



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** August 30, 2010

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Approved

Date

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**COUNCIL DISTRICT:** 9  
**SNI AREA:** none

**SUBJECT: CP10-026. APPEAL OF A CONDITIONAL USE PERMIT TO ALLOW A PRIVATE SCHOOL TO OCCUPY APPROXIMATELY 3,080 SQUARE FEET OF EXISTING SUNDAY SCHOOL CLASSROOM SPACE AT AN EXISTING CHURCH ON A 2.89 GROSS ACRE SITE LOCATED AT THE SOUTHWEST CORNER OF FOXWORTHY AVENUE AND QUINTO WAY (1774 FOXWORTHY AVENUE).**

## **RECOMMENDATION**

The Director of Planning, Building and Code Enforcement recommends the City Council uphold the Planning Commission's decision to approve a Conditional Use Permit to allow a private school, grades 6-12, to occupy approximately 3,080 square feet of existing Sunday school classroom space at an existing church.

## **OUTCOME**

Should the City Council approve the subject Conditional Use Permit, the applicant would be able to use the property as a school after any necessary Building Permits have been obtained. Should the City Council deny the subject Conditional Use Permit, then the site would not have entitlement to allow the proposed school use to the property.

## **BACKGROUND**

### Appeal

On August 13, 2010, an appeal was submitted by Audrey Sinor, an adjacent property owner. The reasons for appeal are 1) infringement on right to quiet enjoyment of home, 2) devaluation of property, and 3) additional auto and foot traffic in the neighborhood. The appellant submitted additional information on August 17, 2010, which is attached and restated the above concerns.

Planning Commission Hearing

On August 11, 2010, the Planning Commission held a public hearing to consider the proposed Conditional Use Permit to allow a private school with up to 95 students, grades 6-12, to occupy approximately 3,080 square feet of existing Sunday school classroom space with no new exterior construction at an existing church.

The Applicant, Dave Delgado, spoke in favor of the project stating he lived in the neighborhood, has a good track record in operating other schools, the school's rent would be able to be reinvested into the church property, and he is going the legal route in obtaining a permit where others did not. As Headmaster of the Cambrian International Academy, any promises he makes will be kept by the school. The school would be sharing classrooms with the church and only making minimal changes to the structure.

Eight resident spoke in opposition of the project and turned in petitions with several additional signatures. There concerns raised at the hearing included the following:

1. Safety and traffic, particularly during the morning drop-off time. Foxworthy Avenue is perceived to be a small, congested street and serves several other schools.
2. Need for a pedestrian crossing at Foxworthy Avenue and Quinto Way to accommodate walking to the local park.
3. Loitering at the site during non-business hours.
4. Church has not been a good neighbor in the past by allowing two previous schools to be located on their site without Conditional Use Permits.
5. Church gatherings are large and school cars would add to traffic and parking demands.
6. There is a known drug/party house in the neighborhood that the neighbors feel would be a safety concern for students.
7. An open campus would cause loitering, littering and pedestrian cut-through traffic within the PG&E to Hillsdale Avenue. Some trash is already left in neighbors' yards.
8. Noise impacts from the school during recess and drop-off periods.

The applicant stated the rent from the school would give the church the funds it needs to better maintain the property, and additional activity in the building would help to keep away any bad elements. The applicant did express concern over the time it might take to comply with conditions 4, 6, 19, 24 and 25 noted in the draft resolution.

Commissioner Kamkar asked how many students would be allowed in the school and if any would be local. The applicant clarified that while the permit is for 95 students it would take them several years to grow into that number. The school also tries to have a mix of international

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and local students with the international students subsidizing the local student tuition. School would generally start at 8:15am and end at 3:00pm. The applicant has worked successfully for schools of up to 900 students and been able to control traffic to have the least impact on the neighborhood.

Commissioner Abelite asked when the school would like to open and if the necessary improvements could be made. The applicant was unclear on exactly what needed to be done and was therefore concerned about the timeframe.

Commissioner Bit-Bidal asked about the previous school tenants and the issue of an open campus. The applicant surmised that since the previous schools had not obtained Conditional Use Permits, they did not feel the same accountability to the neighborhood as he would expect of his school. Only high school students with parent and school permission would be allowed off campus. If students do not respect this privilege or neighbors report a nuisance attributed to those students, the school can take this privilege away.

The public hearing was closed and staff responded to comments. Staff stated that the in-house traffic study included background traffic such as the existing schools, commercial uses and surrounding neighborhood traffic and concluded there was not a significant traffic impact created by the proposal. Public Works Staff added that the in-house traffic report was run using data from the AM and PM commute traffic hours.

At the community meeting, Staff did hear the neighbors' concerns and suggested potential permit conditions to address these issues. These include coordinating hours with other schools and this was addressed as part of Condition 11. As proposed on the plans, the best site for the drop-off zone is at the back of the site as this provides sufficient queuing space to ensure there is no back-up onto Foxworthy Avenue. While the City cannot impose specific conditions on the project to require parents to drive a certain route to school to minimize traffic on nearby smaller residential streets, the applicant can do this as part of their enrollment contract with the students, and they have indicated a willingness to do so. This has been done fairly successfully at Bellerme College Preparatory School in the Rosegarden area.

The addition of the school will give the City an opportunity to include permit conditions to require restoration of the landscaping for the entire church property which could be done prior to occupancy or within 90 days of occupancy. The proposed fence to cut off easement area, should be done prior to occupancy, to help eliminate the neighborhood concerns about pedestrian cut through traffic to the commercial area. This fence could be made of chain link and have a gate to allow access for PG&E. Given most children are driven to this school, there is little nexus to require a crosswalk. However, this is something the neighbors could pursue through the Department of Transportation. The school will be required to obtain a Building permit, if only for the change in occupancy. Public Works clearance will also be required and any broken curb, gutter, sidewalk will need to be bonded for and repaired.

Commissioner Kline asked if this school were to be approved and then move out could a second school move in to this location and could the permit be revoked. Staff stated that the permit runs with the land and as long as it is a continuous use in could remain in perpetuity. If the City

receives a nuisance complaint, a Notice of Non-Compliance would be issued. If this did not resolve the issue, an Order to Show Cause would be issued and the matter would be heard in front of the Planning Commission. The Planning Commission would be able to add or modify conditions or revoke the permit.

Commissioner Bit-Bidal asked when the City normally designates school zones. Public Works Staff stated this is a process completed by the Department of Transportation and it would need to be studied to determine if the criteria for such a designation could be met.

Commissioner Jensen asked Staff if the drop-off area would still be able to operate if the PG&E easement area was no longer leased to the church. Staff stated that the parking lot would have to be restriped and the remaining driveway may have to be enlarged, but it was possible with minimal improvement changes.

Commissioner Abelite then made the motion to approve the Conditional Use Permit and accepted a friendly amendment by Commissioner Kline which allows the Applicant 120 days to complete the Conditional Use Permit condition numbers 19, 24 and 25.

The motion was then approved 4-1-2, Commissioner Kline opposed, Commissioners Cahan and Platten absent.

#### Comments on Specific Issues Raised by the Appellant

##### *1) Infringement on right to quiet enjoyment of home,*

Staff reviewed the project to ensure it would meet the City's Zoning Ordinance requirement of 55 decibels at the property line. Given school activities will be conducted indoors, and physical education classed will be held off-site, Staff determined the proposal would meet this standard.

##### *2) Devaluation of property*

The additional use of the property will serve to eliminate existing loitering during times of inactivity currently at the site and will provide much needed funds for investing in the property. As a condition of approval, the applicant/property owner will be required to upgrade all of the landscaping on-site, patch/repave the site, and restripe parking spaces which could only serve to enhance the existing site thus having a beneficial effect on its surroundings.

##### *3) Additional auto and foot traffic in the neighborhood.*

An in-house traffic study which included background traffic such as the existing schools, commercial uses and surrounding neighborhood traffic concluded there was not a significant traffic impact created by the proposal. The in-house traffic report was run using data from the AM and PM commute traffic hours.

## ANALYSIS

The issues brought forth regarding the Conditional Use Permit have already been addressed by staff in the staff report provided to the Planning Commission, which has also been provided to City Council as a part of Council's consideration of this item.

## CONCLUSION

Based on staff's analysis of the appellant's comments and the lack of new information provided, staff continues to recommend approval of the proposed project in that all of the necessary findings for issuance of a Conditional Use Permit set forth in the City's Zoning Ordinance can be made regarding the approval of the Conditional Use Permit for the reasons staff has previously articulated in the staff report for this item, together with the additional information set forth herein.

## ALTERNATIVES

The City Council in their review of the project can take the following actions:

1. Uphold the Planning Commission's decision to approve the subject Conditional Use Permit, allowing a private school within an existing church building; or
2. The City Council could add additional conditions to the permit to further ensure its compatibility with the neighborhood. This conditions could include but are not limited to:
  - a. Construct a 7 foot masonry wall along the rear and side property perimeter adjacent to residential uses, to further reduce any noise issues
  - b. Relocate the drop-off zone, reverse the direction of the drop-off path and/or split the drop-off zone between the properties two parking lots, to further reduce morning noise issues
3. Deny the project as suggested by the appellant, limiting the use of the property to the currently permitted church activities.

## PUBLIC OUTREACH

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

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Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was published, posted on the City's web site, and distributed to the owners and tenants of all properties located within 500 feet of the project site. A sign has been posted on the project site. Copies of this staff report have also been posted on the City website. Staff has been available to discuss the proposal with members of the public.

### **COORDINATION**

Preparation of this memorandum has been coordinated with the City Attorney's office.

### **CEQA**

Exempt.

/s/

JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

For questions please contact Jodie Clark, AICP at 408-535-7818

#### Attachments:

- Planning Commission Staff Report & Attachments
- Appeal Application

cc: Dave Delgado, Applicant  
Audrey Sinor, Appellant

## NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF	
FILE NUMBER <span style="font-size: 1.2em;">CP10-026</span>	RECEIPT # _____
PROJECT LOCATION	AMOUNT <span style="font-size: 1.2em;">\$100-</span>
	DATE <span style="font-size: 1.2em;">8/13/10</span>
	BY <span style="font-size: 1.2em;">JAC</span>

### TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:

1774 Foxworthy Avenue San Jose CA 95124

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):

Allowance of conditional use permit will infringe on my right to quiet enjoyment of my home, devalue my home investment and cause further auto and foot traffic in my neighborhood.

### PERSON FILING APPEAL

NAME <span style="font-size: 1.2em;">Audrey Sinor</span>		DAYTIME TELEPHONE <span style="font-size: 1.2em;">(408) 799-8886</span>	
ADDRESS <span style="font-size: 1.2em;">3163 Rama Dr.</span>	CITY <span style="font-size: 1.2em;">San Jose</span>	STATE <span style="font-size: 1.2em;">CA</span>	ZIP CODE <span style="font-size: 1.2em;">95124</span>
SIGNATURE <span style="font-size: 1.2em;">[Signature]</span>		DATE <span style="font-size: 1.2em;">8-13-2010</span>	
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet)			

### CONTACT PERSON

(IF DIFFERENT FROM PERSON FILING APPEAL)

NAME <span style="font-size: 1.2em;">Audrey Sinor</span>			
ADDRESS <span style="font-size: 1.2em;">3163 Rama Dr.</span>	CITY <span style="font-size: 1.2em;">San Jose</span>	STATE <span style="font-size: 1.2em;">CA</span>	ZIP CODE <span style="font-size: 1.2em;">95124</span>
DAYTIME TELEPHONE <span style="font-size: 1.2em;">(408) 799-8886</span>	FAX NUMBER <span style="font-size: 1.2em;">( )</span>	E-MAIL ADDRESS <span style="font-size: 1.2em;">madson3163@aol.com</span>	

### PROPERTY OWNER

NAME <span style="font-size: 1.2em;">Clayton Madson &amp; Audrey Sinor</span>		DATE <span style="font-size: 1.2em;">8-13-2010</span>	
ADDRESS <span style="font-size: 1.2em;">3163 Rama Dr.</span>	CITY <span style="font-size: 1.2em;">San Jose</span>	STATE <span style="font-size: 1.2em;">CA</span>	ZIP CODE <span style="font-size: 1.2em;">95124</span>

**PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.**

**Clark, Jodie**

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**From:** Madson3163@aol.com  
**Sent:** Tuesday, August 17, 2010 9:28 AM  
**To:** Clark, Jodie  
**Subject:** CP10-026 Permit Appeal

This is a further explanation of my opposition and reasoning for filing an appeal for the permit issued to David Delgado regarding his use of the Foxworthy Baptist Church located at 1774 Foxworthy Avenue, San Jose, CA 95124 to open a school for 95 children.

As an 11 year resident and one who shares a property line with the aforementioned church property, I am directly effected by the decision to allow this usage. Myself and my neighbors are strongly opposed to this use and we feel very frustrated that our concerns were completely ignored, and that the permit was given without regard to our feelings. With the exception of Mr. Kline's brief spoken opposition, the rest of the Planning Department Board approved the permit without consideration to the ramifications it will have on the surrounding residents.

When I spoke at the meeting on August 11th, 2010 I expressed my concerns and my past experience with the church having previously rented space to a school (without permits) several years ago and it was highly disruptive. The noise generated by the children and the car noises of parents picking up and dropping off their children, as well as outside recess time was not what I bought into when I purchased my home. I decided to purchase my home based on it's location. I took great care in selecting a home in an established neighborhood to avoid changes such as this, and to now find that the church is going to be allowed to repurpose it's space and use it in a manner that was not advertised at the time of my purchase seems to be a very unfair situation and decision. I considered the advertised hours of operation of the church when I considered all the options of the available homes at the time I was shopping. I decided I could deal with the noise and traffic generated by those advertised hours. Had I known that I was going to have to share a fence line with a school whose hours were Monday through Friday as well as the Wednesday and Sunday hours, I would have opted to buy elsewhere.

I have consulted with my real estate agent who has over 30 years of experience and it is her opinion as well as that of her associates that the opening of a school in such close proximity of my home will devaluate it anywhere from 3% to possibly as high as 10%. In addition, the school location may dissuade future buyers from becoming interested in my property. These are hits myself and my neighbors can't afford to take as our property values have suffered enough, to take such a hit would be catastrophic to our home investments. Our neighborhood was established in the 1950's. It has long been a quiet and private street that I reside on, how is it fair that my home's highest attribute, it's quietness and privacy, are now being taken away from me simply so that Mr. Delgado and the church can make money? Although the church is considered a commercial property, it is surrounded solely by residential property on all sides. By increasing, traffic and noise in the neighborhood, the residence quiet enjoyment and some of our privacy is being taken from us. This decision would benefit no one but the pocket books of the Foxworthy Baptist Church and the operators and investors of the school. The main purpose of this school isn't even intended for local children, although they will not be disallowed purposefully...the school is intended to draw it's student body from other countries. So, to be clear on my thoughts; As a resident of this neighborhood, my home value, quiet enjoyment, and portions of my privacy are being removed from me so that children from other countries may study and earn their general education, an education which they are able to acquire within their own country.

I will provide further argument and a petition signed by the neighbors surrounding the church property when we are invited to speak to the appeal being filed and look forward to contact regarding the date which this city council meeting will be held.

Audrey Sinor  
3163 Rama Drive  
San Jose, CA 95124  
408-799-8886  
[madson3163@aol.com](mailto:madson3163@aol.com)

9/2/2010

**STAFF REPORT**  
**PLANNING COMMISSION**

**FILE NO.:** CP10-026

**Submitted:** May 5, 2010

**PROJECT DESCRIPTION:** Conditional Use Permit to allow a private school, grades 6-12, to occupy approximately 3,080 square feet of existing Sunday school classroom space (no new construction) at an existing church on a 2.89 gross acre site.

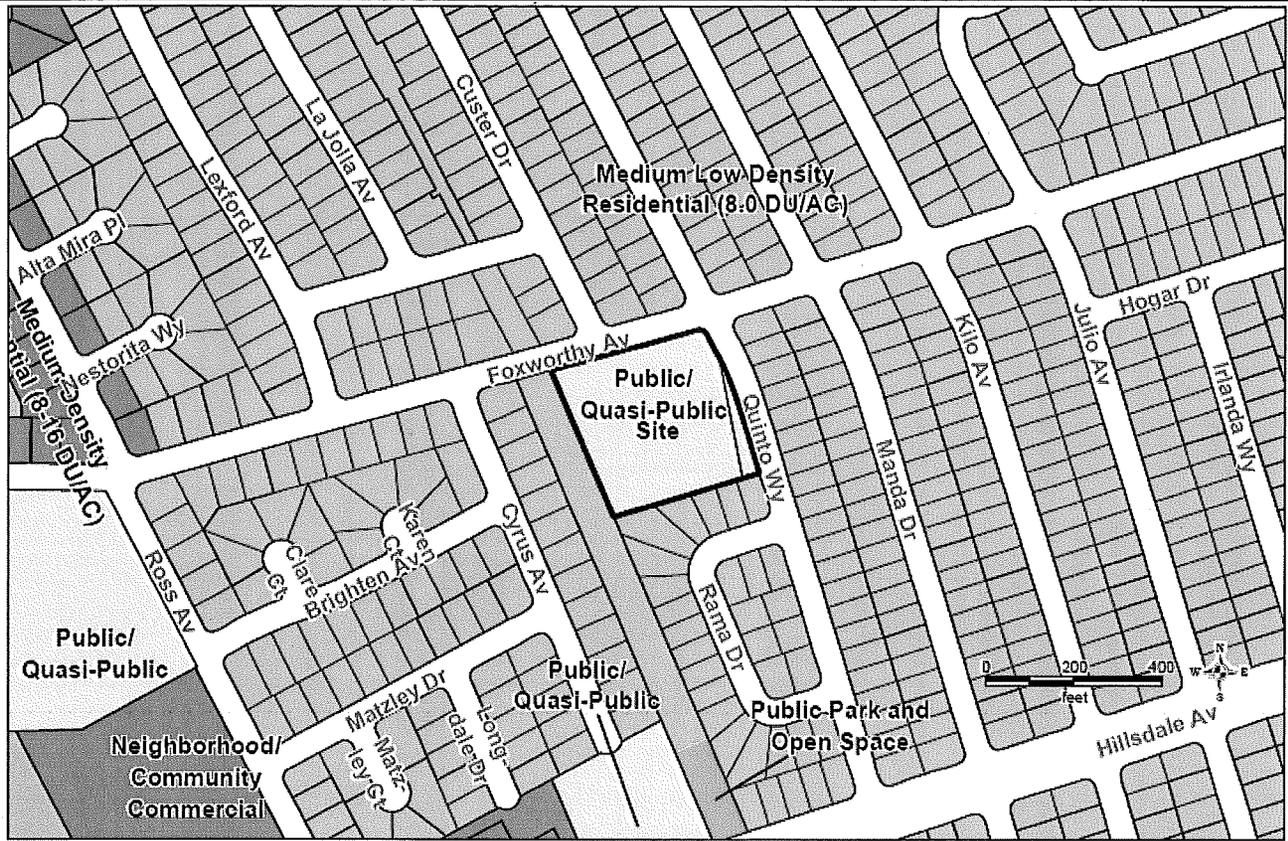
Zoning	R-1-8 Residence District
General Plan	Public/Quasi-Public
Council District	9
Annexation Date	September 22, 1955
SNI	No
Historic Resource	No
Redevelopment Area	No

**LOCATION:** Southwest corner of Foxworthy Avenue and Quinto Way (1774 Foxworthy Avenue)

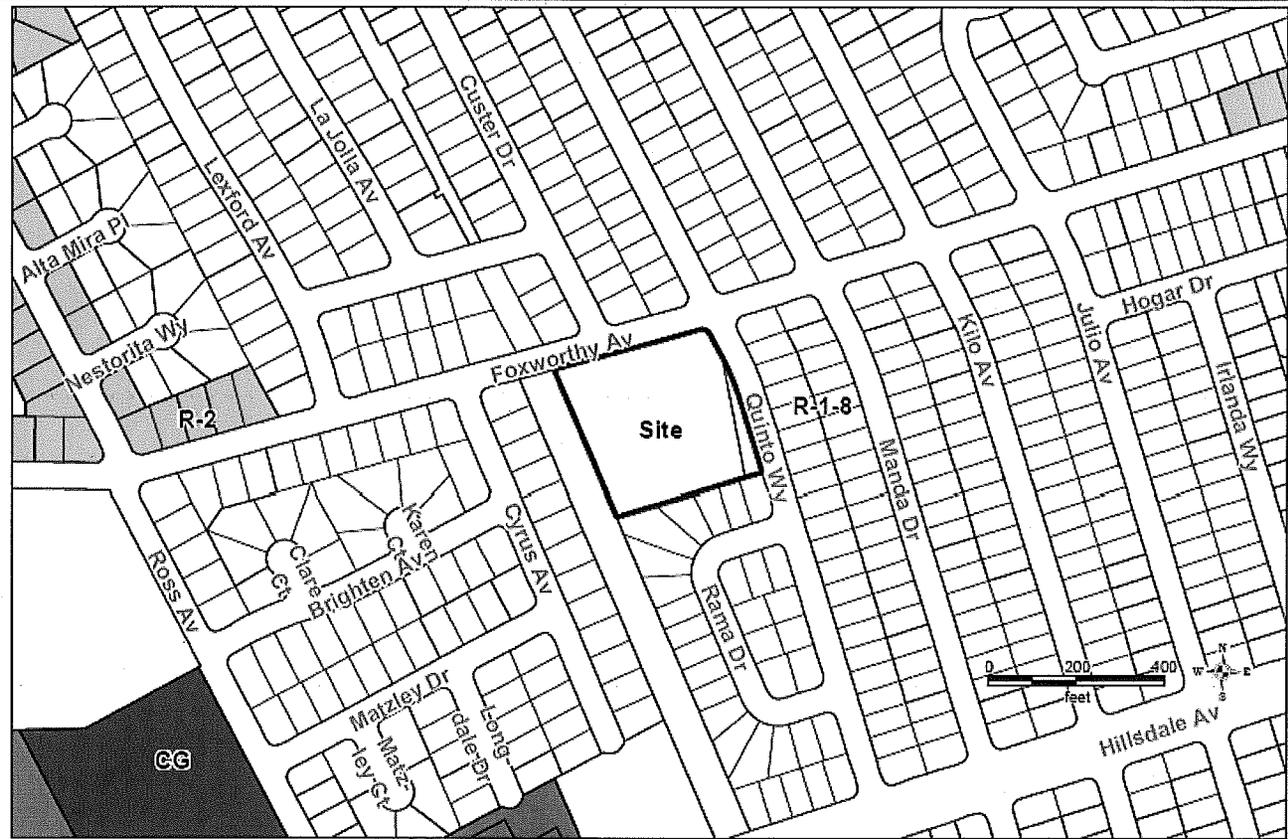
**Aerial Map**



### GENERAL PLAN



### ZONING



## **RECOMMENDATION**

Planning staff recommends approval of the proposed Conditional Use Permit for the following reasons:

1. The site is currently designated as Public/Quasi-Public on the San Jose 2020 General Plan Land Use/Transportation Diagram. This proposal conforms to this designation in that land uses, such as but not limited to, schools, colleges, corporation yards, homeless shelters, libraries, fire stations, governmental offices, churches, private schools and private hospitals are identified as being allowed under this designation.
2. The proposed project supports the intent of San Jose 2020 General Plan Neighborhood Identity Policy 4 that states, "Neighborhoods should include places for interaction among residents such as parks, community centers, schools, commercial areas, churches, and other gathering points."
3. The proposed project will conform to the regulations set forth in the Zoning Ordinance (Title 20).
4. The proposed use will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area, impair the utility or value of a property of other persons located within the vicinity of the site, or be detrimental to public health, safety, or general welfare.

## **BACKGROUND & DESCRIPTION**

On May 5, 2010, the applicant, David Delgado, headmaster for Cambrian Academy, applied for a Conditional Use Permit to allow an existing church facility to be used as a private middle and high school on a 2.89 gross acre site. The subject site is located in the R-1-8 Single-Family Residence zoning district. Private schools require a Conditional Use Permit in all residential zoning districts.

The existing church facility was constructed in the 1960's prior to requirement for a Conditional Use Permit for that use. The facility was originally constructed with several one and two story classrooms and small meeting rooms. *No new construction is proposed with this application.* The subject site is surrounded by single-family residential use on all sides and a PG&E easement along the west edge. The church uses a portion of the PG&E easement as part of their parking lot and play area.

### **Project Description**

Cambrian Academy is proposing to only use approximately half of the existing church classroom and assembly buildings for their middle and high school classes with a maximum enrollment of 95 students. School hours will generally be from 8:00 a.m. to 3:00 p.m. Monday to Friday, with physical education classes taking place off-site. The school office will remain open until 5:00 p.m. During this same time period the church has indicated that they may have between 3 and 200 people on site for maintenance or bible study activities. However, these church-related uses do not start until 9:00 a.m. or later which will lessen any traffic issues.

## **GENERAL PLAN CONFORMANCE**

The site is currently designated as Public/Quasi-Public on the San Jose 2020 General Plan Land Use/Transportation Diagram. This category is used to designate public land uses, including schools, colleges, corporation yards, homeless shelters, libraries, fire stations, water treatment facilities, convention centers and auditoriums, museums, governmental offices and airports. In addition, such institutions as churches, private schools and private hospitals are also appropriate for this designation. The proposed project supports the intent of San Jose 2020 General Plan Neighborhood Identity Policy 4 that states, "Neighborhoods should include places for interaction among residents such as parks,

community centers, schools, commercial areas, churches, and other gathering points.” Therefore, the proposed private school use is consistent with the San José 2020 General Plan.

## **ENVIRONMENTAL REVIEW**

Under the provisions of Section 15301, Existing Facilities, of the State Guidelines for Implementation of the California Environmental Quality Act, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended, in that the proposed school use involves no expansion of the existing buildings.

## **ANALYSIS**

The key issues analyzed for the proposed project are conformance to the Zoning Ordinance related to the following: 1) parking, 2) traffic circulation, and 3) land use compatibility.

### **Parking**

Per Zoning Ordinance, the parking space requirement for middle schools (grades 6-8) is one space per teacher plus one space per employee. The parking space requirement for secondary or high schools (grades 9-12) is one space per teacher, plus one space per employee, and one per five students. The Cambrian Academy has indicated that they will have 14 employees, 65 high school students and 30 middle school students on the site at any one time. This amount of students and staff would require 27 parking spaces.

As shown on the site plan, the parking lot stretches across two separate legal parcels and will be restriped to add additional spaces. The church property contains 118 parking spaces, while the PG&E easement contains an additional 42 parking spaces. Given the City cannot guarantee the PG&E land will be available for parking in perpetuity, the 42 spaces in the easement area have not been counted towards the total number of parking spaces. Therefore, with a total of 118 permanently available parking spaces there would be a surplus of 91 on-site parking spaces for the use of any church activities that might be conducted simultaneously with the private school use.

The existing Foxworthy Baptist Church operates mostly on Sunday and during the evening hours when the school would not be operating. However, the church does have at least three groups that meet during the week, with the Bible Study group of 200 people on Wednesdays being the largest. This bible study group has a parking requirement of 79 spaces.

Generally, the school and the church will not be operated at the same time, and there are no regularly scheduled school activities during the evenings or the weekends. The applicant has indicated that occasional after hour school events will be scheduled such that they do not conflict with the church operations and vice versa. Staff has included a condition in the Draft Resolution to this effect. Based on the above information, Planning staff has concluded that the project conforms to the parking requirements of the Zoning Code, as proposed.

### **Traffic Circulation**

Private school students typically come from throughout the region and are therefore usually driven to school in private vehicles. As parents wait in their cars to drop-off or pick-up children, vehicles may stack up onto neighborhood streets. In order to avoid off-site vehicle stacking, the school proposes to locate a drop off/pick-up area in the parking area around the back of the school. Vehicles will enter from Foxworthy Avenue, drop-off/pick-up on the designated spot located between Buildings B and C and will exit onto Quinto Way. Staff has conditioned the permit so that the operation of the school will adhere to

the above-mentioned drop off/pick up measures. The proposed amount of on-site parking and stacking area will minimize the potential for cars to stack on the public street. The school has indicated that they will require the parents of students to abide by the conditioned drop-off and pick-up procedures.

There is another school site (Steindorf Elementary School) located approximately ¼ mile to the west. This public school has been closed and is currently occupied with two privately-operated daycare centers. Area residents have expressed concerns that the hours of operations between the schools be coordinated so that the peak drop-off times are slightly offset from each other. Since the nearby school is used as a daycare center, their drop-off times are not concentrated within a short period of time as is typical with a school that has a precise start time. That said, in the event that a new private school opens or the facility re-opens as a public school, the drop-off times shall be coordinated and offset by at least 15 minutes. A condition to this effect has been added to the Resolution for this project.

Department of Public Works staff has determined that the traffic impact of the project on the public streets will be insignificant. For all of these reasons, together with the conditions contained in the Draft Resolution permit, staff has concluded that the proposed project will result in an orderly traffic flow and a safe drop-off operation.

#### Land Use Compatibility

The existing residences along the south and west side of the property have rear yards abutting the subject property. An existing parking lot and paved play area occupy these sides of the property. There is only a minimal landscaping buffer in the form of a few small trees and an existing fence along these property lines. Planning staff recommends that the landscaped buffer in this area be augmented by planting fast-growing screen trees and shrubs. Existing planting areas along the streets will be restored, as necessary, to include full and complete landscaping without bare areas.

The PG&E easement at the back edge of the parking area will be fenced/gated to help alleviate neighbors fears of students loitering or using this area as a cut through to nearby commercial destinations during the lunch hour. Staff has conditioned this permit to address fencing and provide a revised landscape plan showing a landscape design for the entire site, which is required to be implemented prior to the operation of the proposed school. From the above analysis, staff has concluded that, as conditioned, the proposed private school operations would not result in land use compatibility concerns.

#### PUBLIC OUTREACH/INTEREST

Planning Staff, along with the applicant, held a community meeting on July 29, 2010. Approximately 17 members of the neighborhood attended the meeting. The key issues included: vehicle traffic and safety, potential cut through pedestrian traffic along the PG&E easement, coordinating hours with other schools in the area, the need for additional crosswalks near the school area, and appropriate signage along Foxworthy Avenue near the site to identify the area as a school zone.

A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. This staff report is also posted on the City's website. Signage has been posted at the site to inform the public about the proposed permit. Staff has been available to discuss the proposal with interested members of the public.

**Project Manager:** Jodie Clark, AICP **Approved by:**  **Date:** August 2, 2010

Owner/Applicant:	Attachments:
David Delgado Cambrian Academy, Inc. 3333 Hilary Drive San Jose, CA 95124	Resolution Reduced plan set Correspondence from the neighborhood

## RESOLUTION NO. \_\_\_\_\_

Resolution of the Planning Commission of the City of San José granting, subject to conditions, a Conditional Use Permit to use certain real property described herein for the purpose of allowing a private school (grades 6-12) to occupy approximately 3,080 square feet of existing space at an existing church facility on a 2.89 gross acre site.

### FILE NO. CP10-026

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on May 5, 2010, an application (File No. CP10-026) was filed for a Conditional Use Permit for the purpose of allowing a Private School, grades 6-12, to occupy approximately 3,080 square feet of space (no new construction) at an existing church on a 2.89 gross acre site, on that certain real property (hereinafter referred to as "subject property"), situated in the R-1-8 Single Family Residence Zoning District, located on the southwest corner of Foxworthy Avenue and Quinto Way (1774 Foxworthy Avenue), San José, and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "Cambrian Academy, 1774 Foxworthy Avenue, San Jose, CA 95124" dated, April 27, 2010, last revised 7/30/10. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE:

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This Permit would allow a private middle and high school for up to 95 students with 14 staff members on the same site as an existing church.
2. The site has a designation of Public/Quasi-Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. The project site is located in the R-1-8 Single-Family Residence Zoning District.
4. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
5. The Zoning Ordinance requires a Conditional Use Permit for a private school in the R-1-8 Single-Family Residence Zoning District.
6. A total of 118 parking spaces will exist on the site after the proposed restriping.
7. The site is comprised of two legal parcels.
8. The proposed project includes an on-site drop-off area.
9. There is only a minimal landscaping buffer in the form of a few small trees and an existing fence along the rear and side property lines.
10. A community meeting was held on July 29, 2010. The key issues raised included vehicle traffic and safety, potential cut through pedestrian traffic along the PG&E easement, coordinating hours with other schools in the area, and the need for additional crosswalks near the school area and appropriate signage along Foxworthy Avenue near the site to identify the area as a school zone.
11. The former Steindorf Elementary School is located approximately ¼ mile to the west of the subject site.
12. The PG&E easement is located at the back edge of the parking area.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated facts and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in Title 20, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

## CONDITIONS

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and
  - b. Conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of issuance hereof by said Director, if within such time period, the establishment of the use has not commenced, pursuant to and in accordance with the provision of this Conditional Use Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the

San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval, may be imposed by the approval authority.

4. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
5. **Conformance with Plans.** Except as required by the subsequent Permit Adjustment, construction and development shall conform to approved plans entitled, "Cambrian Academy, 1774 Foxworthy Avenue, San Jose, CA 95124" dated, April 27, 2010, last revised 7/30/10 on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
6. **Permit Adjustment Required.** The applicant shall provide and agree to implement a Permit Adjustment prior to occupancy of the facility as a private school. The plans shall address the following:
  - a. A five-foot wide planting area with fast growing trees and shrubs shall be provided along the entire perimeters adjacent to residential properties.
  - b. Existing planting areas along the streets will be restored, as necessary, to include full and complete landscaping without bare areas.
  - c. Automatic irrigation shall be provided.
  - d. The PG&E easement at the back edge of the parking area will be fenced/gated to help alleviate neighbors fears of students loitering or using this area as a cut through to nearby commercial destinations during the lunch hour.
7. **Revocation.** This Conditional Use Permit is subject to revocation for violation of any of its provisions or conditions.
8. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
9. **Maintenance of Perimeter Walls/Fences.** The applicant shall, at all times, repair and maintain in good and upright condition, an uninterrupted solid wall/fence, at least 6-foot tall, along the interface of the parking lot/recreation area and existing single-family homes.
10. **Number of Students/Operation of Facility.** This facility shall be limited to a maximum of 95 students.

11. **Hours of Operation.** Hours of operation for the school shall be limited to 8:00 a.m. and 3:00 p.m. Monday to Friday. The school office can remain open until 5:00 p.m. In the event that the former Steindorf Elementary site opens as a new private school or the facility re-opens as a public school, the drop-off times shall be coordinated and offset by at least 15 minutes.
12. **Off-site stacking.** The applicant shall manage the student drop-off and pick-up area and access, between Buildings B and C as shown on the approved plan set, such that no vehicle(s) using the subject site shall cause stacking on any public street.
13. **Signage.** No new signage is approved as part of this permit. All signs shall conform to the applicable sections of Sign Ordinance of the City of San Jose.
14. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
15. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
16. **Simultaneous Use at Church and School.** The property owner shall closely regulate the simultaneous use of the church and the school so as not to create a parking issue and/or allow uses that exceed the City's parking requirements as codified in Title 20 (Zoning Ordinance).
17. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
18. **Refuse.** All trash areas shall be effectively screened from view, covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted. Trash areas shall be maintained in a manner to discourage illegal dumping.
19. **Landscaping.** Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines. (See additional landscaping requirements under Condition #6).
20. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
21. **Fire Flow.** Required fire flow for the site shall be provided to the satisfaction of the Fire Chief.
22. **Visible Street Numbers.** Street numbers shall be visible day and night from the nearest street, either by means of illumination or by use of reflective materials.
23. **Noise.** The sound level generated on this site shall not exceed 55 DNL at any property line used or zoned for residential purposes.
24. **Public Works Clearance for Building Permit(s):** Prior to the issuance of Building permit(s), Planning Permits or a Certificate of Occupancy, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.

- a. *Minor Improvement Permit:* The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
  - b. *Sewage Fees:* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
  - c. *Street Improvements:* Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
  - d. *Street Trees:* Replace missing street trees in empty tree wells or park strips along Quinto Way and Foxworthy Avenue and match existing trees per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects." Obtain a City of San Jose Department of Transportation street tree planting permit for any proposed street tree plantings.
25. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, CP10-026, shall be printed on all construction plans submitted to the Building Division.
  - b. *Construction Conformance.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms to all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.
  - c. *American With Disabilities Act.* The applicant shall provide appropriate access as required by the American With Disabilities Act (ADA).
  - d. *Mechanical Equipment.* No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise level from such equipment will not exceed 55 DBA at the residential property line.
26. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.

Approved this 11<sup>th</sup> day of August 2010 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Chairperson

ATTEST:  
Joseph Horwedel, Secretary

\_\_\_\_\_  
Deputy

**NOTICE TO PARTIES**

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*

**Clark, Jodie**

---

**From:** Brad Weissshahn [brad@weissshahn.net]  
**Sent:** Thursday, July 29, 2010 12:08 PM  
**To:** Clark, Jodie; ddelgado@cambrianacademy.org  
**Cc:** carol@weissshahn.net  
**Subject:** Cambrian Academy

Regarding the revising of the Conditional Use Permit for Foxworthy Baptist Church to Allow Cambrian Academy to have both a Jr. High and Sr. High on their campus.

I have three major concerns with having a Jr. and Sr. High at this location: 1Traffic Volume; 2 Traffic Speed; 3 Parking.

1 I am sure we will see neighborhood traffic increase both during the day and evening by having this school in the neighborhood. What are the limits being imposed on the school, i.e. number of students, staff etc.?

2 Since there will be a school in the neighborhood, the City should lower the speed limit from 30mph to 25mph. Not just a School Zone, which is only in effect during school hours, but 24/7 since there will most likely be an increase in evening activity as well. The Police Department should, on a regular basis, have speed enforcement officers assist parents, students and staff keep their speed down on their way to and from the school.

3 The School should provide adequate on-site parking, for students, staff and guests. The School should also have a written and enforced policy prohibiting student, staff and guests from parking off-site in the neighborhood.

I am interested to hear what thought The City of San Jose and Cambrian Academy has put into these three issues.

**Brad Weissshahn**  
**1775 Foxworthy Ave**  
**San Jose CA 95124**

**Clark, Jodie**

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**From:** Odell [marymadd@netzero.com]  
**Sent:** Monday, August 02, 2010 1:20 PM  
**To:** Clark, Jodie

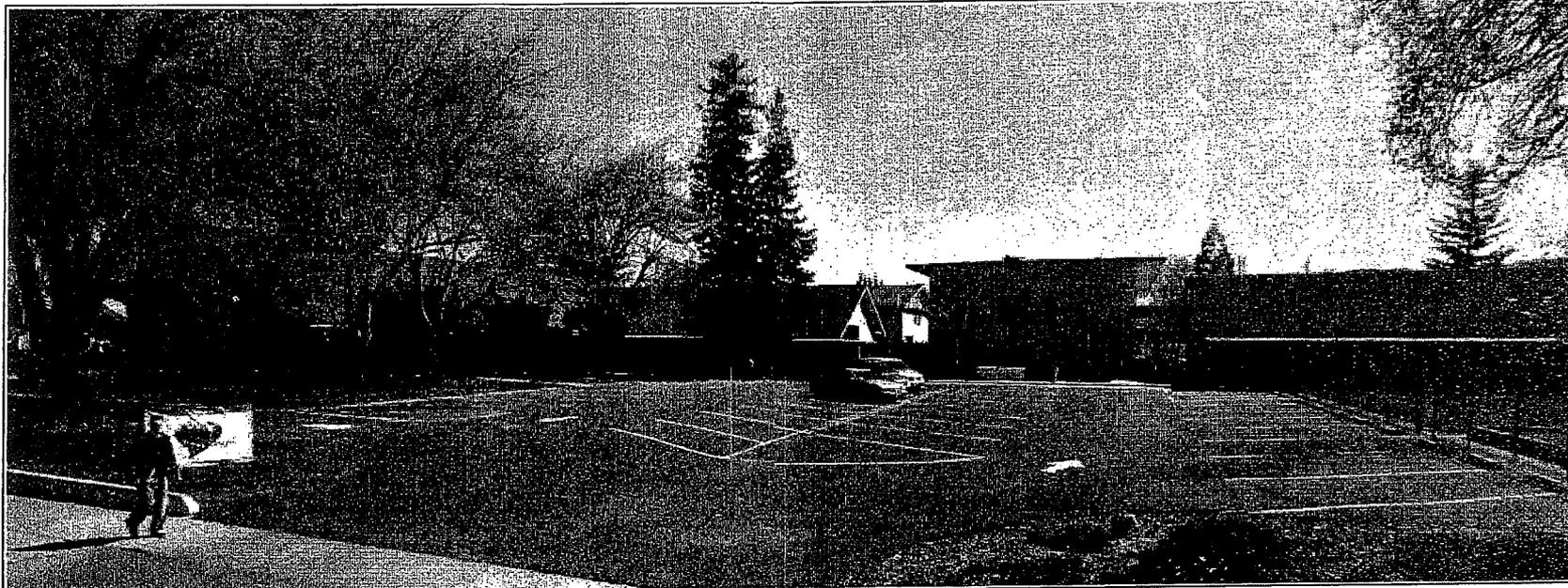
**Subject:** Conditional use permit for private middle and high school

I am unable to attend this meeting and need to know the impact of this. We live in the area 500 feet from the Foxwothy Baptist Church that is circled on teh map we receievd and need to understand teh impact of placing a school there. My husband is a medical marijuaan patient. Does this have any affect on this ?

Also, In addition placing a school on Foxworthy will only increase the bad traffic situaiton we have on this street now in addition to the foot traffic cause by students. What period of time will this conditional permit allow them to operate a scholl in this location ?

Thank you, Odell Deary

8/4/2010



# CAMBRIAN INTERNATIONAL ACADEMY

SHEET INDEX	PROJECT INFORMATION	VICINITY MAP
<p>A-0 SHEET INDEX, PROJECT DESCRIPTION, &amp; VICINITY MAP</p> <p>A-1 SITE PLAN</p> <p>A-2 EXISTING FLOOR PLANS</p> <p>A-3 EXISTING EXTERIOR ELEVATIONS</p> <p>A-3.1 EXISTING EXTERIOR ELEVATIONS</p>	<p><u>Cambrian International Academy</u></p> <ul style="list-style-type: none"> <li>- operates a private school serving grades 6 to 12.</li> <li>- is an approved member of the Western Association of Schools and Colleges.</li> </ul> <p>Cambrian International Academy (CIA) would occupy Foxworthy Baptist Church's (FBC) existing classrooms during daytime school hours, Monday - Friday and other times by special arrangement. FBC will continue to use said classrooms evenings and weekends. CIA has selected this specific location so that its rental payments will benefit FBC and the local community it serves.</p> <p>Further information regarding CIA is available at <a href="http://www.CambrianAcademy.org">www.CambrianAcademy.org</a> <a href="http://www.CambrianAcademy.org">http://www.CambrianAcademy.org</a>.</p> <p>David Delgado, Headmaster          Cambrian Academy          2050 Camden Avenue          San Jose, CA 95124          (408) 833-7050  <a href="http://www.CambrianAcademy.org">www.CambrianAcademy.org</a> <a href="http://www.CambrianAcademy.org">http://www.CambrianAcademy.org</a></p> <p>OCCUPANCY: EDUCATIONAL GROUP E</p> <p>PARKING: TOTAL OF 163 STALLS          2 VAN ACCESSIBLE STALLS          2 ACCESSIBLE STALLS          159 STANDARD STALLS</p> <p>FIRE SPRINKLERS: YES</p>	<p>MAPQUEST VICINITY MAP</p> <p>©2010 MapQuest, Portions ©2010 NAVTEQ</p>

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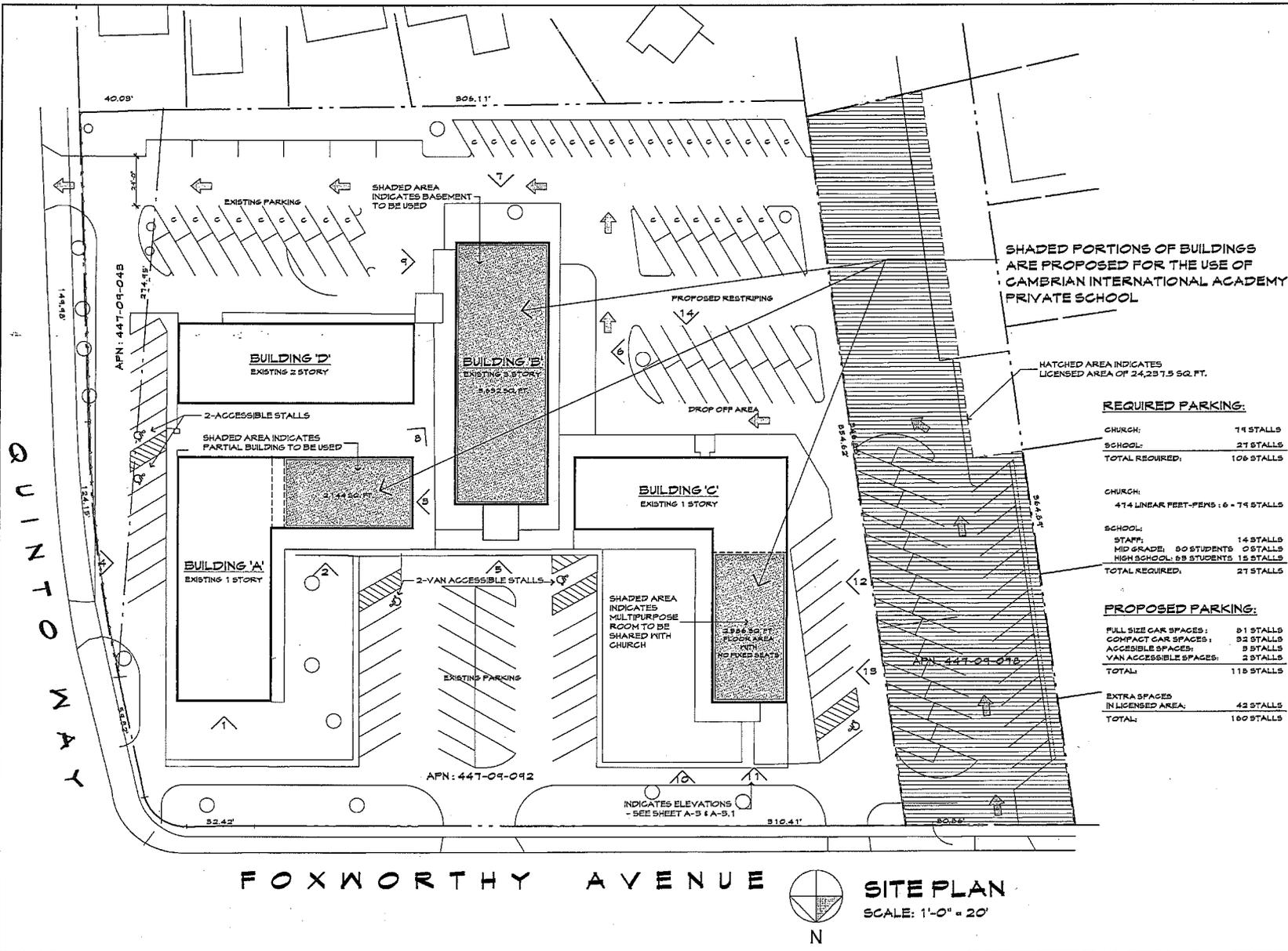
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REVISION  
 11/30/11

PROJECT  
**CAMBRIAN ACADEMY**  
**1774 FOXWORTHY AVENUE**

DATE: 04-2  
 SCALE: NOT TO  
 DRAWN BY: DZ  
 CHECKED BY: TE  
 ARCHITECT: TOM  
 PROJECT NO.: 11

SHEET NO  
**A-C**



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REVISION

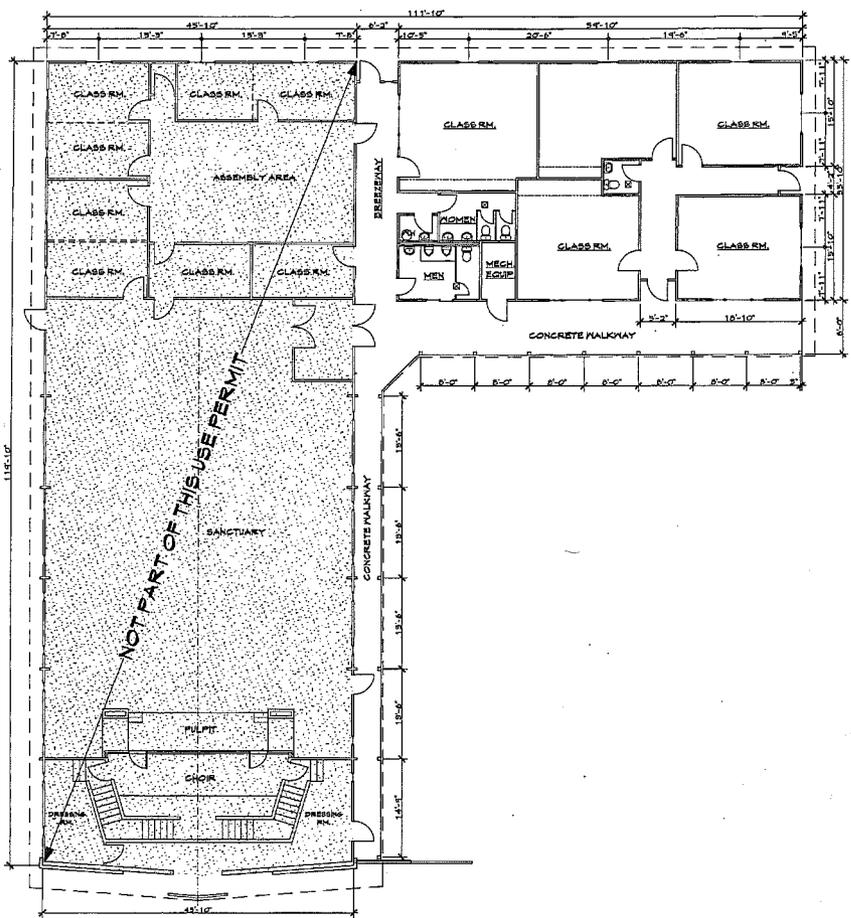
**CAMBRIAN ACADEMY**  
1774 FOXWORTH AVENUE  
SAN JOSE, CA 95124  
APN 447-09-012

**PROJECT:**

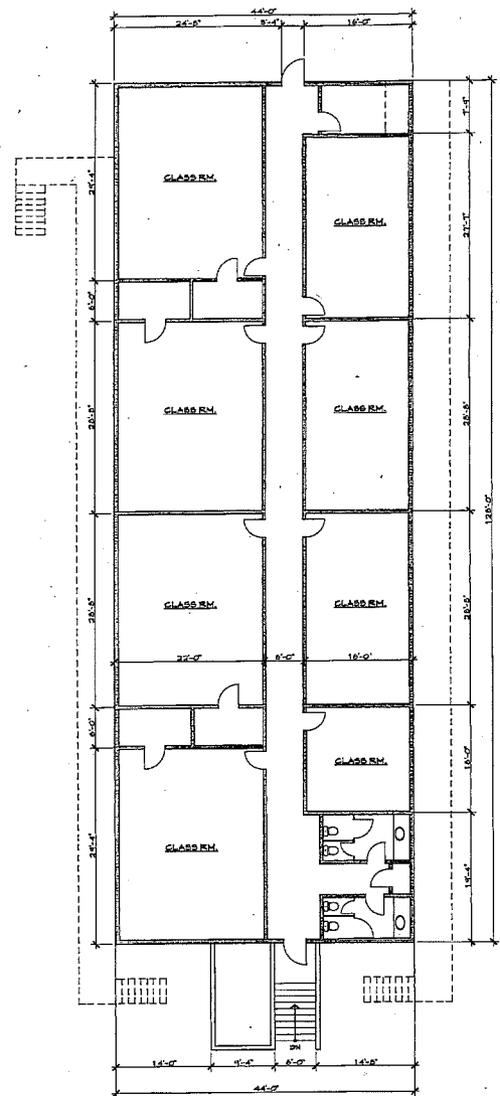
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**SCALE:** 1'-0" = 20'  
**DRAWN BY:** DZ  
**CHECKED BY:** ITS  
**ARCHITECT:** TOM SLOAN  
**PROJECT NO.:** 10525

**SHEET NO.:**  
**A-1**

**SITE PLAN**  
SCALE: 1'-0" = 20'



EXISTING FLOOR PLAN  
AT BUILDING 'A'



EXISTING BASEMENT PLAN  
AT BUILDING 'C'

8/4/2010 5:15 PM  
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MET  
DEE  
GRC

307 ORCHARD C  
CAMBRIDGE  
MA 02142

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REVISION

PROJECT: **CAMBRIGIAN ACADEMY**  
**1774 FOXWORTHY AVENUE**

DATE: 04-2  
SCALE: 1/8"  
DRAWN BY: DZ  
CHECKED BY: TS  
ARCHITECT/ITOM  
PROJECT NO: 10

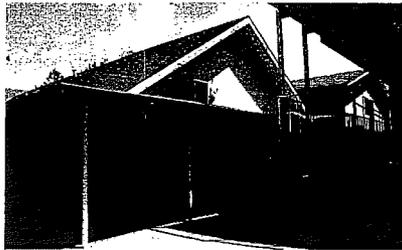
SHEET NC  
**A-2**



1 NORTH ELEVATION AT BUILDING 'A'



2 DETAIL AT NORTH ELEVATION AT BUILDING 'A'

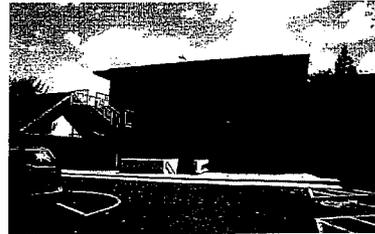


3 DETAIL AT WEST ELEVATION AT BUILDING 'A'



4 EAST ELEVATION AT BUILDING 'A'

**BUILDING 'A'**



5 NORTH ELEVATION AT BUILDING 'B'



6 WEST ELEVATION AT BUILDING 'B'



7 SOUTH ELEVATION AT BUILDING 'B'



8 PARTIAL EAST ELEVATION AT BUILDING 'B'



9 PARTIAL EAST ELEVATION AT BUILDING 'B'  
SOUTH ELEVATION AT BUILDING 'D'

**BUILDING 'B'**



**METRO  
DESIGN  
GROUP**

807 ORCHARD CITY DRIVE  
SUITE 107  
CAMPBELL, CA 95008  
PH: 408/351-1011

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REVISION


**CAMBRIAN ACADEMY**  
1774 FOXWORTHY AVENUE  
SAN JOSE, CA 95124

PROJECT:

DATE: 04-27-10

SCALE: N.T.S.

DRAWN BY: D.Z.

CHECKED BY: ITS

ARCHITECT: TOM SLOAN

PROJECT NO.: 10525

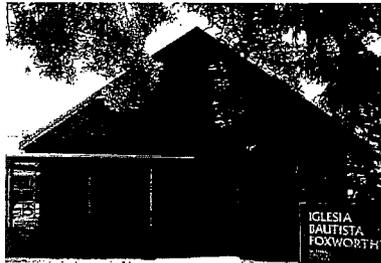
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**A-3**

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10 NORTH ELEVATION AT BUILDING 'C'



11 DETAIL AT NORTH ELEVATION AT BUILDING 'C'



12 WEST ELEVATION AT BUILDING 'C'



13 DETAIL AT WEST ELEVATION AT BUILDING 'C'



14 SOUTH ELEVATION AT BUILDING 'C'



15 DETAIL AT SOUTH ELEVATION AT BUILDING 'C'



16 EAST ELEVATION AT BUILDING 'C'



17 DETAIL AT EAST ELEVATION AT BUILDING 'C'



18 DETAIL AT NORTH EAST CORNER AT BUILDING 'C'

BUILDING 'C'



METRO  
DESIGN  
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301 ORCHARD CITY DRIVE  
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CAMPBELL, CA 95008  
PHONE 408-311-1011

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REVISION

PROJECT:  
CAMBRIAN ACADEMY  
1774 FOXWORTH AVENUE  
SAN JOSE, CA 95124

DATE: 04-27-10  
SCALE: N.T.S.  
DRAWN BY: D.Z.  
CHECKED BY: TS  
ARCHITECT: TOM SLOAN  
PROJECT NO: 10925

SHEET NO:  
A-3.1

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