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Mayor Robert Good and
Members of the City Council
City of Albany
1000 San Pablo Avenue
Albany, California 94706

Re: Application of Saint Mary's College High School to
Retain Existing Band Room, Snack Bar, and Class Room
Application Number 02-104

Dear Mayor and Council:

I represent Saint Mary's College High School ("Saint Mary's") with respect to the above referenced application to modify its existing Conditional Use Permit (CUP No. 93-27) to retain the existing Band Room, Snack Bar, and Class Room consisting of approximately 3032 square feet ("Application to Retain Space"). Saint Mary's believes that the nature of the application and the process followed has been misunderstood.

Saint Mary's Requests An Opportunity To Respond to PPNA Statement.

Saint Mary's respectfully requests the opportunity to respond to the "Statement in Support of Appeal" submitted by the attorney for Peralta Park Neighborhood Association ("PPNA") at the July 5, 2005 Meeting of the City Council. Although the document is dated July 1, 2005 and purports to have been delivered by hand and e-mail on that date, it was handed to representatives of Saint Mary's for the first time at the beginning of the July 5, 2005 meeting. Moreover, many of the points raised in the Statement had not been raised in the series of the Planning Commission meetings that had been held over the previous thirty months. The discussions at those meetings, held for the limited purpose of considering the Application to Retain Space, considered a very broad range of issues pertaining to traffic, parking, protecting the integrity of the creek, rescheduling maintenance activities to reduce early morning noise, modifying parking on Posen, creating a new drop-off space and procedure, opening a third entrance to the school on Monterey, noise from the athletic fields, compliance with existing conditions of approval, encouraging alternative methods of transit, and a host of other issues. Consideration of the actual Application to Retain Space was held up by the Commission until, after six separate meetings, it was satisfied that Saint Mary's was intent on not only meeting, but exceeding its obligations under the existing approvals. During those six hearings, the actual request to retain space was rarely discussed and attention focused on the larger –

and much more important -- issues. Although not required to do so, Saint Mary's conducted traffic studies, opened a third entrance to the school on Monterey, reorganized drop-off and pick-up procedures, secured a dedicated AC Transit bus for students, altered schedules for various activities, and took a number of other actions designed to lessen concerns identified by interested neighbors. Saint Mary's did these things as a good faith response to neighbor concerns and requests. After those thirty months and six hearings, the Commission, apparently satisfied that Saint Mary's had demonstrated its good faith, voted to approve the Application to Retain Space. This appeal and the July 5th meeting followed. The Council's vote on July 5th was made without the benefit of a full response to the Statement. We maintain that fairness requires that the Council consider this response and accompanying testimony, particularly after the thirty months of good faith efforts by the school.

Throughout the consideration of the Application to Retain Space, the City and Saint Mary's made every effort to ensure that the credibility of the process was maintained.

The Application to Retain Space was initiated by Saint Mary's pursuant to the City of Albany's standard procedures for such an application. Saint Mary's paid all appropriate fees requested by the City. Six duly noticed public hearings were held on the application on the following dates.

March 25, 2003
July 8, 2003
October 28, 2003
March 23, 2004
November 9, 2004
April 26, 2005

Saint Mary's paid for and conducted all studies requested by the City. The studies included two traffic studies by an outside traffic consultant, Korve Engineers. Saint Mary's communicated regularly with the City and the community regarding the application and any other issues that were raised. Saint Mary's provided regular reports on its compliance with City requests and requirements. In short, the consideration of the Application to Retain Space was conducted in a credible, open, and public process.

Please see the summary of meetings attached hereto as Exhibit "A."

In making the Application to Retain Space, Saint Mary's acted in a credible, open, and honest manner.

At several points during and after public testimony on July 5th, the credibility of Saint Mary's was questioned. The Saint Mary's community is deeply troubled by such statements, particularly with respect to the Application to Retain Space. As noted herein, Saint Mary's followed all applicable processes, followed the suggestions and requests of the City, went beyond the requirements of the existing conditional use permit, and

conducted an open and public dialogue of all issues raised concerning the school regardless of whether or not they related to the Application to Retain Space.

Saint Mary's made the Application to Retain Space at the suggestion of the City.

The most important fact is that, in making the Application to Retain Space, Saint Mary's did so at the suggestion of the City. The staff report confirmed this fact. The Planning Manager also confirmed this fact. Saint Mary's has attempted to secure the audio tapes of the October 26, 1999 Planning Commission meeting, but has determined that the tapes are only available for two years. However, even if no tapes still exist, there is no contradiction that such a suggestion was made. PPNA insinuates that, since the minutes do not reflect such a suggestion, the suggestion could not have been made. However, not all comments get into the minutes. PPNA further claims that it could not find "any evidence" of such a suggestion and adds a somewhat sinister (and incorrect) allegation of potential Brown Act violations if "two or more commissioners" made such a suggestion outside of a public forum. Notably absent from the claims made by PPNA is any direct statement contradicting Staff's and Saint Mary's position that the suggestion to submit the Application to Retain Space came from the City. PPNA does not and can not contradict the fact that Saint Mary's acted at the suggestion of, and in reliance on the advice of, the City.

Saint Mary's Compliance with a Condition Imposed by the City does not constitute a promise or a reaffirmation of a promise.

The Statement by PPNA is replete with the use of the term "promise" and claims that the "promise" not to increase square footage beyond the existing square footage in 1994 was "reiterated" over a ten year period. The use of these terms in this manner is extremely misleading and, we believe, has led to confusion.

First, the 1993 application did not propose additional square footage. There was nothing sinister about the fact that no additional square footage was sought at that time. It simply reflected what the school thought it needed and what the school proposed to do in that application. Moreover, there was no square footage limitation in either the application or the environmental review. The square footage limitation was initiated by the City Council when the application came to the Council on appeal. The Council formally added the limitation in its adopting resolution in June of 1994. There was no "promise" by Saint Mary's that it would not seek additional square footage because the application was not seeking any additional space. The limit was merely imposed on Saint Mary's by the Council. In 1994, the limitation was not significant because, at the time, the existing space was all that the school thought was needed.

Second, the 1994 approvals did not contain a square footage number. The actual number of square footage was not calculated until 1999. The 1994 approvals merely stated that the total classroom space may not be increased.

Third, the 1999 application was for “design review” of one new class room building – Frates Hall. Although Saint Mary’s could have sought a modification to the square footage limitation at the time, it did not do so. The new class room building generated a net increase of approximately 3000 square feet (out of a total of approximately 90,000 square feet or approximately three percent). In order to proceed with design review under the limitations of the 1994 approval, Saint Mary’s had to modify its a design review application (once the actual number was calculated) that was in compliance with the 1994 approvals. In retrospect, the school probably should have applied for the modest (3%) increase in square footage at the time. However, the precise number of square footage was not determined until the design review process was underway and, as discussed above, the City advised Saint Mary’s that it could apply for the modification later. With this assurance, Saint Mary’s went forward with the design review process for Frates Hall without requesting a concurrent 3% increase in square footage and without seeking a modification of the existing master plan.

Fourth, all actions pursuant to the 1999 design review approvals had to conform to the existing 1994 and 1999 approvals or they would have been rejected by the City. Therefore, any submittal by the school (construction drawings or otherwise) had to contain information that conformed to existing planning approvals. Rather than a “reiteration” of a “promise,” such statements constituted required compliance with the existing limitations contained in the planning documents. Moreover, all such statements were made with the understanding provided by the City that the limitation could be modified through a subsequent application.

The Application to Retain Space was made in a timely manner.

PPNA, again employing language that insinuates wrongful conduct, notes that the Application to Retain Space was made eleven months after the issuance of the certificate of occupancy for Frates Hall. The 1999 planning approvals granted the school a twelve month period to determine its needs following the completion of Frates Hall. Saint Mary’s made timely application before the deadline established by the 1999 approvals.

The Application to Retain Space is necessary to address previously unknown and unanticipated requirements.

Contrary to the statement in the proposed resolution, Several new factors in education require more educational space than previously needed.

Recent Changes in College Admissions Requirements. Admissions requirements for the 2003 graduating class developed by the University of California and California State University systems have been modified starting in 1999 and have created a need for more classroom space. Specifically UC and CSU now require one full year of Visual or Performing Arts and recommend two years and additional science requirements. These requirements necessitated an increase in the number and variety of Arts and Science offerings. The classroom space is needed to meet the contemporary educational needs.

Need for AP Courses. On an increasing basis, schools and its students are judged by the availability of advanced placement (A.P.) courses. The quantity and variety of AP courses is a new key aspect for students. AP courses commonly enroll fewer students per classroom and, therefore, more classrooms are required to serve the existing enrollment.

Need for Smaller Class Sizes. Since the adoption of the No Child Left Behind Act in 2001, schools receiving federal funds have been required to implement certain changes. This has resulted in an increased pushed for smaller class sizes. Moreover, recent research indicates that students in small classes are much more likely to pursue college level education. Smaller class sizes require more classrooms.

Programs and Technology. Additional programs and, in particular, a greater need for computer and internet technology in the classroom has created a greater demand for classroom space.

Denial of the Application to Retain Space will be a substantial burden on the school.

The school currently uses every classroom for virtually the entire school day in order to deliver its curriculum. The removal of two spaces where classes are currently taught (the band room and one classroom) will severely impact scheduling, lead to more student and teacher movement around the campus, and will reduce the availability of classroom space that is already stretched to the maximum.

The Reasons Stated for the Appeal do not justify granting the appeal.

PPNA provided six reasons for granting the appeal. None of the reasons justify reversing the Planning Commission's action taken after thirty months of consideration.

1. PPNA stated that the Planning Commission did not take into account the history of the Saint Mary's expansion project. We believe that the PPNA is mistaken. Thirty months of deliberation took into account every aspect of the operation of the school and its impact on the community. Although the effect of the retention of the 3% of footage had, and continues to have, no effect on the City of Albany or the School's neighbors, the Planning Commission studied the entire issue carefully. The Planning Commission did not shirk their duty as PPNA claims it did.

2. PPNA stated that Saint Mary's did not provide valid reasons for wanting to retain the 3% of footage and not destroy or otherwise diminish the utility of this small area. The reasons are numerous and outlined herein. The requirements of education for high school students has changed greatly over the past six years and more space is needed for the existing student body. Facts and circumstances have changed in education since 1999.

3. PPNA claims non-compliance with the provisions of the California Environmental Quality Act ("CEQA"). However, PPNA concedes that the square footage limitation was not an identified mitigation in the 1994 approvals. In fact, since

the square footage limitation was added by the Council after all CEQA analysis was completed, it could not have been an identified mitigation. Moreover, the retention of space that has existed in its present form with no concurrent increase in students or faculty would not present any further impacts. In several points, PPNA attempts to transform the square footage limitation contained in a condition of approval into a required mitigation under CEQA. There is no legal or factual support for such a transformation.

4. PPNA claims that the Planning Commission acted arbitrarily. Over thirty months of work in good faith by the school, the City, and the community has occurred before this appeal of the approval of the Application to Retain Space. One should note that reversing a decision crafted over a period of thirty months based on a last minute one letter, a brief presentation, and a brief discussion was arbitrary.

5. Without any factual support, PPNA claims that Saint Mary's has not been faced with changed circumstances and has not described those circumstances if they exist. Saint Mary's has changed circumstances. Many of these changes were caused by the actions of others, including the actions of the University of California system which added additional requirements for high school educators. These changed circumstances created the vital need to keep the existing square footage.

6. PPNA states that failing to enforce the square foot limitation will adversely affect traffic in the neighborhood, degrade proposed private open space, and incur future potential development. This reaching assumption is simply exaggerated and incorrect. The amendment adds no more students, no more traffic, and no more space than currently being used.

As discussed herein, Saint Mary's volunteered to, and did, take actions to relieve traffic and ameliorate the neighbors concerns in direct response to requests from the community. These actions were voluntary and were taken in a good faith effort to improve the condition of our neighbors. While the school would not assume that all neighbors would suddenly become unconditionally supportive, the school does believe that good faith efforts should go both ways and has asked the community to join the school in a facilitated process. It is interesting to note that PPNA did not respond to our request for two months and then only the day after the July 5th vote. It goes without saying that the substantial and unnecessary burden placed on the school by this appeal at the request of the PPNA demonstrates an unwillingness to work productively with the school on solutions that benefit everyone. Moreover, PPNA's positions have caused substantial disappointment for those who have sought improved relationships for so long.

Saint Mary's building area is less than one-fifth of the applicable Floor Area Ratio and has a substantially lower Floor Area Ratio than all other schools in Albany.

Under the General Plan, the school is permitted a maximum floor area ratio ("FAR") of 0.95. The current structures at Saint Mary's, including the 3000 square feet that is the subject of this application, generate a FAR of 0.18. In other words, the density

of buildings at the school is less than one-fifth (1/5th) of that allowed under the General Plan. Moreover, all other schools in Albany enjoy FARs that are two to three times higher than Saint Mary's. Please see the chart attached hereto as Exhibit "B."

The use of the space sought to be retained creates no impact on the community.

The three spaces identified are 1) an existing small classroom within an existing older classroom building – one of three classrooms at the same level, 2) a soundproofed band room adjacent to the football field, and 3) a snack bar adjacent to the football field. Each of these spaces is fully utilized for each intended purpose.

In fact, following the July 5th vote, PPNA contacted Saint Mary's with a request for a site inspection to find out where the three designated spaces were located. If the retention of the space constituted an impact, surely some knowledge of its location would be known.

There is no compelling reason for preventing the use of the space sought to be retained.

Given the facts that the density of development is less than one-fifth of that allowed under the General Plan, there is no increase in enrollment that might generate additional traffic or parking needs, and the classrooms merely service broader curriculum and smaller class size needs, there is no compelling reason for denying Saint Mary's the use of this existing space.

No precedence would result from granting the Application to Retain Space.

Saint Mary's is the only private High School operating in the City of Albany. As noted herein, there are ample reasons that are unique to Saint Mary's that justify the retention of existing class room space.

No enrollment increase is sought.

Saint Mary's is not seeking an enrollment increase. If, at some point in the future, such an increase is sought, it will be subject to full planning review and will be done in a public and open process with the input of all concerned neighbors. Moreover, we maintain that, in the spirit of the approval by the Planning Commission, Saint Mary's cannot (and will not) use the approval of this application as a justification for adding students. The Application to Retain Space is not growth inducing. As noted above, Saint Mary's needs the existing space to meet its current enrollment.

Saint Mary's has taken substantial actions to improve conditions at the request of concerned neighbors.

As noted above, Saint Mary's responded to many issues from leaf blowers and water runoff into the creek to traffic and parking. For instance, on the issues of traffic and parking, Saint Mary's took the following voluntary steps:

- Encouraged students and families more to carpool to and from school, with continued on-campus parking priority for students who carpool to school.
- Re-opened the Monterey Avenue gate to school pedestrian traffic and creation by the City of Berkeley of a formal drop-off/pick-up zone in front of the gate.
- Installed new bike racks.
- Directed students not to park in front of residences on Monterey Avenue between Hopkins and Posen.
- Created a formal drop-off and pick-up zone on Posen Avenue.
- Established a system of prefecting for traffic at locations around the campus during certain times of the school day.
- Advised parents to seek alternate, safe drop off locations just beyond the immediate vicinity of the campus.
- Posted signage that reminds students and parents to drive safely and courteously in the neighborhood.
- Increased student and parent education about Saint Mary's driving and parking policies and neighborhood relations, and continued enforcement of those policies.
- Met with representatives of the Bay Area Air Quality Management District, Bay Area Clean Air Partnership, and RIDES for Bay Area Commuters to obtain recommendations on decreasing vehicle traffic to and from campus.
- Worked with AC Transit to establish new bus dedicated service to Saint Mary's from areas not currently served. Bus Route 688 began service to Saint Mary's from parts of Oakland on April 4, 2005. In its first three weeks, between 25 and 35 students used the service on school mornings, debarking at Monterey and Hopkins and accessing campus via the Monterey gate. The bus service also provides a return trip in the afternoon. It is hoped that there will be increased ridership with the new school year. The school continues discussions with AC Transit about possible service to and from campus from the Hercules area.
- Additionally, the school pursued the recommendation of a 2000 Korve Engineering study to create diagonal parking spaces on the south side of Posen to accommodate the new drop-off and pick-up zone and to calm traffic. The application for the diagonal parking spaces, made by the

school in 2001, was ultimately denied by the Albany Traffic and Safety Commission in 2003 in response to neighbor preferences.

- Saint Mary's has retained a professional facilitator in a further effort to improve relationships with its neighbors.

Saint Mary's submitted regular reports to the City and to neighbors regarding such efforts. Please see a sampling of such letters and reports to the City and community attached hereto as Exhibit "C."

The Action of the Planning Commission should be upheld.

After the extended series of meetings and with the recommendation of the staff, the Planning Commission approved the retention of the 3032 square feet. However, it restricted the uses of the three spaces to the current use at each space, it would require the school to apply for any alternate use, and it requires the City to consider the benchmark size of the school as 90,675 square feet for future applications.

The reduced benchmark was proposed by the neighbors that now appeal.

The reduced benchmark standard was first suggested by the neighbors that now pursue the appeal through the PPNA. In correspondence dated April 30, 2003, while noting that they did not "favor unrestricted approval" of the application of the Application to Retain Space, neighbors proposed that the approval should be restricted in two ways: (1) use the existing benchmark size for future applications and (2) require the opening of the Monterey Gate. The school voluntarily agreed to open and did open the Monterey gate. Moreover, the school does not object to the lower benchmark for future planning discussions. PPNA now appeals a decision that is entirely consistent with their previous request – the reduced benchmark – and the voluntary action by Saint Mary's – the new gate on Monterey.

Attached hereto as Exhibit "D" is the correspondence dated April 30, 2003.

Conclusion

Saint Mary's Application to Retain Space was not a dishonest or improper act that was sought in some underhanded manner. To the contrary, at every step of the way Saint Mary's acted openly and honestly under the constraints and or at the suggestion of the City of Albany. It did many things that were not required of it and did so willingly in order to improve the quality of life of its neighbors. Admittedly, there are some aspects of the school that could be further improved that would further reduce impacts on the community. However, the use (or non-use) of the 3000 square feet that is the subject of the application would not accomplish any betterment for anyone and would only serve to severely diminish the school's ability to provide a complete education to its students. The only result of closing the 3000 square feet will be to move the band out of a sound-proofed room in the middle of the campus and causing more teachers and students to

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change classrooms. It is hard to imagine who would benefit from such a decision. Certainly, the school is hurt by such a decision. It is far better to use the space for the intended educational purpose than to leave it vacant and unused.

The school looks forward to continuing to work with the community further in the future and hopes that all of its neighbors will join in the effort to improve the area for the benefit of everyone.

Thank you for your consideration of this response to the appeal of PPNA.

Sincerely,

Harold P. (Peter) Smith

HPS:

cc: Peralta Park Neighborhood Association
(via hand-delivery to
Rich Brown,
James Neville,
Lucas Guttentag, and
Donna DeDiemar/Chris Hamilton)
Ann Chaney (via hand-delivery)
David Dowswell (via hand-delivery)

Enclosures

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