

May 16, 2013

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Via Overnight Mail and E-Mail

Aubrey Rose  
Planner II  
Oakland Planning Department  
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Re: Application REV 120004 – 6100 Broadway (College Preparatory School)

Dear Mr. Rose:

I am writing on behalf of the College Preparatory School ("College Prep") in response to the appeal ("Appeal") filed by a few neighbors of the City's approval of an amendment to the school's Conditional Use Permit ("CUP") to increase enrollment from 340 students to 375 students.

As with many schools in Oakland, College Prep is located within a residential neighborhood and operates pursuant to a CUP. College Prep has always recognized that its obligations to its neighbors go much beyond conditions written into its CUP and it has consistently sought to act in a manner that allows it to co-exist in a harmonious and productive manner among its neighbors. To that end, the school has long gone above and beyond what is required in the CUP to minimize impacts of school activities. It is apparent that most neighbors recognize that fact, which is why the majority of the neighborhood has expressed no objection to the City's approval of a moderate increase in enrollment.

**1. College Prep's request for increased enrollment will improve the quality of the school without impacting the neighborhood**

Before addressing the specific allegations in the Appeal, it is important to reiterate the purpose of the school's request to increase enrollment to 375. Contrary to what may be claimed, the school arrived at this number through a careful curriculum based analysis of the optimal school size with the goal of providing the best education possible. This analysis included such factors as the school mission, student-teacher ratios, course and elective offerings, physical space requirements, extracurricular programming, and market demand.

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The economics of the school are not the primary driver behind the request. College Prep delivers the premium high school education in the Bay Area, and does so in Oakland. It has achieved that distinction through constantly reviewing and revisiting the core school parameters described above. College Prep believes that an enrollment of up to 375 students will allow it to continue to deliver this premiere education based on a sustainable commitment to attract and serve a highly qualified faculty and student body. The school did not arrive at the request for an enrollment cap of 375 lightly.

The neighbors make much of the fact that just a few years ago the school committed to a "hard cap" of 340, which according to them means that any new request for an enrollment increase must be in bad faith and part of a devious plan to add students incrementally. College Prep has always acted in good faith and there is no broken "deal." To the contrary, in 2009, when the neighbors asked if College Prep would provide long-term assurance that it would not seek an increase above 340, the school responded that it could not bind future school leaders or handicap the future of the school. The fact of the matter is that after College Prep obtained its CUP in 2009, it underwent a change in leadership, including a new Head of School, and as a part of that transition, many aspects of the school were looked at with fresh eyes, including its size. The most recent request is simply the result of that analysis, nothing more. If the school knew in 2008 when it applied for its prior CUP that 375 or 400 or some other number was the optimal size, it would have applied for that number at that time. The fact that it is seeking that increase now is not evidence of previously acting in bad faith or the breach of some prior deal.

It should also be stated again that the facilities included in the new Master Plan approved in 2009 were curriculum driven and were not done to create additional capacity. Statements to that effect were made in 2009 and they remain true today. With the addition of facilities completed in 2011, College Prep has been able to offer world language and history classes in larger and more sound-proofed classrooms. The school has also been able to replace two of the original portable classrooms that the school had purchased from Oakland Unified School district in 1980 that were considerably outdated. These changes enhanced rather than expanded its program. The decision to seek a moderate enrollment increase was made independent of the Master Plan approvals.

The Appeal is based primarily on claims that the increased enrollment will cause unacceptable traffic conditions. College Prep is proud of the significant steps it has taken to minimize school traffic and to virtually eliminate school related parking in the neighborhood. A core value of College Prep is sustainability and it infuses sustainable values into all its decision-making, from how the school is managed to its facilities (a rooftop solar energy system supplies a portion of the school's electricity needs). This mission also extends to how students and faculty commute to school. As traffic studies have repeatedly shown, the school's success in promoting alternate modes of transportation and ameliorating traffic

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speaks for itself. In the past few years, College Prep has successfully implemented the following:

- Modified Broadway entrance and campus driveway to include vehicular flow and improved pedestrian safety.
- Converted existing gates on Eustice and Broadway to be emergency-only exits.
- Increased the occupancy requirement for student on-campus parking from two to three passengers.
- Expanded shuttle service to Rockridge BART, running shuttles until after 5:15 p.m. with later transportation alternatives provided to students, thus ensuring that students with after school activities have access to BART.
- Installed additional bike-racks to accommodate increased bike-ridership, and actively promoted this mode of transportation through initiatives such as "Ride Your Bike to School" days.
- When the school hosts special events such as "Back to School Day" or Graduation, the school secures off-site parking and shuttle service is provided.

College Prep is proud of those efforts and of its students for taking them seriously, and it should be: analysis prepared by Nelson/Nygaard shows that even though the school's enrollment increased from 355 to 372 – approximately the same level it is now requesting in the amendment – the amount of traffic actually decreased. Very recent traffic counts conducted in April 2013 by Nelson/Nygaard again confirm that the school's alternative transportation efforts continue to pay off. This track record demonstrates that the school has the capability to be a good neighbor, even when operating at the enrollment level now sought.

During the CUP amendment application process, College Prep worked extensively with the Planning Department to address any concerns. This included seeking confirmation from City officials that all current conditions were being met and updating the traffic study. The school also reached out to the neighbors about its intent to seek the CUP modification and heard no opposition, other than from the Appellants. Since the filing of the appeal, the school again reached out to all neighbors (not just the Appellants) and held an open house meeting to discuss neighborhood concerns. Again, the school heard no complaints, other than from the three Appellants. The CUP amendment approval was well vetted and the required findings were well supported and as such, the Appeal should be denied. The remainder of the letter specifically addresses each point raised by Appellants.

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**2. Responses to issues raised in January 10, 2013 letter from Leila Moncharsh**

- a. The evidence supports the finding that an enrollment of 375 students at College Prep is compatible with the surrounding neighborhood.**

The Appeal asserts that the findings required by Oakland Municipal Code Section 17.134.050 (generally requiring that the City find that the development is compatible with the surrounding neighborhood) are not supported by the evidence. Appellants allege that increased enrollment will cause traffic impacts, that the new conditions of approval are "illusory," and that there should be conditions addressing amplification equipment used on campus. While each issue is addressed individually below, the Appeal generally misses the mark on what the Conditional Use Permit findings require. Appellants fail to recognize that the school already exists in the residential neighborhood. In this instance, the City need only find that the *increased enrollment* at issue is compatible with the surrounding neighborhood; the City can and should assume that the school as it currently exists is compatible with the neighborhood. Appellants have offered no evidence that a moderate increase in enrollment will cause a presumptively compatible use to become incompatible. To the contrary, evidence in the record supports the finding that the school, as conditioned under the CUP, is compatible with the surrounding neighborhood.

**i. Traffic will not adversely impact the neighborhood**

The heart of the Appeal is that increased enrollment will worsen traffic impacts on the neighborhood. The Appeal attacks various findings in the traffic report prepared by Nelson/Nygaard in support of the CUP amendment application. The Appeal also references a short email from a traffic engineer that Appellants claim undermines the traffic analysis. Bonnie Nelson from Nelson/Nygaard prepared two letters firmly responding to and rebutting all statements regarding traffic both in the Appeal and from the traffic engineer. Letter from Bonnie Nelson to Jane Carney, February 28, 2013, attached as Exhibit A; Letter from Bonnie Nelson to Jane Carney, April 30, 2013, attached as Exhibit B. Ms. Nelson's letter show that the claims made in the Appeal are either misleading or inaccurate and that, contrary to the claims made in the Appeal, traffic will not cause any significant impacts. Ms. Nelson's letters clearly establish substantial evidence supporting a finding that the school can be a "compatible" neighbor when operating at an enrollment of 375 students. Indeed, Ms. Nelson writes that her analysis and studies show that "the school can meet its enrollment target without increasing auto traffic at all."

While the existing data and analysis supports the City's approval of the CUP amendment, to fully respond to concerns about traffic and to be sure that the City has up to date information, Nelson/Nygaard prepared an updated traffic study, based on new traffic counts conducted on

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May 1, 2013. *2013 College Prep Traffic Counts*, Bonnie Nelson & Colin Burgett (May 10, 2013), attached as Exhibit C. With these latest traffic counts, Nelson/Nygaard has traffic data from three different years (2008, 2010, and 2013) and has been able to re-confirm that College Prep's efforts to minimize traffic are paying off and that the school is not causing, and will not cause, significant traffic impacts. Key findings from the recent study are as follows:

- Between 2008 and 2013, there has been a 20 percent reduction in the number of vehicles arriving during the morning peak hour
- Inbound traffic is more dispersed, meaning the "peak of the peak" is less congested
- The school continues to generate a lower rate of vehicle trips than the rate of 1.17 vehicle trips per student during the AM Peak Hour that was used to evaluate traffic impacts as described in the 2012 Traffic Study, meaning that the actual impacts are likely less significant than identified in that study.

This latest study confirms that College Prep is able to effectively manage traffic and implement a successful TDM program such that traffic impacts to the neighbors are minimized.

**ii. The Conditions of Approval ensure that the School will be compatible with the neighborhood**

The Appeal takes issue with the portion of the City's finding that the CUP's "new conditions" will minimize impacts, claiming such conditions are "illusory." College Prep certainly does not view these new – or any – conditions as "illusory." Again, the school takes its obligations under the CUP very seriously. This can be illustrated by how the school responded to the requirement in the 2009 CUP to develop and implement a Transportation Demand Management plan. Although that condition is arguably as "vague" as the conditions Appellants now attack, College Prep acted by going above and beyond what was required, hiring a highly respected traffic consultant who prepared a comprehensive and robust plan. College Prep has gone on to implement – indeed, embrace – the TDM plan and today traffic has dropped and parking on Eustice and Brookside has all but ceased.

Appellant's assertion seems to be that parents will not obey new "Keep Clear" signage or that College Prep will not carry out the clear direction in Condition 16 to direct traffic and inform parents of drop-off/pick-up procedures. The school has shown that it carries out the letter and intent of the City's conditions and will do so again with these newest conditions. They are not "illusory."

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**iii. The increased enrollment will have no impact on the use of sound equipment**

Appellants seem to allege that the increased enrollment permitted by the CUP will result in increased use of sound equipment and thus increased noise impacts on the neighborhood. To the contrary, the addition of these students will have no impact on the use of sound amplification. The school uses sound amplification in limited circumstances, including for ten minutes during bi-weekly mid-morning assemblies, emergency drills and the occasional special event, for which the school obtains noise permits. The frequency of those events would be the same whether the school population is 325, 340 or 375. Finally, it should be noted that Condition 33 in the 2009 CUP addresses noise from school operations. There is no need for anything new or different.

**b. The City's finding that the existing campus can accommodate an enrollment of 375 is supported by the evidence**

Appellants take issue with Finding "B" relating to the appropriateness of the campus to accommodate a study body of 375 students, citing to the same concerns about traffic and noise. For the reasons cited above, particularly the reports from Nelson/Nygaard, Appellants' claims are without merit. Further, as the City points out, the CUP amendment does not propose any physical modifications to the site and the existing campus has adequate capacity to operate at 375 students. The school has operated at this location for over 30 years and has generally had no conflict with most residential neighbors during that time. There is no evidence to suggest that a moderate increase will change that relationship.

**c. A moderate enrollment increase will allow College Prep to continue to serve the larger Oakland community by providing a high quality high school education**

Appellants level an attack on College Prep for being an independent school and that this fact alone allegedly means the school cannot provide an essential service to the community. Appellants' attack is completely baseless and should be ignored.

College Prep is an asset to Oakland and the surrounding communities. 120, or one-third, of the school's 359 current students live in Oakland. College Prep has a strong financial aid program. It awarded \$1.95 million in financial aid to deserving students this year and 50 percent of these dollars went to Oakland residents. Next year's financial aid budget is approved at \$2.16 million.

College Prep is proud of the national recognition the school has earned as an educational leader, and equally proud to be a member of the Oakland community. The school founded and continues to be the home of *Partners*, a twenty-five year old program that presently

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provides summer and school-year services to 265 low-income Oakland middle schoolers. The school has also sustained service oriented relationships with many local schools and organizations, including Chabot Elementary School, Chaperall House Elderly Home, Frog Park, and North Oakland Little League, to name only a few. The evidence supports the City's finding that the school will continue to serve and enhance the surrounding community.

**d. The increased enrollment conforms with the General Plan and Zoning**

In Finding "E," the City correctly found that the CUP amendment for the modest enrollment increase is consistent with the General Plan. As the City notes, the General Plan designation for the school is "Detached Unit Residential," which permits "appropriate allowances for schools and other small scale civic institutions." As this plainly shows, the use of a school conforms with the General Plan. The only question is whether the modest increase in enrollment is still within the "appropriate allowance for schools." As discussed above, College Prep has long co-existed with its residential neighbors and it recently has undertaken extensive efforts to minimize impacts. These efforts have resulted in reduced traffic and a virtual elimination of parking intrusion into the neighborhood. A modest increase in enrollment will not take the existing presumptively "appropriate allowance" and cause it to become excessive. Again, College Prep remains committed to continuing to work with the neighbors to address their concerns.

Appellants argue that increasing the enrollment cap would be inconsistent with the General Plan because this might impact home values. This claim, too, is meritless and lacks any evidence. Appellants essentially argue that property values may go down because the neighbors cannot be assured that the school will not seek future amendments to its CUP. However, every property owner has the right to use his or her land in a manner that is consistent with existing land use policies, which always includes the right to seek amendments through the City's normal procedures. College Prep's request for an enrollment increase is no different and it will have no impact on home values.

**e. Appellant's Equal Protection arguments are baseless**

Appellants make a convoluted argument that granting the requested CUP amendment would somehow create an Equal Protection claim for future schools that seek similar amendments. Appellants claim that under recent case law, when there is no set procedure for a particular type of approval and an individual is treated differently from others who have previously been granted the same approval, that action can form the basis of an Equal Protection claim. They then assert that because there is no procedure for what they characterize as the City's act of "legalizing" existing conditions, if College Prep's request is approved, future schools may claim a right to the same result and raise an Equal Protection claim if they are denied. Appellants' tortuous claim is flawed for many reasons.

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Appellants mischaracterize the action by the City as a mysterious approval they dub a "legalization," an action they claim is not contemplated in the Planning Code. College Prep's request, however, is for a routine amendment to its existing CUP. The Oakland Planning Code sets out clear procedures for CUP amendments, including the decision making body, required findings, and the appeals process. The City has carefully followed those procedures, including making all findings based on substantial evidence. Appellants are well aware of those procedures as they have followed them when filing their Appeal and have cited to code provisions when challenging City findings. The current situation has no relationship to that in *Gerhart v. Lake County* where there were "no rules, regulations, laws, or ordinances that exist...putting property owners on notice that the County's permit process exists." Here, any school that wishes to modify its existing enrollment cap knows exactly what findings the City must make and the process for seeking the amendment.

Further, there has been no permit violation. When school enrollment unexpectedly spiked in the 2010-2011 school year, Tim Durham, one of the Appellants, filed a complaint with the City alleging that the increase violated the CUP and requested a revocation hearing. The City rejected the request for a hearing, finding that under the CUP, the school had until December 13, 2012 to bring enrollment to 340 and there could be no violation until that date. Letter from Scott Miller, Zoning Manager, December 20, 2010. Subsequently, in January 2012, the school applied for a CUP amendment to increase enrollment and the City granted that request in December 20, 2012. If there was any non-compliance, that existed for all of one week and during that week, the school was actively seeking an amendment.

**f. The City's decision in no way violates Appellants' constitutional rights**

In their final claim, Appellants stretch the bounds of constitutional law even further by claiming that their due process rights were violated because there was no "legalization" procedure. As described above, there was a clear procedure and the City followed it. The City's action was based on evidence in the record and it made findings required by the Planning Code. Appellants have since exercised their due process rights and appealed that decision. There has been no due process violation.

Finally, Appellants seem to allege that the City should have used their enforcement authority under Planning Code section 17.152.010 *et seq.* and that failure to do so somehow violated the neighbors' Equal Protection rights. But there was no violation so no enforcement action was needed. Further, the Planning Code sets out a procedure for the neighbors to file a formal complaint, something one of the neighbors actually did in 2010, but was rejected. If the neighbors believe that there have been more recent violations, they could have filed another complaint.



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### 3. Responses to issues raised in March 19, 2012 letter from Leila Moncharsh

In her January 10, 2013 letter, Ms. Moncharsh incorporates by reference her prior March 19, 2012 letter. This section responds to various claims made in that letter.

#### a. Appellants Have Not Demonstrated that There are "Unusual Circumstances" Precluding the Use of an Exemption

Appellants argue that the three categorical exemptions relied on by the City are inapplicable because the increased enrollment will cause a significant impact, citing to the *Berkeley Hillside Preservation* case. *Berkeley Hillside Preservation*, however, has been appealed to the California Supreme Court so is not binding precedent and does not define the standard of review. Most courts recognize that the "unusual circumstances" exemption is a two part test that looks at (1) whether there are "unusual circumstances," and (2) whether it is reasonably possible that those unusual circumstances could cause a significant effect on the environment. See e.g., *Banker's Hill, Hillcrest, Park West community Preservation Group v. City of San Diego*, 139 Cal. App. 4th 249, 278 (2006). Both prongs of the test must be satisfied to demonstrate the unusual circumstances exception. Contrary to Appellants' claims, it is not the current state of the law that evidence of a significant impact is itself the unusual circumstance.

Appellants fail to identify any credible "unusual circumstances" with respect to the modest enrollment increase. Common to all high schools is a strict start time for school, meaning that most students and faculty arrive at approximately the same time, resulting in an increase in traffic during the morning commute hour. Also common is for parents to drop off students. Finally, many schools are located within a residential neighborhood. If the mere fact that a school causes traffic during the morning peak hour were sufficient to create an "unusual circumstance," then most enrollment increases would not qualify for the exemption.

Appellants allege six unusual circumstances, none of which are availing:

a. Appellants claim that the topography is unusual, "allowing amplified sound to travel from the school at greater than normal levels," but they fail to provide any evidence. Even if that is true, as explained above, the minor increase in enrollment will have no impact on the volume or frequency of amplified sound.

b. Appellants allege that the narrow roads do not easily allow passing. While streets within the neighborhood may be narrow, as Nelson/Nygaard recently documented, drop offs occur mostly within the parking lot, although a few students are dropped off on Broadway. Broadway is not a narrow or winding road. While there had been issues with students parking on Brookside in the past, that has been fully addressed and that practice has effectively ceased.

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c. Appellants allege that the already narrow roads become “dangerously further narrowed” with illegally parked cars. This is really a repeat of the prior point and, again, is unconvincing, particularly now that student parking on Brookside has ceased.

d. Appellants point to the “blind turns” that add to the dangerousness. This too is the same point as the prior two.

e. Stretching further, Appellants cite to the unique canyon topography as causing the neighbors to “view industrial appearing rooftops.” The CUP amendment would only increase the number of students and would have no impact on views so this point is a red herring.

f. Finally, Appellants claim that the CUP amendment violates the General Plan, which in turn constitutes an “unusual circumstance.” However, Appellants fail to specify any single General Plan violation and the City has found that the CUP amendment is consistent with the General Plan, so this too must fail.

Even if there are “unusual circumstances,” there is not a reasonable possibility that such circumstances could themselves cause a significant impact. As discussed above, multiple traffic studies conducted by Nelson/Nygaard, including traffic counts conducted as recently as May 2013, confirm that traffic generated by the school has not had, and will not have, a significant impact on traffic operations. This included a traffic study when the school enrollment was at 372 students, effectively the same as what is currently being requested in the CUP amendment. As Nelson/Nygaard has documented, school generated traffic does not create significant impacts and the school’s ongoing efforts to reduce traffic have been successful. While there certainly may be a morning rush as students and teachers arrive for class, no objective evidence (let alone substantial evidence) has been provided that shows a significant impact. As a result, the “unusual circumstances” exception to categorical exemptions is inapplicable.

**b. The Categorical Exemptions Relied on by the City Are  
Appropriate**

The City cited to three exemptions in its approval. Courts have upheld the use of multiple exemptions supporting a single action. *Surfrider Foundation v. California Coastal Commission*, 26 Cal. App. 4th 151(1994). The City’s action was done in full compliance with CEQA and no further environmental review is required.

The primary exemption the City relied on is known as the “Class 14” exemption, which applies to minor additions to schools where the student capacity does not increase by more than 25%. Here, College Prep is requesting an increase of 35 students, or approximately a 10% increase. Appellants make much of the alleged “successive” increases, but even if the

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enrollment cap that existed prior to the 2009 CUP amendment is used as the "baseline," the change from 325<sup>1</sup> to 375 would be a 15% increase, still well within the 25% limit. Appellants apparently recognize this and do not dispute that the CUP amendment fits within this category.

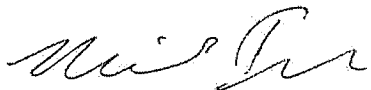
Instead, Appellants argue that CEQA Guideline 15300.2(b) precludes the exemption due to the cumulative impacts of the school's long range master plan and all enrollment increases since 1980. This argument fails for the same reason as the "unusual circumstances" claim addressed above: there are no significant impacts. Again, the analysis prepared by Nelson/Nygaard demonstrates that traffic in the neighborhood operates at an acceptable level, even after accounting for what Appellants characterize as "successive" enrollment increases. Nelson/Nygaard analyzed the traffic when enrollment was at 372 – essentially the same level now being sought – and did not identify significant impacts. That is, even after all enrollment increases since 1980, traffic operates acceptably. Thus, because the CUP amendment plainly meets the Class 14 requirements and no significant impacts result (whether considered at a project level or cumulatively), it is appropriate for the City to rely on the exemption.

The City's citation to the additional exemptions – Guideline 15301 and Guideline 15183 – recognizes the facts that the CUP amendment is a minor modification to an existing facility and that the CUP is consistent with the City's General Plan which had been subject to previous environmental review. Appellants point out that Guideline 15301 only applies if there is negligible or no expansion of an existing use, but fail to recognize that the school has operated at approximately the level requested, so any expansion can be seen as negligible. As for Guideline 15183, Appellants point to a series of policies pertaining to avoiding single occupancy vehicles, policies that College Prep strongly supports, as seen by its successful Traffic Demand Management program. College Prep meets each of the policies cited to by Appellants.

\* \* \* \*

Thank you and the City for your valued consideration of this matter. For the reasons stated above, we respectfully request that you deny the appeal and uphold the approval of the CUP.

Sincerely,



Miles H. Imwalle

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<sup>1</sup> Appellants incorrectly state that the 2009 amendment increased the enrollment cap from 250 to 340. To the contrary, the enrollment cap prior to 2009 was 325 students.

## Exhibit A



February 28, 2013

Jane H. Carney  
Chief Financial Officer  
The College Preparatory School  
6100 Broadway, Oakland CA 94611

***Re: Traffic Impacts (Appeal of City of Oakland administrative decision to increase maximum enrollment from 340 to 375 students)***

Dear Jane,

We received the Appellant's Letter dated January 10, 2013, prepared by the law firm of Venuruso & Moncharsch. This letter summarizes our input concerning the comments focusing on traffic impacts contained on Pages 1 to 5 of the Appellant's Letter. Please note that while this letter responds to the points in the appeal letter, the appellants did not submit their traffic engineer's report, and therefore we are unable to respond to or review their analysis.

**General Comments on Appellant's Letter**

1. **The City's decision in this matter, in considering the potential traffic impacts resulting from the School's application, is to be based on the potential effect of 35 additional students.** The Appellant letter, however, generally avoids describing the Proposed Project in those terms. Instead, the Appellant primarily focuses the appeal discussion on total enrollment and traffic, rather than on the proposed increase in enrollment (and resulting increase in traffic) that is the subject of the current permit application and associated College Prep Traffic Study (*The College Preparatory School Traffic Study*, prepared by Nelson\Nygaard on August 9, 2012).
2. **The Appellant does not argue that "Significant Transportation Impacts" would result from the Proposed Project. Instead, the Appellant argues that the Proposed Project (i.e., proposed increase in maximum enrollment of 35 students) would "present a harmful effect on neighborhood character"** (Page 1 of Appellant's Letter). In taking this approach (focusing on a potentially subjective interpretation of "neighborhood character"), it is relevant to note that the Appellant is not disagreeing with the findings of the College Prep Traffic Study. Instead, the Appellant is seeking to direct the discussion of potential traffic impacts to focus on a more subjective evaluation (i.e., based on perceptions of "neighborhood character") that differs from the City's transportation impact criteria.
3. **The Appellant does not specify how the addition of 35 students would result in a "harmful effect on neighborhood character". Instead, the Appellant's description of "Traffic Impacts" focuses nearly entirely on describing existing enrollment and existing traffic conditions adjacent to the Project site.** In choosing to focus on existing site characteristics, the Appellant is essentially describing key components of the existing neighborhood character. Given that description, it seems potentially contradictory for the Appellant to argue that the

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proposed addition of 35 students would result in a "harmful effect" on that existing character.

## Responses to Specific Comments

- A. Appellant Traffic Comment, Page 1 (final paragraph of page):** *"In 2009, when CPS agreed to limit its enrollment to a "hard cap" of 340 students, reducing it from 355, there already were serious traffic problems. The number of students arriving at the school greatly exceeded the capacity one multi-road intersection closest to the one driveway into the school."*

**Nelson\Nygaard response:** The comment is incorrect in alleging that traffic volume exceeds capacity today (or in 2009) at the "adjacent multi-road intersection". The "adjacent multi-road intersection" referred to by the Appellant is the intersection of Broadway with Brookside Avenue and the SR-24 Eastbound Off-Ramp. The capacity of that intersection is, contrary to the Appellant's comment, actually higher than the current volume of traffic, and will remain so with the proposed increase in enrollment. Perceptions of that intersection's capacity are likely based on the "LOS F" operations for side-street stop-sign controlled approaches (i.e., the side-street approach from Brookside southbound, approaching Broadway, and the side-street approach southbound approaching the SR-24 Eastbound On-Ramp); however, that LOS calculation is not a function of capacity. In fact, the side-street volumes are very low (thus not warranting signalization); for that reason, those intersections are not currently signalized. Instead, the LOS "F" finding simply reflects the delay to low-volume approaches at these unsignalized (i.e., side-street stop-sign controlled) intersections. If the side-street approach volumes were higher, then the City would likely install traffic signals. (In fact, the School has requested signalization of this intersection in the past, but that request was not supported by the City, presumably due to the very-low side-street approach volumes that did not warrant signalization).

- B. Appellant Traffic Comment, Page 2, bullet point 1:** *"The only ingress and egress for the school is a single driveway located at a challenging intersection that includes Broadway, Brookside Avenue, and the State Route (SR) 24 on-ramp."*

**Nelson\Nygaard response:** While it is true that there is only one access driveway at the school, this is not an uncommon condition for parking lot entry and is an existing condition that is not impacted by the Proposed Project. The Appellant does not specify how the proposed increase of 35 additional students would result in a significant transportation impact, nor does the Appellant specify how 35 additional students would result in a "harmful effect on neighborhood character".

- C. Appellant Traffic Comment, Page 2, bullet point 2:** *"The traffic safety thresholds for CEQA purposes includes analyzing whether the project will expose motorists, pedestrians, bus riders and bicyclists to transportation hazards due to new or existing physical design features or incompatible uses. The design of the existing complicated intersection (Broadway, Brookside, SR 24) and the heavy school traffic during drop-offs and pick-ups is presenting a traffic safety and congestion problem for students, staff and neighbors."*

RESPONSE TO APPEAL LETTER | FEBRUARY 28, 2013  
College Preparatory School

**Nelson\Nygaard response:** As stated in the College Prep Traffic Study: the collision rate at the intersection of Broadway & SR-24 & Brookside is below average (just 0.19 collision per million vehicles from 2009 to 2011, below the statewide average of 0.43 collisions per million vehicles). Furthermore, as noted on Page 23 of the College Prep Traffic Study: none of the reported collisions that occurred in the vicinity of the school (at a rate below the statewide average) involved pedestrians or cyclists. Therefore, there is no data to support the assertion that the Proposed Project (i.e., the proposed increase in maximum enrollment of 35 students) would expose motorists, pedestrians, bus riders, or bicyclists to significant hazards in this case.

**D. Appellant's Comment, Page 2, bullet point 3:** *"The Nelson report acknowledges that a safety threshold for CEQA purposes is whether increased pedestrian or vehicle traffic will degrade pedestrian safety. Students parking around the neighborhood and then walking to school are "pedestrians" when they are between cars in the neighborhood and the school. The photo on Page 10 of the Nelson report and the observations of neighbors demonstrates that this complication is not a safe environment for pedestrians during drop-off and pick-up operations"*

**Nelson\Nygaard response:** The Appellant's assertion that the walking environment around the school is "unsafe" is a perception, not supported by data. As stated in the College Prep Traffic Study: the collision rate at the intersections of Broadway & SR-24 & Brookside and Broadway & Keith is below average (just 0.19 collision per million vehicles from 2009 to 2011, below the statewide average of 0.43 collisions per million vehicles). Furthermore, as noted on Page 23 of the College Prep Traffic Study: none of the reported collisions that occurred in the vicinity of the school (at a rate below the statewide average) involved pedestrians or cyclists. Furthermore, the school has taken measures to limit the amount of student parking in the adjacent residential neighborhoods and has eliminated drop-off access in the neighborhood to ensure that pedestrians remain on primary routes that do not impact community conditions.

**E. Appellant's Comment, Page 2, bullet point 4:** *"81% of the staff and students use auto transportation. Unlike other schools where there is a bus or shuttle program to reduce that number, CPS has consistently been allowing an excessive number of autos into the neighborhood, which adds to congestion and safety risks."*

**Nelson\Nygaard response:** The Appellant's description of existing conditions is not accurate, as the school does provide bus transportation, including shuttle service from BART. Further, the school has taken great care to minimize intrusion into the surrounding neighborhoods, including identifying "no parking areas" for students and faculty and providing enforcement of these prohibitions at their own expense. The effectiveness of these measures is well documented in the Transportation Demand Management study, which showed that increasing enrollment has been accommodated on campus without increasing vehicle traffic. Further, the appellant's comment addresses an existing condition, not a description of potential impacts resulting from the Proposed Project (i.e., the proposed increase in maximum enrollment of 35 students). It should be noted that as a result of the "Nelson study" College Prep has taken a number of steps to decrease drive alone trips to school, including increasing shuttle service hours and increasing opportunities for carpools.

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- F. Appellant's Comment, Page 2, bullet point 5:** *"Despite that there is a BART Station within a mile to the school, Figure 5 on Page 8 of the Nelson report demonstrates that 92% of the students from Piedmont, 86% from San Francisco, and 85% from Oakland are all driving to the school. One would normally expect that these students could use public transportation and reduce the congestion in the neighborhood."*

**Nelson\Nygaard response:** There is no evidence given to suggest that the drive alone rates from these communities or any other communities are excessive or surprising. In fact, drive alone rates at College Prep have declined significantly as the school has improved alternative transportation options and is likely to continue to improve as a result of changes made since that study. For example, the school has expanded shuttle hours, and provided BART shuttles for teams participating in after school activities. This has made BART access viable for a larger number of students. Further, while the Appellant sites the drive alone rates from Oakland and Piedmont, new students may come from anywhere in the Bay Area, making that statistic particularly irrelevant.

- G. Appellant's Comment, Page 2, bullet point 6:** *"Although the students were allegedly supposed to only park in the school lot if they had three students in a carpool, students were discovered parking there with only one student. Apparently, there was no monitoring to enforce the car pool, parking lot rule. (Nelson report, p. 11.) Furthermore, the 3 person in a car rule acts as a disincentive for students to park in the lot. Neighbors have noticed that the rule benefits staff and faculty so that they are guaranteed spots in the lot, while the students, who obey the rule, are forced into the street. Meanwhile, there are empty, unused parking spots in the lot. These empty spots translate into more traffic and parked cars, related to the school, ending up in the neighborhood. Instead, the rule should be that any faculty or student with two or more people in a car can park in the lot, which provides an incentive to carpool."*

**Nelson\Nygaard response:** The Transportation Demand Management report noted that the school parking lot was fully utilized. The carpool rule has been enforced and continues to be enforced, although occasionally a late arriving student is able to find parking and avoid carpool enforcement, this is a relatively rare occurrence. The Appellant's primary concern seems to be the number of cars parking in the neighborhood. Parking in adjacent residential neighborhoods is very well enforced by the school and has been almost entirely eliminated, as described in the Transportation Demand Management Report. The school has worked closely with neighbors to accomplish this and would welcome the opportunity to continue to do so.

Efforts made by the school have resulted in a decrease in auto travel to the school, despite increasing enrollment. This trend is likely to continue given improvements to the BART shuttle and continued focus on alternatives to driving alone.

- H. Appellant's Comment, Page 3, bullet point 1:** *"Due to the high school enrollment, coupled with the heavy use of auto transportation by students and staff who fill up the school's parking lot, 64% of them are using the streets surrounding the school as a supplement to the school parking lot, which is inconsistent with a residential neighborhood. While parking is not a CEQA issue, it is an issue when evaluating the school's impact on the neighborhood's character. The residential neighborhood should not become part of the school's operation."*



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**Nelson\Nygaard response:** The Appellant's statement that 64 percent of students and staff use the surrounding streets as a supplement to the school parking lot is incorrect. The use of street parking is limited to those students that drive-alone or arrive in a 2-person carpool (while 3-person student carpools can park on-campus). As stated in the College Prep Traffic Study (based on information gathered during preparation of the TDM Plan), 36 percent of students are driven by a parent, 31 percent carpool, 16 percent use public transit (BART or AC Transit), 3 percent walk, 2 percent ride a bicycle, and just 12 percent drive alone. The school puts particular emphasis on enforcing "no student parking zones" in the residential neighborhoods and would welcome and support neighbors in their desire to implement neighborhood parking permits to further reduce any students parking in the neighborhood who may have gone undetected.

- I. Appellant's Comment, Page 3, bullet point 2:** *"The current CUP specifically allows drop off along Broadway. But where? Every possible location near the entrance to CPS is marked No Parking or No Stopping. The CUP is inconsistent with existing parking/stopping signs; as a result, there are traffic and safety hazards from students and staff violating the signs, which were designed to prevent accidents and keep Broadway open to through traffic. The Nelson report completely overlooked this traffic problem in suggesting that the students and staff can use Broadway for parking. (Nelson report, p. 12.)"*

**Nelson\Nygaard response:** As noted in the Transportation Demand Management study, parking is allowed at the curb on Upper Broadway just west of the campus driveway. Drop-offs may occur legally at this curb where space is available. Drop-offs are encouraged to occur within the parking lot and the school has configured the lot for ease of drop-off activity, and based on observation, nearly all drop-off activity does take place inside the parking lot. This is described in some detail in the Transportation Demand Management study. The subsequent traffic study assumed that additional drop-off activity from the increased enrollment would take place within the parking lot.

- J. Appellant's Comment, Page 3, bullet point 3:** *"The Nelson report makes much of the reduction by about 40 autos arriving at the school during drop-off between 2008 (353 students) and 2010 (372 students.) However, it does not explain how this drop was achieved (if it really was achieved- there are no specifics as to how counts were completed, over what period of time, and by whom.) Nor does it provide any independent counts for 2011 or 2012, or any tables showing the percentage of students or staff using carpools. (Nelson report, p. 14.) The 40 auto alleged reduction does not make mathematical sense given the admittedly high percentage of students and staff dependent on autos for transportation to and from school."*

**Nelson\Nygaard response:** The description of the decrease in traffic from 2008 to 2010 is contained in the College Preparatory School Transportation Demand Management Study prepared by Nelson\Nygaard in March 2011 (College Prep TDM Study). A key element of this study was independent counts of driveway activity combined with a survey of students and staff. Counts taken in 2008 were conducted by school personnel using standard manual traffic counting techniques similar to the 2010 data collection. No additional counts were required by the City in preparation of the project application because there was no indication that conditions had changed.

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The data collected by Nelson\Nygaard was supplemented by peak-hour traffic volume data at off-site study intersections independently collected and provided by the City.

The Appellant questions the decrease in auto trips suggesting that there is no reasonable explanation for the decrease in auto trips. However, as the Transportation Demand Management report documents at length, the school has put significant resources and energy into programs designed to reduce single occupant auto trips to school and has been very successful in moving students to shuttle and carpool options.

**K. Appellant's Comment, Page 3, bullet point 4 and paragraph i:** *"The Nelson report quotes a traffic study commissioned by EBMUD for a recent project as demonstrating a level of service (LOS) of E/F for the PM peak hour period at the Broadway and SR-24 EB ramp and a B/F rating for the Brookside and Broadway PM Peak hour. Nelson argues that adding more students, therefore, would not decrease the LOS further since it already is extremely poor. (Nelson report, p. 20.) Nelson has misread the traffic study:*

*(i) "The traffic study by Fehr & Peers, cited by Nelson, indicates on page 9 (attached Exhibit B) that its peak AM period traffic count was between 7:00 and 9:00a.m. and its peak PM traffic count period was between 4:00 and 6:00p.m., long after school was over. <sup>1</sup> Its only relevant data for comparing this traffic study's counts with those of Nelson would be for the morning count when school was in session."*

**Nelson\Nygaard response:** The Appellant is correct in noting that the peak-hour count data provided by the City does not include the "afternoon" school peak period (i.e., 2:30 to 3:30 PM). Since school was not in operation at the time the College Prep Traffic Study was conducted (in early August) it was not feasible to augment that data at that time. However, the Transportation Demand Management Plan shows that arrivals at school are much more concentrated than departures, because students may end their day at one of two different dismissal times and a significant portion of students remain for after school activities. Therefore, the worst case condition for school volumes is the AM Peak Period.

**L. Appellant's Comment, Page 4, paragraph ii:** *"On page 12 of the Fehr traffic study, Fehr shows for the Broadway/SR 24 EB onramp an LOS rating of A for the AM time period and B for the time period when there is the highest amount of traffic. It shows the same morning LOS of A and B for the Broadway/Brookside Ave/SR24 intersection. Contrary to Nelson, the footnote does not relate to any queue spill-back. Nelson has misread the document. (See attached Exhibit C.)"*

**Nelson\Nygaard response:** The Fehr & Peers study identified LOS F for the side-street stop-controlled approach to the Broadway/SR-24 EB On-ramp Intersection (while the College Prep Traffic Study identified LOS E for that approach). The Appellant is correct that the reference to "queue spill-back" (described on Table 2 of the Fehr & Peers) applies to several other intersections (Broadway & Kay Overcrossing and Caldecott Lane & Kay Overcrossing), but the Fehr & Peers study does not specify that queue-spill back occurs affecting the Broadway/SR-24 EB On-ramp Intersection. However, this does not change the finding of potential impacts at the Broadway/SR-24 EB On-ramp Intersection. At side-street stop-controlled intersections, the level of service (LOS) based on Highway Capacity Manual (HCM) methodology is based on the average

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delay to the side-street stop-controlled approach. Therefore, the applicable LOS is F (based on HCM methodology and the findings of the Fehr & Peers study) or E (based on HCM methodology and the findings of the College Prep Traffic Study prepared by Nelson\Nygaard). However: this finding pertains only to the stop-sign approaching the on-ramp (not the stop-sign on Brookside Avenue approaching Broadway). The Fehr & Peers study did not provide a separate LOS evaluation for the Brookside Avenue approach. By contrast, the College Prep Traffic Study included a separate LOS finding for the Brookside approach, that identified LOS B (based strictly on volumes and anticipated delay calculations), but the College Prep Traffic Study also noted that this delay would be affected by the downstream delay (i.e., the second stop-sign approach, approaching the on-ramp).

**M. Appellant's Comment, Page 4, paragraph iii:** *"The traffic conclusions by Fehr are supported by the 2002 environmental impact report commissioned by CalTrans for the Caldecott Tunnel Fourth Bore project. In its EIR, on page 87, for the Broadway & SR 24 EB onramp, the AM peak hour LOS is A and the PM peak hour was B. (See attached Exhibit D.)"*

**Nelson\Nygaard response:** The referenced exhibit was not attached to the Appellant's letter. However, it is likely that the reference to LOS A/B in 2002 is based on "overall average delay", not on the "side-street delay approaching the stop-signs" that is applicable based on HCM methodology and was the basis of the College Prep Traffic Study, as described in another response above.

**N. Appellant's Comment, Page 4, paragraph iv:** *"In the context of the Fehr and Caltrans traffic studies it appears that the counts obtained by Nelson demonstrate that the school's contribution to the traffic load has now, with the addition of students over the 340 enrollment cap reduced the morning LOS from an A to a C at the Brookside and Broadway intersection. (See page 20, Figure 16 and page 21, figure 17 of the Nelson report.) The reduction of an LOS that started in 2002 as A and is now reduced to C (per Nelson) is not consistent with preserving the neighborhood character."*

**Nelson\Nygaard response:** The Appellant provides a description of existing conditions, not a description of potential impacts resulting from the Proposed Project (i.e., the proposed increase in maximum enrollment of 35 additional students) and is therefore not relevant for the review of the Proposed Project. It should be noted that LOS C is within the City's standard for intersections of this type. Changes in LOS over the last decade at this intersection cannot be attributed to the school, or to the school alone as traffic counts show a decrease in auto volumes travelling to the school in roughly the same period.

**O. Appellant's Comment, Page 4, bullet point (bottom of page):** *"Despite the attempt to downplay the number of auto accidents, Nelson eventually concedes that between 2009 and 2011, there were eight auto accidents that most likely were related to school traffic. Adding traffic to transport another 35 students over the number agreed upon by CPS is inconsistent with traffic safety. (Nelson report, pp. 23-24.)"*

**Nelson\Nygaard response:** This statement is incorrect. The College Prep Traffic Study noted, on pages 23 and 24, that five (5) reported collisions occurred at the intersection of Broadway &

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Keith between 2009 and 2011, and three (3) reported collisions occurred at the intersection of Broadway & SR-24 EB On-Ramp & Brookside occurred from 2009 to 2011. These are the collision totals over the entire period. There was no assertion that any of these collisions were attributable to school traffic, or even occurred during school travel hours.

**P. Appellant's Comment, Page 5, bullet point (top of page):** *"Nelson also states that 'Increased student enrollment is not anticipated to result in a significant increase in AC Transit ridership generated by trips to/from [CPS]'. A future of CPS continuing to rely heavily on auto transportation will continue the pattern of neighborhood congestion due to the school's creeping upward enrollment. (Nelson report, p. 25.)"*

**Nelson\Nygaard response:** Nelson\Nygaard did not suggest that College Prep's enrollment would "continue creeping upward" or that "neighborhood congestion would continue to increase". Quite to the contrary, the Transportation Demand Management report shows that with investments in resources and energy the school can meet its enrollment target without increasing auto traffic at all. Many of the recommendations of the 2011 report have already been implemented and while additional counts have not been taken, increases in shuttle ridership and observations by staff suggest that auto dependence is further reduced. The school takes seriously its desire to reduce its carbon footprint and its stewardship of the neighborhood and welcomes the opportunity to work with the neighbors to ensure that students minimally impact their quality of life while providing a wonderful educational resource for the Bay Area.

I look forward to the opportunity to present our analysis in the future, as needed. Please let me know how we may be of further assistance.

Sincerely,

Bonnie Nelson  
President