
Environmental Determination: An Environmental Impact Report was previously certified by the Planning Commission on October 21, 2009. As a separate and independent basis, the project was also found exempt from CEQA pursuant to CEQA Guidelines sections 15301, 15061(b)(3), 15378(a) and/or 15183. No further environmental review is required.
- Service Delivery District:** II - North Oakland
City Council District: 1
Action to be Taken: Decision on the TDM measures based on staff report
Finality of Decision: Appeable to City Council
For Further Information: Contact case planner Heather Klein at 510 238-3659 or by e-mail at hklein@oaklandnet.com.



APPEALS

The Commission will take testimony on each appeal. If you challenge a Commission decision in court, you will be limited to issues raised at the public hearing or in correspondence delivered to the Zoning Division, Community and Economic Development Agency, at, or prior to, to the public hearing; provided, however, such issues were previously raised in the appeal itself.

Following testimony, the Commission will vote on the report prepared by staff. If the Commission reverses/overturns the staff decision and no alternate findings have been prepared, then the vote on the matter will be considered a "straw" vote, which essentially is a non-binding vote directing staff to return to the Commission at a later date with appropriate findings and, as applicable, conditions of approval that the Commission will consider in making a final decision.

Unless otherwise noted, the decisions in the following matters are final and not administratively appealable. Any party seeking to challenge these decisions in court must do so within ninety (90) days of the date of the announcement of the final decision, pursuant to Code of Civil Procedure section 1094.6, unless a shorter period applies.

COMMISSION BUSINESS

Approval of Minutes: January 19, 2011

Correspondence

City Council Actions

OPEN FORUM

At this time members of the public may speak on any item of interest within the Commission's jurisdiction. Speakers are generally limited to two minutes or less if there are six or less speakers on an item, and one minute or less if there are more than six speakers.

ADJOURNMENT By 10:30 P.M. unless a later time is agreed upon by a majority of Commissioners present.

SCOTT MILLER
Zoning Manager
Planning and Zoning Division

NEXT REGULAR MEETING: March 2, 2011

Oakland City Planning Commission

Case File Number CM04-411; ER07-006; REV10-0003

February 16, 2011

Location: Bentley School; 1 Hiller Drive, 245, 251, and 261 Tunnel Road
APN: 048H-7576-001-04, 048H-7576-030-02, 064 -4231-015 through 064 -4231-017

Proposal: To review and approve the final two sections of the Transportation Demand Management (TDM) Program (Condition of Approval #14; Case File CM04-411) for Bentley School, including and limited to:

- a) A portion of Section A related to additional onsite parking spaces, and
- b) A portion of Section J related to an alternative to the Memorandum of Understanding (MOU) with the Police Department.

In addition, to review the School's Condition of Approval compliance record since the project was approved by the Planning Commission on October 21, 2009.

These Conditions were associated with the Conditional Use Permit to increase the student enrollment from 200 to 360 students; change the school operation hours; and allow for childcare, physical education and extracurricular sports classes; and weekday evening, weekend, and summer events at the school. This proposal also included the number of on-site faculty, as well as the option to change the grade levels from K-8th grade to K-5th grade.

Applicant: Bentley School

Contact Person/Phone Number: Arlene Hogan or Duncan Lyon / (510) 843-2512

Owner: Bentley School

Case File Number: CM04-411; ER07-006; REV10-0003

Planning Permit Required: Review and approval of the remaining Transportation Demand Management (TDM) Program, Sections A and J. The TDM was Condition of Approval #14; Case File CM04-411).

General Plan: Hillside Residential

Zoning: R-30 One-Family Residential Zone

Environmental Determination: An Environmental Impact Report was previously certified by the Planning Commission on October 21, 2009. As a separate and independent basis, the project was also found exempt from CEQA pursuant to CEQA Guidelines sections 15301, 15061(b)(3), 15378(a) and/or 15183. No further environmental review is required.

Service Delivery District: II – North Oakland

City Council District: 1

Action to be Taken: Decision on the TDM measures based on staff report

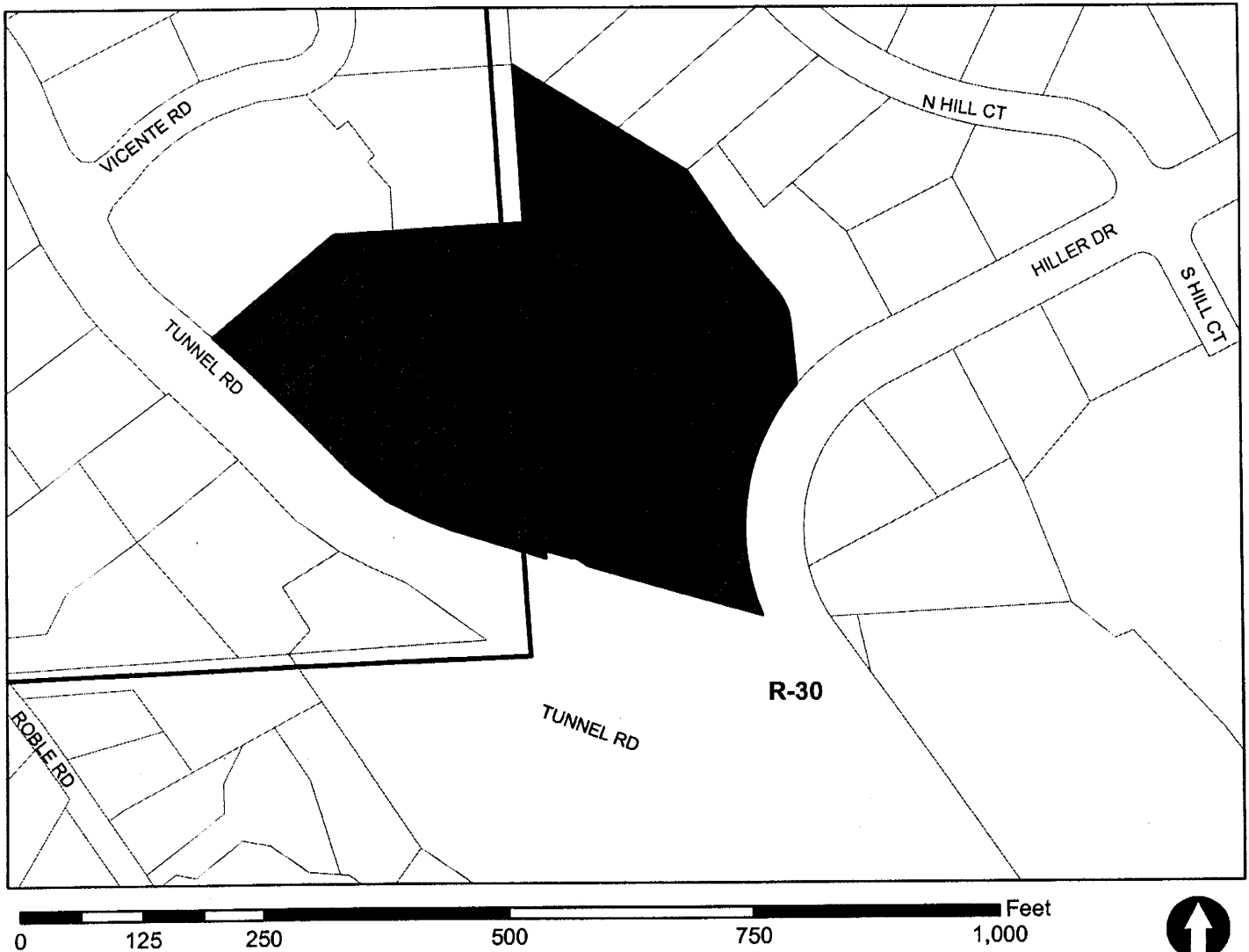
Finality of Decision: Appeale to City Council

For Further Information: Contact case planner **Heather Klein** at 510 238-3659 or by e-mail at hklein@oaklandnet.com.

SUMMARY

On October 21, 2009 the Planning Commission granted Bentley School a Major Conditional Use Permit (CUP) to legalize and permit a student enrollment of 360; established hours of operation for academic, childcare and physical education activities; as well as weekday evening, weekend and summer events at the school. The proposal included the option to change the grade levels from K-8th grade students to K-5th grade students. The permit was granted with Conditions of Approval that the school must implement and follow.

CITY OF OAKLAND PLANNING COMMISSION



Case File: CM04-411; ER07-006; REV10-0003
Applicant: Bentley School
Address: 1 Hiller Drive, 245, 251, & 261 Tunnel Road
Zone: R-30

The purpose of this report is to review and approve the final two sections of the TDM program for Bentley School, which include:

- a. A portion of Section A related to additional onsite parking spaces, and
- b. A portion of Section J related to an alternative to the Memorandum of Understanding (MOU) with the Police Department.

Furthermore, this staff report also discusses the School's overall compliance with the Conditions of Approval and contains recommendations for the Planning Commission's consideration.

PROPERTY LOCATION

Bentley School is located along Hiller Drive, near the intersection of Hiller Drive and Tunnel Road. The School property encompasses approximately 4.2 acres on five contiguous parcels and straddles the City of Oakland and City of Berkeley border.

PROJECT BACKGROUND

On October 21, 2009 the Planning Commission granted the School a Major CUP with Conditions of Approval to legalize and permit a student enrollment of 360; hours of operation, and events. Since the project was approved several Conditions of Approval have been clarified, revised, or eliminated. Attachment A provides a summary of the actions and revisions.

REVIEW OF THE TWO REMAINING PORTIONS OF THE TDM

The TDM (Attachment B) is subdivided into sections as bulleted in Condition of Approval #14. The majority of the TDM was approved by the Planning Commission on July 21, 2010. However, two portions were incomplete including a portion of Section A and a portion of Section J and were not approved. The TDM consultant submitted these portions on January 18, 2011. Below is a discussion of the two remaining TDM sections to be approved.

a) Parking Management Strategies

The Parking Management Strategies Condition required the School to explore other on-site parking spaces. The TDM consultant reviewed the school's site plan and has determined that the only space available for additional on-site parking is at the Head Master's House and within the lower parking lot based on the topography of the site. Both of these potential areas are located within the City of Berkeley. A site plan of the Head Master's House (Attachment C) shows that approximately eight (8) spaces could be added with three (3) spaces parked on the existing pavement and five (5) spaces on the grass area within the driveway loop. These eight spaces would meet the City of Berkeley's size dimensions for parking spaces. Staff has discussed the issue with the City of Berkeley staff and a Conditional Use Permit application would need to be submitted and approved.

Additional parking spaces could be provided within the lower parking lot, but these would be tandem spaces. Tandem parking would require a parking management plan and additional coordination to be effective. Based on observation, between five and eight vehicles could potentially be striped in the lot. A site plan confirming the number of spaces and addressing potential travel aisle restrictions would need to be submitted to the City of Berkeley along with a parking management plan. Staff has discussed the issue with the Berkeley staff and the School will need to revise the Conditional Use Permit for the parking lot to permit these additional non-tandem spaces.

With City of Berkeley approval of these spaces and assuming the lower lot can hold eight (8) vehicles, the number of on-site parking stalls would increase from 51 to 67. With continued leasing of the three (3) spaces from the Claremont Hotel, the school would be one space short of meeting a one stall to one staff member parking ratio. However, because faculty and staff are included in the SOV reduction rates, the number of trips to the school should not increase with the increased number of parking spaces. On the contrary, this should mean that more parking stalls will be available for visitors, volunteers, tutors, etc. and the number of persons parking on Hiller Drive associated with the School will be reduced.

Staff recommends that the City require the School to apply to the City of Berkeley for approval of these additional parking spaces and construct the spaces. If the City of Berkeley denies the Conditional Use Permit, then the School will have met Condition 14a. However, Condition 25 would still be applicable. This Condition requires the School to address on-site parking in the event the School applies for a Master Plan.

j) Memorandum of Understanding with Oakland Police Department

The School has a Memorandum of Understanding (MOU) with Oakland Police Department which allows a person trained by the Department to direct traffic on Hiller Drive and cars into the Bentley driveway. The Memorandum of Understanding (MOU) Condition required the School to develop an alternative to the MOU in the event the MOU is revoked for some reason.

The TDM consultant reviewed the MOU and had discussions with the Police Department regarding an alternative person that could perform the functions outlined in the MOU. The Police Department indicated that there was no person other than an on-duty Police Officer who could assume this role and the School could not hire an on-duty Police Officer. Without this person, the TDM consultant and staff concluded that it was possible that traffic could back-up, impacting traffic operations and safety along Hiller Drive and at the Hiller Drive/Tunnel Road intersection. However, it was impossible to predict, based on all the variable factors, the extent of the impact with typical traffic modeling procedures and software. Therefore, to alleviate the possibility of safety impacts and address the condition, the TDM recommends the following actions be implemented if the MOU is revoked.

1. The School should immediately notify the City and the TDM Independent Enforcers that the MOU was revoked.
2. The TDM Independent Enforcers should monitor the traffic for one week and determine whether traffic operations at the signal and at the Bentley driveway are being causing safety impacts.
3. A monitoring report shall be prepared if needed that recommend short term solutions to be implemented immediately.
4. The TDM Independent Enforcers shall monitor the effectiveness of the short-term solutions weekly until longer term solutions are recommended and implemented.
5. Once long term solutions are implemented, the TDM Independent Enforcers should return to monthly monitoring.
6. If the above procedures do not adequately address traffic circulation and safety issues along Hiller Drive, then enrollment reductions would be required to assure acceptable traffic and safety conditions along Hiller Drive.

The TDM Independent Enforcers have reviewed the above actions and are in concurrence.

OVERALL COMPLIANCE WITH THE CONDITIONS OF APPROVAL

The other purpose of this report is to review the School's overall compliance with the Conditions of Approval. Attachment D contains a Compliance Matrix for Bentley School. In general, the School is in compliance with most of the Conditions. Below is a discussion of Conditions where the School is either not in compliance or there is inconsistent compliance.

Condition 14d: Single Occupancy Vehicle (SOV) Trip Reductions (Formerly Minimum Bus Ridership)

This Condition requires the School to reduce the SOV trips by 25% by the beginning of the fall trimester 2010 (242 trips total) and by 35% by the beginning of the fall trimester 2012 (210 trips total).

The TDM monitoring reports submitted by the Independent Rule Enforcers show non-compliance in the September and October report (+2 cars), compliance in November report (-2 cars), and non-compliance in the December report (+2 cars). All of these instances of non-compliance were during the morning drop-off timeframe. During the afternoon pick-up, the School consistently is under 120 SOV trips. Staff did not initiate enforcement mechanisms per Section K of the TDM during the first trimester despite the fact that the School did not meet the SOV reduction numbers in September and October. This was based on the fact that the School seemed to initiate methods to reduce the SOV trips between October and November. However, the TDM monitoring reports show that at the beginning of the second trimester (December 2010) the number of SOV trips increased.

Section K of the TDM requires that the Independent Rule Enforcers propose measures to alleviate the infraction and that those measures must be approved by the City of Oakland prior to implementation. Once approved, Bentley School shall implement the measures and be given one trimester period after the approval to meet the TDM goals. The TDM Independent Rule Enforcers recommend increasing the transit subsidy program and coordinating and arranging an off-site carpool location amongst families of similar aged students. Staff recommends approval of these measures to reduce the SOV trips. Furthermore, this report stands as official notice of inconsistent compliance and the School has until the beginning of the third trimester (April 2011) to reduce the SOV trips to the approval level. Per Section K, if the School does not reduce the number of trips, the Planning and Zoning Division shall commence enforcement procedures.

Condition 14e: Number of Persons to Assist Traffic

This Condition requires the School to have a certain number of persons assisting traffic. The TDM monitoring reports submitted by the Independent Rule Enforcers show compliance in the September, October, and December reports but non-compliance in the November report (-2 persons). Staff did not initiate enforcement mechanisms for the lack of traffic assistants during the November monitoring period per Section K of the TDM because the December report shows compliance. TDM independent enforcers recommend at least one "supervisor" among the traffic assistants. Staff agrees that there should be traffic assistant supervisor and staff will continue to review the monitoring reports for compliance.

In addition, the TDM requires one person to be located at the driveway exit. The Independent Rule Enforcers have confirmed that there is a person in this position directing vehicles and students. The Independent Rule Enforcers recommend placing another trained traffic assistant "in the street" at the driveway exit. This person's role would be to slow down southbound through traffic (which has a tendency to speed) as well as aiding in merging traffic. Staff has submitted this recommendation to the Traffic Safety Division of the Oakland Police Department for review.

Condition 14f: Traffic Safety Devices

This Condition requires the School to place traffic safety devices on Hiller Drive to delineate the drop-off/pick-up zone. The devices must be placed one-half hour before drop-off and pick up times and removed no later than one-half hour after drop-off and pick up times. At least one monitor will be present during the period that traffic safety warning devices are in the roadway. The TDM monitoring reports submitted by the Independent Rule Enforcers show compliance in the October and December reports but non-compliance in the September and November reports. Staff did not initiate enforcement mechanisms for the lack of traffic safety devices per Section K of the TDM because the December report shows compliance. Staff will continue to review the monitoring reports for compliance. Per the Independent Rule Enforcers, the devices do seem to have a tendency to "fly up" when run over by a car. The Traffic Safety Division of the Oakland Police Department is investigating this issue.

Condition 24A_C: Neighborhood Liaison Committee/Point of Contact/Complaints

This Condition requires the School to initiate a Neighborhood Liaison Committee and hold meeting every trimester. The meetings will have an agenda which will be forwarded to Planning and Zoning staff. The School does hold the meetings but staff did not receive the agenda or the meeting minutes from the October 2010 meeting. The School has also been inconsistent with sending documents to the NLC. Staff has not initiated enforcement mechanisms because the School is generally in compliance with the Condition and has recently improved the distribution of materials to the NLC. In addition, staff often forwards this information directly to the neighborhood parties. Staff will continue to review this Condition for compliance.

ENVIRONMENTAL DETERMINATION

An Environmental Impact Report (EIR) was prepared for the Major CUP project, under the requirements of CEQA, pursuant to Public Resources Code Section 21000 *et. seq.* and was certified by the Planning Commission on October 21, 2009. The Major CUP project was also found to be exempt from CEQA pursuant to CEQA Guidelines sections 15301, 15061(b)(3), 15378(a) and/or 15183, each of which provided a separate and independent basis for CEQA compliance and when viewed collectively provided an overall basis for CEQA compliance. No further CEQA review is necessary to implement the project.

OTHER KEY ISSUES

Since the project was approved in October of 2009 and the TDM was approved in July of 2010, staff has received many public comments, including a letter from the Neighbors for Safety in Hiller Highlands (Attachment E). Below is a brief summary for the Planning Commission's review, along with staff's response.

Neighborhood Liaison Committee

Staff received several comments that the School was not cooperating or communicating with the NLC. Recent e-mails regarding the NLC included the following the issues:

- a) Meetings should be called by the neighbors.
- b) Agendas should be developed by the neighbors.
- c) Requests for interim drafts of the traffic plan have been ignored.
- d) Requests for interim drafts of the DKS reports have been ignored.
- e) Communications have been ignored

Staff Response:

- a) The Condition of Approval requires the School to schedule an NLC meeting each trimester.
- b) Staff believes that there should be a clear agenda and that both parties should place items on the agenda. Time should be allotted for discussion of each item.
- c) The Planning Commission approved the TDM on July 21, 2010. Therefore, aside from the remaining two incomplete portions the TDM is final. Despite City policy not to hand out drafts, staff did provide a draft of the TDM to the neighbors. In addition, staff provided the neighbors the final TDM weeks before publication for the July 2010 staff report. The revised TDM in Attachment B is the same plan that was approved in July except that the two incomplete portions were added and the changes from July have been reflected in the revised document. In this way, there is one complete version of the TDM.
- d) DKS does not prepare draft monitoring reports for the School or City staff. The reports are generated per the requirements outlined in the TDM, Section K. The reports come directly to City staff and staff distributes it to the School and the neighbors.
- e) Staff can't respond to this issue as we have not seen the requests for communications.

Events not on Calendar

Staff received comments that the School was holding events not on the calendar. In one case, the calendar was not corrected when the event was rescheduled. Staff believes that these scheduling issues have been resolved.

Traffic Safety

Staff received comments there were persons crossing the street unsafely and u-turns occurring in driveways. Staff understands that there will be no way for the School to achieve total compliance regarding these unsafe crossings and u-turns. However, the School personnel should continue to take the compliant, investigate and follow the non-compliance procedures outlined in the Traffic Handbook. Furthermore, the School shall continue to remind persons of the traffic rules.

Traffic Management Plan- TDM Methodology

Per Condition of Approval #14 the City Planning and Zoning Division, Transportation Services Division and Traffic Safety Division of the Police Department reviewed and approved the TDM monitoring worksheets and methodology presented by the Independent Rule Enforcers. The worksheets and monitoring methodology was approved with the TDM in July 2010. As part of this public hearing, the neighbors are requesting the following items clarified in the TDM:

- a) Observation days should not be pre-announced and monitoring should be done on different days of the week.
- b) There should be one observation day for total vehicle trips and the number of vehicles using the parking lots should be added to the TDM monitoring reports.
- c) The SOV trips (242 by fall of 2010 and 210 by the fall of 2012) should be considered the total trips.
- d) Ensure that Bentley's report of daily attendance includes all people involved in school operations.
- e) The TDM reports must take account of the full daily attendance in order to determine total vehicles trips accessing the campus. Field monitoring worksheets need to be simplified, and reports and methodology for determining total vehicle trips need to be developed and included in the appendix.
- f) The School shall implement additional trips reduction strategies to ensure compliance.

Staff Response:

Staff is concerned that the comments received on the TDM methodology would call for re-opening items that were already approved and for which the appeal period for raising these concerns has passed. Staff does not believe that the TDM methodology or reporting should be changed now that the TDM is being implemented. Below are staff's specific responses to the neighbors concerns.

- a) Observation days originally were announced to the School. After discussions with the Independent Rule Enforcers this no longer occurs. The Independent Rule Enforcers should have the ability to choose when to conduct the monitoring. Since the Independent Rule Enforcers are counting Bentley traffic it should not matter when Kaiser School is in session.
- b) Staff believes that the observation methodology should be implemented by Independent Rule Enforcers as approved by the Planning Commission as part of the TDM.
- c) The SOV reduction Condition approved by the Planning Commission states: "The project applicant shall reduce the number of single occupancy vehicles (SOV) driven by 25% of 323 (352 students plus 71 faculty and staff minus 79 students that were taking the bus as noted in the certified EIR and the 21 parking spaces for the lower parking lot) by the beginning of the fall trimester 2010 (242 trips total) and by 35% by the beginning of the fall trimester 2012 (210 trips total)." Now that the Condition is being implemented and monitored, staff and the neighbors are requesting additional language be added to the TDM define total vehicle trips. Staff and School assumed that the 242 trips does not refer to the total number of trips per day that can arrive at the school but 242 trips during the AM peak drop-off and 242 trips during the PM peak pick-up. This assumption is substantiated by the discussion of the various scenarios in the staff report recommending approval of the TDM (Attachment F). Each scenario presented an SOV reduction based on the morning peak period. Staff would have vehemently opposed a 242/210 total trip scenario as this would have amounted to a 43% reduction in 2010 and a 52% reduction in 2012 based on the maximum student and staff numbers. The approved TDM is already more stringent in that the number of students previously taking the bus was included in the baseline. In all previously approved TDMs, except for Bentley, 20% has been the maximum SOV reduction the Commission has approved. Changing this definition would be inconsistent with the Commission's prior approvals for the project.
- d) The issue of "staff" was discussed in great detail at the April 7, 2010 Planning Commission meeting. Staff acknowledged the need for a specific staffing number but we did not want to be the constant position of having to determine who was considered faculty, staff, or an employee. The School provided a document that listed the positions of their existing staff. This list included full and part-time teachers, full and part-time childcare staff, maintenance workers, and custodial staff. The Planning Commission reviewed this information and granted the School 71 staff.

City staff is now being asked to redefine "staff" and determine whether tutors, coaches, vendors, etc. should be included in the TDM, the SOV monitoring, and parking prohibition on Hiller. Based on the list previously provided by the School and the number of faculty and staff approved by the Planning Commission, staff does not believe that it is appropriate to include these persons in the SOV reduction rates. Again, this re-opens issues that were already discussed and approved back in April and July of 2010.

- e) The methodology that the Independent Rule Enforcers use to monitor the SOV trips is based on cars. However, the Independent Rule Enforcers also count children in multi-occupant vehicles, bus riders, walkers, and bicyclists in order to arrive at a total student and staff number. They then cross reference these numbers with the overall attendance for that day to ensure a generally accurate count. In some cases there is a difference in the observed number and the attendance which can be based on a number of factors including missing a head count of children, drivers

arriving at a campus access point that was not observed, vehicles arriving before the monitoring period begins or after it ends. The difference between the observed cars and the attendance has ranged from 6-30 persons in the morning and 190-210 persons in the afternoon. The large number of unobserved persons in the afternoon is based on the Independent Rule Enforcers leaving after the afternoon peak pick-up and the number of students participating in after School programs or childcare. This is a positive situation in that this traffic is distributed over a three hour period.

Staff presented concerns over counting staff/students at the July 2010 Planning Commission hearing based on the intense vehicle activity during the peak periods (for example, 360 students arriving in a half hour period during the morning drop-off.) Staff believed that the best option was to count cars otherwise the monitoring would become too complicated and onerous.

The neighbors are requesting additional language be added to the TDM clarifying that each person should be counted and then that number would be checked against the daily student/staff attendance. Then the difference between the observed attendance and the actual attendance would be distributed based on the SOV, multi-occupant vehicle, and other modes of travel percentages. In this way each person would be assigned to a mode of travel and the most accurate monitoring count will be achieved. Staff agrees that that this would provide the most accurate count but this option was not approved with the TDM, does not take into account all of the various activities at the School, and not in the spirit of the TDM which is to reduce congestion during peak periods.

Staff does not recommend changing the language or methodology in the approved in the TDM. One of the main points of the TDM is to reduce traffic congestion on Hiller Drive and manage the traffic demand. Congestion occurs only during the morning and afternoon loading periods. The TDM specifically called out staggered bell times as a way to reduce the number of vehicles coming to the School all at once. The EIR also calls out the daycare activity as beneficial in this regard. By requiring that each student/staff member be counted, the School is essentially be penalized for spreading the traffic out. This also re-opens the debate about peak hour trips. The SOV reduction scenarios specifically called out peak traffic periods not all day. Finally, while counting vehicles might not give the most exact picture of the total number of vehicle trips coming to the School, it is reasonable and does meet the intent of the TDM. It is for these reasons that staff does not believe that a daily attendance number or counting of persons needs to be factored into the methodology.

- f) Staff is also concerned that the School is exceeding the SOV numbers in the morning on a consistent basis. This report stands as official notice of inconsistent compliance and the School has until the beginning of the third trimester (April 2011) to reduce the SOV trips to the approval level. Furthermore, given the low enrollment, faculty and staff numbers, we are concerned that the School will not be able to meet the required SOV reduction rate by 2012. We believe that additional vehicle trip reduction scenarios, as outlined in the TDM, should be implemented.

Maintenance of Evacuation Route Adjacent to along School Property

Staff received comments regarding the sidewalk along Tunnel Road. Staff discussed the issue with Caltrans and they are assuming the lead role to fix the sidewalk. They have identified preliminary funding and are moving forward with the Project Study Report (PSR) process.

CONCLUSION

Approval of the remaining two sections of the TDM will reduce traffic congestion, address safety concerns, and improve livability in the neighborhood.

City staff believes that the School is generally in compliance, but there are a number of Conditions that require additional effort, including the SOV reductions, traffic assistants, traffic safety device monitoring, completion of the EMP, and better coordination with the City and neighbors. Staff proposes several recommendations below for the Planning Commission's consideration. Staff will continue to review the TDM reports for compliance.

RECOMMENDATION

Staff recommends that the Commission:


1. Take public testimony; and
2. Approve the remaining portions of the TDM including Section A related to alternative on-site parking spaces and Section J related to the alternative to the MOU; and
3. Regarding Condition 14a, staff recommends requiring the School to submit an application to the City of Berkeley, no later than April 16, 2011 for approval of the additional parking spaces at the Headmasters House and the tandem spaces in the lower parking lot and implement construction of these spaces. Progress on this Condition shall be added to the TDM monitoring reports and if the City of Berkeley denies these permits than the School will have complied with this Condition; and
4. Regarding Condition 14d, staff recommends increasing the transit subsidy program and coordinating and arranging an off-site carpool location amongst families of similar aged students in order to reduce the SOV trips to 242 by April 2011.

Approved for forwarding to the
City Planning Commission:


ERIC ANGSTADT

Deputy Director
Community and Economic Development Agency

Prepared by:


Heather Klein
Planner III

Attachments:

- A. Summary of the actions and revisions to the CUP since approval October 21, 2009
- B. Revised Transportation Demand Management Program, dated January 18, 2011
- C. Site Plan of Head Master's House and Potential Parking Layout
- D. Compliance Matrix for Bentley School
- E. Public Comments since the TDM was approved on July 21, 2010
- F. SOV reduction scenarios, July 21, 2010 TDM and staff report
- G. TDM Report September 2010
- H. TDM Report October 2010
- I. TDM Report November 2010
- J. TDM Report December 2010

Klein, Heather

From: JimDexter@aol.com
Sent: Saturday, April 23, 2011 11:19 PM
To: michael.colbruno@gmail.com; Klein, Heather; dboxer@gmail.com; VienV.Truong@gmail.com; Blake.Huntsman@seiu1021.org; sgalvez@phi.org; mzmdesignworks@gmail.com; VinceGibbs.opc@gmail.com; Miller, Scott
Cc: milt.capsimalis@gmail.com; dlyon@bentleyschool.net; dsmith@bentleyschool.net; sandi.bonacini@gmail.com; jbgene@yahoo.com; tulaeconomou@gmail.com; fsseifried@comcast.net; lynette.francis@kp.org; lkarris@sbcglobal.net; sjames12345@msn.com; donna_karch@yahoo.com; mpshep@aol.com; board@northhillscommunity.org; Piper, Susan; Quan, Jean; Brunner, Jane; Wald, Zachary
Subject: Continued Bentley School Non-Cooperation with Affected Residents

Dear Planning Commissioners,

Please remember as you consider any June 15 appeal by the Bentley School staff for reconsideration, and in all future agenda items relating to Bentley School's duties associated with the Bentley CUP and TDM, **that Bentley School's administration has consistently and actively avoided all meaningful communication with the affected residents.** The Bentley School administration took great efforts in appearing to participate with the Neighborhood Liaison Committee (NLC). This NLC was suggested strongly by you, the Oakland Planning Commission, in your effort to resolve many of the issues associated with the CUP. Bentley School's administration provided absolutely not one meaningful cooperative effort with the dedicated and hopeful NLC neighbors who participated in the useless meetings.

In my opinion, Bentley School's administration has acted with the obvious intention to pretend to be cooperating with both the residents and the Oakland Planning Commission, while working to undermine the Planning Commission's intent to mitigate the original two-fold expansion of the school's enrollment, and to simply ignore the neighbors as if they were unnecessary irritants to the process (branding the active neighbors as 'crazy,' 'evil,' and worst of all, attacking the public credibility of at least one neighbor in the most harmful and reprehensible manner).

Oakland's CEDA staff has been neutral to the community, and has not reflected the actual situation to the Planning Commission that the Bentley School has been completely uncooperative with the neighbors. Further, it seems to me like CEDA is cooperating with the Bentley School in their effort to legitimize the vastly-expanded enrollment, and to have the Oakland Planning Commission rubberstamp what is nothing less than a knowing thumb-of-the-nose to Oakland's planning efforts, not to mention the affected neighbors who have lived with the consequences of the expansion for over five years.

Jim Dexter

Representative to the Bentley School Neighborhood Liaison Committee (now inactive)
 Appointed by the Beat 13Y Neighborhood Council
North Hills Community Association's Public Safety Committee
<http://www.northhillscommunity.org>
 5591 Merriewood Drive
 Oakland, CA 94611
 510 339 2184 (h)
 650 575 1745 (c)

ATTACHMENT C

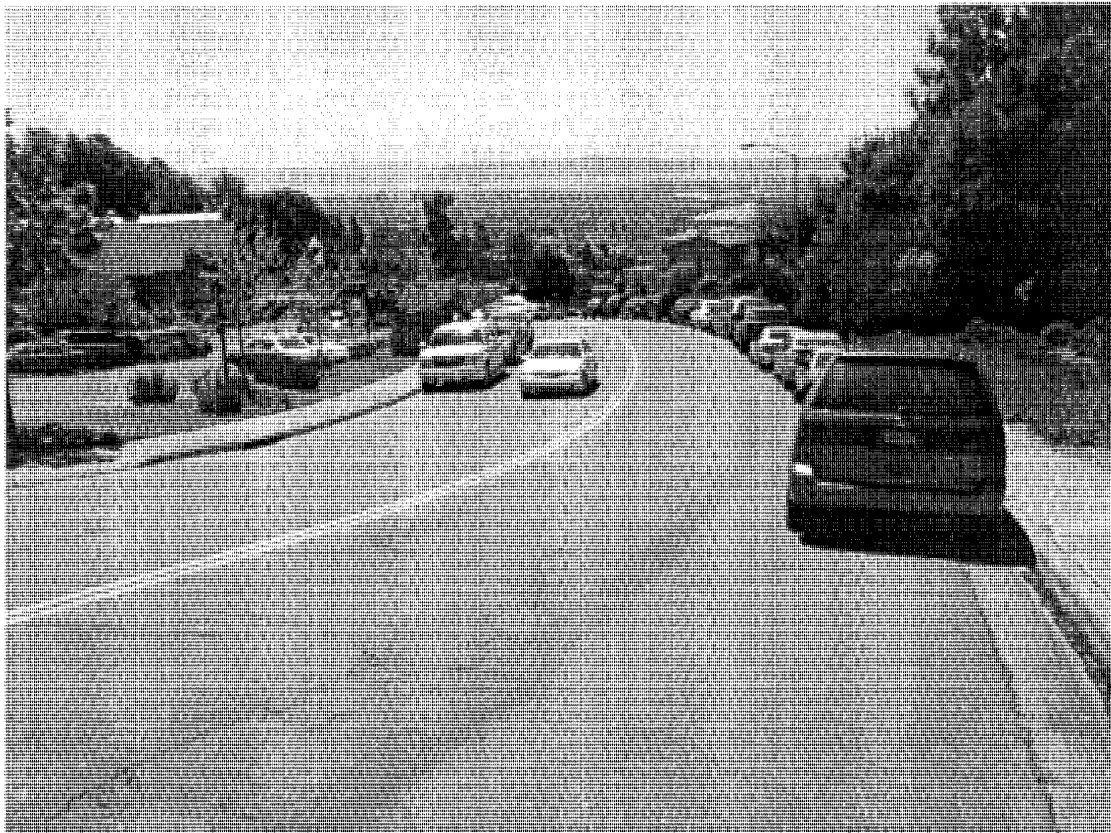
May 22, 2011

Dear Planning Commission,

I am writing this to support Bentley School's request to count cars only during the high demand hours when parents drop off and pick up their children. I live by Hiller Drive and use it to go to work after 8:45 AM. There is no traffic problem for Bentley at that time and at other non-peak times. The area around Bentley is quiet and presents no burden to the neighbors. The traffic during the off hours is so small it makes no sense to regulate it.

Please do listen to two households who are extreme and have already caused great inconvenience to the hundreds of families who attend Bentley. Parents have to driven tens of miles longer because Bentley is forced to hold events in Lafayette. During the weekdays there is no traffic problem on off hours, so why regulate it.

Furthermore, you need to have a perspective on Hiller Drive. There are two other institutions that hold large event their. One is Kaiser School, a little bit up the hill, and the other is Hiller Highlands Country Club – a club that some of the vocal opponents are members.



Kaiser School has many events where people park on the street. Hiller Highlands rents out its club on a paying basis to anyone. They use this as a commercial basis to keep its dues low. When Hiller Highland rents out its facilities, the group is not allowed to park in Hiller Lot. Visitors are forced to park on the street and they block the neighborhood houses.

If you look at the picture above, you can see that the street is jammed and that there are empty parking spaces in the lot. This picture was taken on a Sunday for a rental of Hiller Highlands Country Club.

What is fair to Hiller Highlands should be fair to Bentley. The City of Oakland does not restrict this commercial rental, so why should it restrict Bentley. The opposition to Bentley decries parking next to their houses, but stands mute on Hiller Highland parking.

Please be fair and only monitor traffic at Bentley during the peak time. It is not good judgment to regulate it at times when there is no problem.

Howard Matis
6824 Sherwick Drive
Oakland Resident

Summary of NSHH Comments on Bentley's Appeal to the City Council and Request for Planning Commission Reconsideration

Bentley's Appeal is factually incorrect and doesn't meet the standard for review:

- Bentley's Project for expansion is governed by two separate documents:
 - **Conditional Use Permit (CUP) with Conditions of Approval approved in 2009:** allowed Bentley to expand its enrollment from 200 to 360 students and provides specific quantified mitigations for negative impacts in the community and to the environment.
 - **Transportation Demand Management (TDM) plan:** provides a blueprint for monitoring CUP compliance and enforcement. The CUP is the "law" and the TDM is the "how to" enforce the law. Where there are inconsistencies in the two documents, the CUP prevails.
 - Bentley's Appeal asserts that the CUP was modified on 2/16/11. It was not. Only the TDM language was clarified which is within the discretion of the Planning Commission.
- **Bentley's Appeal is factually incorrect in asserting that notification was inadequate:**
 - Agenda and Staff Report were widely distributed before and at the PC Hearing.
 - Staff Report included 5 pages of discussion on compliance and monitoring. Several alternative methods of monitoring were discussed in the staff report.
 - Agenda included stated purpose "...to review the School's Condition of Approval compliance record since the project was approved..."
- **Bentley's Appeal fails to provide specific evidence of policies or documents to support their complaint.**
 - Bentley's Appeal alludes to "planning practices"; "course of conduct"; "supporting findings"; and "planning documents" but provides NO specific supporting citations or references..
- **Bentley's Appeal fails to provide evidence that the Planning Commission's clarification of language in the TDM is an error of abuse or discretion.**
 - Previously approved TDM Section K requires periodic monitoring and evaluation "to determine how the program is achieving its goals".
 - Section K allows for Rule Enforcers, Planning Department and Planning Commission to recommend changes in the TDM to achieve CUP goals based on monitoring reports.

Bentley's appeal, with vague and undocumented assertions, fails to meet the standards for reconsideration or appeal. It is without merit and should be denied. Bentley should stop delaying compliance with the CUP and live up to the responsibilities agreed to when they accepted the City's approval of the 2009 CUP with Conditions.

NSHH line-by-line Comments on Bentley's 2/28/11 Appeal to City Council (Bentley Appeal letter in Black, NSHH comments in Blue indented)

APPEAL:

This letter is submitted in support of Bentley School's appeal of the Decision of the Planning Commission on February 16, 2011.

PLANNING COMMISSION RECONSIDERATION

In the alternative, Bentley School hereby requests that the Planning Commission reconsider the action taken at the February 16, 2011 meeting for the reasons set forth herein.

BASIS FOR APPEAL/RECONSIDERATION

From: Rules and Regulations for Procedure of the Oakland City Planning Commission, 1994

"The Planning Commission may approve a request for reconsideration if the party submitting such a request presents new information not previously considered by the Commission. Revisions to previously submitted descriptions of use shall not be deemed or considered new information."

Bentley's appeal fails to meet the standards for reconsideration or appeal. Bentley has provided no new evidence nor have they even cited to specific sections from the thousands of pages that have already been reviewed by the Planning Commission. Instead, the appeal relies on vague and unsupported assertions.

In addition and most important, Bentley has factually misrepresented the action taken by the Planning Commission.

Improper Notice for Action Taken

The Notice of the Hearing ("Notice") stated that the hearing was to "review and approve the final two section (sic) of the Transportation and Demand Management (TDM) Program...for Bentley School, including and limited to : 2) A portion of Section A related to additional onsite parking spaces, and b) A portion of Section J related to an alternative to the Memorandum of Understanding (MOU) with the Police Department."

There is no basis for this Appeal because in addition to the two items the Appeal mentions, the agenda also stated that the purpose of the hearing was:

"...to review the School's Condition of Approval compliance record since the project was approved by the Planning Commission on October 21, 2009"

The Staff Report and Agenda, dated 2/16/11, were available in advance to interested parties and were also available at the meeting. The Staff Report includes a 5-page discussion of Bentley's overall compliance including alternative monitoring methods. It also includes an official notification that Bentley is not compliant with vehicle trip limits, and is inconsistently compliant with other conditions.

Bentley is on the distribution list of interested parties for these announcements so it is inconceivable that they were unaware that compliance issues could be considered or that the Planning Commission might take discretionary action on the enforcement issues which Bentley describes as “the enlarging of time or changing of trip count methodology”. Other interested parties, including neighbors and DKS, the Traffic Engineers hired by Bentley, were prepared with notes, questions and recommendations on these issues because they read the agenda and staff report. See Staff Report p. 5-10.

There is no basis for an Appeal on the grounds of improper notification.

Although the Notice was, by its terms, limited to two specified matters, the Commission adopted a draconian reduction in the number of allowable trips by enlarging the time for the traffic counts to be made beyond the adopted practice of tracking “peak period” counts and applying limits to those counts only. Bentley School had no notice the enlarging of time or changing of trip count methodology would be discussed, considered, or modified.

There is no basis for an appeal on Improper Action taken because the Planning Commission did not take the action the Appeal describes as draconian.

The Commission’s decision does not reduce Total Vehicle Trip limits (allowed trips) established in CUP Condition 14d, nor in the TDM, as the Appeal states. Bentley is allowed 242 total vehicle trips under both documents and that was not changed by the 2/16/11 decision.

The Planning Commission did not “enlarge time” or “change trip count methodology” because neither the CUP, nor the TDM, specified monitoring periods. The Planning Commission simply clarified that vehicle trips should be counted from 7:15- 8:45 a.m and 2-5 p.m.. This clarification was provided to DKS so their reports would meet the TDM requirement to “document total vehicle trips” which Planning relies on to enforce the CUP.

Bentley fails to define “peak period monitoring” and provides no evidence that peak period monitoring, as they might define it, would support the CUP Conditions and TDM goals.

There is no language in the CUP or TDM that prescribes “an adopted practice” of how to count total vehicle trips. Bentley’s Appeal fails to provide reference to any such adopted practices. Bentley ignores the fact that neither the CUP conditions nor the TDM language limit traffic monitoring to peak periods.

In prior hearings the Planning Commission spent a great deal of time discussing Bentley’s CUP application, their long history of noncompliance and the school’s disregard for planning procedures when they expanded from 200 students to 360 students without Planning approval. The Commissioners reviewed information in the EIR as well as information submitted by the community and the school. Intensity of use was an important part of the discussion because the project is out of scale with its small land parcel and has a high building occupancy and high intensity of use in the neighborhood.

To address the concerns about intensity of use and impact, the Planning Commission (PC) adopted specific related goals and other broader goals when granting Bentley’s 2009 CUP

(see goals sheet). Then they wrote conditions that would meet those goals (Conditions of Approval). In accordance with those goals and conditions, a Traffic Demand Management (TDM) plan was written to implement compliance with, and enforcement of, some of these conditions. The TDM also states "if the document (TDM) contains any inconsistencies, the Conditions of Approval shall prevail."

Bentley submitted no substantial evidence that the Planning Commission's decision on monitoring periods was either an error or abuse of discretion. In fact Bentley's unsupported assertions are contradicted by supporting evidence provided herein. See: Agenda, Staff Report, CUP condition 14d, CUP & TDM goals, Planning Commission Meeting transcript 2/16/11.

- Planning Commission's clarification of language in the TDM is consistent with the goals of the CUP and TDM Section K gives Planning Commission discretion to modify the TDM to meet the goals of the CUP.
- Required notifications were given. DKS, the traffic consultants, attended the PC hearing to ask the PC to clarify monitoring hours. Neighbors spoke on the need to improve monitoring methods to accurately report total vehicle trips.
- Bentley should have been equally prepared.

Improper Action Taken

The draconian reduction of allowable trips was done without any supporting finding and without any basis in the planning documents including the environmental analysis. Moreover, it constitutes a substantial modification of the existing conditional use permit granted to the Bentley School as modified and approved by the Planning Commission on October 21, 2009. The approval and all actions taken since the approval established and implemented the measuring of trips based on peak period traffic only and did not limit non-peak period traffic. Peak period traffic occurs at morning drop-off and, to a lesser degree, afternoon pick-up. Non-peak traffic is minimal and is spread over a larger period of time, but including these trips in the total trip limit is unprecedented and unnecessary for purposes of limiting impacts.

Bentley provides no references to 'the supporting findings' they believe disallow the Planning Commission's decision on 2/16/11. An environmental analysis was reviewed extensively during the CUP review, as were many planning documents. What additional documents does Bentley want Planning Staff and Commission to review? This process has gone on for seven years and has involved an inordinate amount of Staff and Commission time. This is a false and delaying argument and should be dismissed.

Bentley is factually incorrect to state that Planning Commission's clarification of language in the TDM reduced allowable vehicle trips. 242 vehicle trips are allowed as stated in the CUP and continue to be allowed with the language modifications. The language clarification in no way changes Bentley's obligations under the CUP. Section K of the approved TDM gives the Planning Commission this discretion.

The Commission reviewed DKS Monitoring reports between September 2010 and January 2011. The reports showed that the hours used for monitoring vehicles (7:15 -8:30a.m. and 2:30 - 4:00 p.m.) did not capture adequate data during this period to document total vehicle trips as required by the CUP and TDM. DKS asked for guidance on the length of monitoring

times and Neighbors asked for longer periods to ensure that total vehicle trips were recorded as required by the CUP Conditions of Approval.

The Planning Commission found that counting a higher percentage of daily attendance would be necessary to document Total Vehicle Trips (CUP Condition 14d). Neighbors suggested that it was impractical to monitor for all of the eleven-hour school day but that using somewhat longer periods, could improve the accuracy. The Planning Commission discussed monitoring periods with input from DKS and clarified monitoring hours that could provide a more accurate report even though it wouldn't count all vehicles. Thus, the Commissioners approved a once a month monitoring period of 4.5 hours (1 hour 45 minutes longer than recent reports) and once per trimester 5.5 hours including morning and afternoon hours. By specifying these time periods, the Planning Commission expects that DKS reports will adequately document total vehicle trips for measuring compliance. Section K gives Planning Commission discretion to continue to evaluate and modify the monitoring methodology in the TDM to comply with the CUP.

Bentley incorrectly asserts that the CUP and TDM documents limit data gathering to "peak periods". The CUP and TDM require that "the number of vehicle trips accessing the school shall be documented by the Independent Rule enforcers". Further, CUP Condition 14d limits "total vehicle trips to 242 in 2010 and 210 total vehicle trips total in 2012. Neither document describes exactly how or when the Rule Enforcers are to gather data to document TOTAL VEHICLE TRIPS.

The Appeal also incorrectly states that the Planning Commission's clarification of TDM language is a substantial modification to the CUP. The Commission clarified language only in the TDM (not the CUP). The TDM is subordinate to the CUP and lays out methodology for measuring compliance and for enforcement of some of the CUP conditions. Bentley's appeal confuses the two documents. Section K in the TDM gives discretion to the Planning Commission to modify the TDM methods in order to meet CUP goals.

Bentley's Appeal itself seems to be arguing that because the school has been unsuccessful in reducing the number of vehicles accessing the school (see notification of noncompliance) the method for counting vehicles should be limited narrowly to a peak time, which Bentley does not define. Counting a small portion of school related vehicle trips would violate the CUP Conditions of Approval and would fail to meet the Conditions of the CUP and goals of the TDM.

TDM Section K: specifically allows for evaluations to "determine how the program is achieving its goals." The TDM review process allows for "modifications or enhanced or additional TDM measures". This section of the TDM has been approved and is not under appeal. The Planning Commission's clarification of language in the TDM was an appropriate use of its discretion.

The Planning Commission determined, based on evidence presented to them during the CUP review, that setting specific, measurable and enforceable limits on traffic and hours of operations was the best way to limit impacts in the community. Because of Bentley's long history of violating Planning Procedures and their CUP, neighbors argued for a CUP with "teeth" and in 2009, the Planning Commission approved Bentley's CUP with several conditions with specific limits. Bentley accepted the CUP allowing them to expand their

school from 200 to 360 students. Now they do not want to accept the responsibilities that they also accepted with the CUP – to reduce vehicle trips to 242 in 2010 and 210 in 2012. Planning Staff, Planning Commission and Neighbors have invested many hours and resources making compromises and shaping documents that meet the needs of the school and protect the neighborhood and environment. Since the CUP approval in 2009 Bentley has requested two substantial modifications to the CUP, which were approved with compromises by neighbors. This Appeal is another incremental attempt to lower the bar for compliance and take “the teeth” out of the CUP.

The measuring of peak period traffic is consistent with all planning practices. Enlarging time for traffic counts and limits is unprecedented and contrary to planning practices.

It is true, studies done for the EIR, counted peak period traffic. However, the Planning Commission was not writing language for a standard traffic study but writing specific conditions and rules, including vehicle limits, as mitigations for negative impacts of the project. Bentley accepted the CUP including all of the conditions.

Bentley has not shown what “planning practices” it believes support their argument or why the Planning Commission’s clarification of the TDM language is contrary to planning practices or how the Planning Commission’s decision is “unprecedented.” Where are the citations to “planning practices” to support this claim?

The Planning Commission, under TDM Condition K, is allowed discretion to add or make modifications to the TDM.

The measuring of traffic counts during peak periods only against the limits adopted pursuant to the October 21, 2009 approval has been the practice of the city and all interested parties during the implementation of the approved modified use permit. The course of conduct for implementing and monitoring the conditions of approval establish that peak period traffic counts were subject to limits and not the enlarged time adopted by the commission on February 16, 2011.

- **The CUP adopted in 2009, set a limit of 242 Total Vehicle Trips in 2010-11.**
- **The clarification of TDM language doesn’t modify CUP vehicle trip limits.**
- **The CUP does not describe or limit traffic monitoring periods.**
- **The Planning Commission specifically corrected the TDM language, taking out reference to “peak period” because it was inconsistent with the approved CUP, which takes precedence over the TDM.**
- **Planner, Heather Klein, identified a reference to “peak period” in the TDM draft as a drafting error. The Approval letter reflects this correction.**

At its 2/16/11 meeting, the Planning Commission clarified the length of time for monitoring because the first few DKS reports captured a low percentage of the school’s daily attendance. Commissioners believe that longer monitoring periods will enable the rule enforcers to more accurately ‘document total trips accessing the school’. The Planning Commission wrote this limit to achieve its broad goals stated in the hearings and in the CUP document to improve safety, and reduce carbon footprint and intensity of use in the neighborhood. They quantified the condition so it could be enforced.

The only way to monitor and enforce TOTAL VEHICLE TRIPS accessing the campus is to use monitoring methods that count total trips to and from the campus. To be completely accurate, monitors would observe a full 11-hour school day but staff and neighbors concur that is impractical. If it is true that nearly all school related vehicle trips arrive in narrowly defined peak periods then observing longer periods will simply validate that argument. It seems, however, that Bentley really believes using a longer period to count will be "draconian" because it will show that they exceed total vehicle trip limits and will have to take steps to reduce school related traffic to comply with the CUP.

In the March traffic monitoring report using the slightly longer periods, observers reported 241 trips in the morning and 230 trips in the afternoon and thus found the school barely in compliance with the vehicle trip limit. It would require some proactive, but not draconian, steps for Bentley to maintain compliance.

Bentley provides no documents or evidence to support the assertion that "course of conduct" for monitoring or enforcing the CUP was subject to limits of narrowly defined "peak periods." The term "peak period" is vague and is not used in the CUP or the TDM. Bentley's appeal with vague and inadequately documented assertions fails to meet the standards for reconsideration or appeal.

Bentley's Appeal delays completion of project approvals and abuses the public process. The Planning Commission should deny Bentley request for Reconsideration and City Council should deny this appeal and order the project to go under compliance review and enforcement without further delay.

**Submitted by Neighbors for Safety in Hiller Highlands (NSHH)
Neighbors.safety.hiller.highlands@gmail.com**

**Additional document available from Planning Staff:
Full CUP and Conditions of Approval
Full Transportation Demand Management (TDM) plan including a statement of goals
Planning Commission Hearing 2/16/11 record
Full EIR**

Klein, Heather

From: Neighbors for Safety in Hiller Highlands [neighbors.safety.hiller.highlands@gmail.com]
Sent: Thursday, June 02, 2011 2:46 PM
To: Klein, Heather; VienV.Truong@gmail.com; sgalvez@phi.org; blake.huntsman; Michael.colbruno@gmail.com; mzmdesignworks@gmail.com
Cc: Neighbors for Safety in Hiller Highlands List
Subject: Bentley's 5/26/11 letter
Attachments: NSHH Comments on Bentley's Letter dated 5.doc; NSHH comments on compliance 6211.doc

Dear Heather and Commissioners:

Bentley's compliance with the CUP is not specifically listed on the agenda for the June 15 meeting but NSHH wants to make the point that Bentley is not in compliance with all requirements of the CUP at this time and for this reason, and others we have documented, NSHH opposes granting Bentley any kind of reconsideration of Planning Commission decisions which will further delay completion of this long review/approval process.

We have attached a NSHH response to Bentley's 5/26/11 letter in which they claim they have made a good faith effort to provide parking for all 71 employees but ultimately, could not find a solution. Our second attached letter shows that Bentley is still noncompliant with 3 items that were noted in the February Staff Report.

We note that in the last traffic monitoring report, Bentley is somewhat below the vehicle trip limits established in the CUP even with a slightly longer observation period (which the school labeled "draconian" and is asking the Commission to reconsider).

Thank you for considering Bentley's noncompliance.

NSHH

6/7/2011

NSHH Comments on Bentley's Letter dated 5/26/11

RE: CUP Condition 14a

In its letter of 5/26/11 Bentley asserts that it has made a good faith effort to research three options for creating additional on-site parking.

Bentley has not applied to the City of Berkeley (4/16/11 deadline) for a permit for any of these parking sites as was required and approved by the Planning Commission on February 16, 2011.

Instead, two months late, Bentley submits this letter, which does not provide evidence or professional reviews of the three locations to support their own conclusion that these locations are not suitable for parking. This is not a good faith effort.

Bentley Reason 1: Conflicts with the evacuation points in the school's Emergency Response Plan.

- The City, as part of the CUP, has not yet approved the EMP.
- The school does not provide a professional opinion that having a dual use of these areas would pose a safety issue that can't be otherwise resolved.
- The school does not provide evidence that it explored other possible evacuation points or a layout by which this issue could be addressed.

Bentley Reason 2: Students use Space adjacent to auditorium during transitions to classes.

- This area (next to auditorium) is frequently used by the school for parking for events being held on campus and in the auditorium.
- Presumably, the school has determined that this use does not conflict with evacuation points in the ERP on these occasions.

Each of the three locations should be evaluated independently to achieve at least part of the goal to provide parking for 71 employees. Modification of the ERP should be considered to eliminate evacuation concerns in regard to this parking.

These issues relate directly to Bentley's appeal to maintain their high level of staffing rather than move all-school staff to Lafayette. The condition that no employee/staff parking occurs on Hiller Drive and assigning spaces were meant to mitigate for the higher staff levels that were approved. The school's suggestion that they have made a good faith effort falls short. Neighbors objected to the approval of increased staff size for this reason.

Recommendations:

1. **REDUCE the demand for parking.** The obvious alternative response to having inadequate parking for its 71 staff is to reduce demand. For example, Bentley could rent additional parking for 17 staff (71 staff – 54 existing parking spaces), at Claremont Resort or restrict 17 staff from driving a car to the campus at all – forcing staff to carpool or use mass transit. Planning Commissioners noted that only 6 Bentley staff rideshare per the DKS reports at the February PC meeting. Developing these alternatives would be evidence of good faith intentions to comply with the condition to create parking for 71 staff and would be consistent with other CUP goals to reduce carbon footprint and local impacts.
2. **NSHH asks that the Planning Commission and Staff make a determination that Bentley's "good faith" efforts are an inadequate response to the CUP Condition and require Bentley to reduce demand for on-site staff parking by securing alternate off-**

site locations or prohibiting 17 staff members from driving a vehicle to campus by “assigning” them offsite parking or carpool or mass transit.

Neighbors for Safety in Hiller Highlands
Neighbors.safety.hiller.highlands@gmail.net

Dear Planning Commissioners and Heather Klein:

The February 22, 2011 Notice of Approval detailed remaining incomplete compliance items for the school:

1. ***Submit an application to the City of Berkeley no later than April 16, 2011.*** As of today, June 1, Bentley has not submitted this application.

- Another school year is ending without the school's compliance.
- We are seeing an increase in Bentley related staff parking on Hiller Drive.
- CUP Condition 14A requires Bentley to provide assigned spaces to all full and part time faculty and staff and not use Hiller Drive or other neighborhood streets for staff parking. Completing condition will provide relief to the neighborhood and is consistent with the environmental and intensity use goals of the CUP.

2. ***Increase the transit subsidy and arrange off-site carpool locations.*** We have not seen any evidence that the school has increased transit subsidies and, in fact, Bentley's bus ridership is consistently 75% below the EIR reported levels of ridership. In order to make up for the reduction in bus riders, Bentley must pursue an aggressive carpooling and shuttle program. We have not received notification that carpool staging areas are in place. Bentley is still barely below the vehicle trip limits of the CUP and the trip limits will be lower next year.

3. ***The Staff Report dated 2/16/11 also noted that Bentley's EMP is still incomplete and staff recommended better coordination with the City and neighbors.***

We hope that the Commission and staff will consider Bentley's compliance on all issues before making a decision to reconsider most recent Planning Commission decisions.

Thanks,
NSHH