

Attachment E

California Institute of Technology

1200 E. California Boulevard, CA 91125

September 6, 2006

Dear Caltech Neighbor:

Caltech values its history of good relations and constructive communications with all of its neighbors and remains committed to a decades-long practice of taking available steps to avoid or reduce campus impacts on surrounding neighborhoods. As a result, in the wake of three July meetings attended in all by 28 residents who live south of campus and 11 campus officials, the Caltech administration is taking a number of steps aimed at improving the parking situation on Lombardy, Holladay and Arden roads. Caltech invites you to attend a meeting at **7:00 p.m. on Thursday, Sept. 14, in the Caltech Athenaeum Main Lounge** to discuss the steps being taken, which include the following:

The administration is committing to expanded internal communication about the impact of employee and student parking in your neighborhood – and the need for the Caltech family to act in a concerted community-conscious fashion. Regular written and web-based messages will be conveyed to everyone who works or goes to school here, as well as to frequent visitors who utilize campus facilities. Informational leafleting of cars parked on Arden, Holladay and Lombardy roads will be resumed, with the flyers reminding vehicle owners of public safety and health issues related to parking in the neighborhoods. In addition, Caltech administrators will hold face-to-face meetings with employee and student groups. The robust parking incentives program already in place – <http://www.parking.caltech.edu/rideshare.html> – for those using more environmentally sensitive modes of commuting than driving alone to campus will also be more energetically publicized on campus.

The Athletic Department has undertaken an awareness campaign with both its on-campus and off-campus users to inform them about the location of 10 free 90-minute campus parking spaces near the gym. These on-campus spaces, which have been set aside to eliminate the number of gym visitors who might otherwise park along Arden Road, can be expanded based on monitored need. Parking in the spaces is enforced with chalk marking at least five times each weekday, and parking citations are issued for violators. In addition, this fall Caltech will repeat its 2006 springtime monitoring of gym users who park off campus and will restrict business-hours access to Braun Gym from Wilson Avenue if a problem on Arden is evident.

As a result of a concern raised at one of the neighbor meetings, the contractors operating the valet service at The Athenaeum have been instructed not to park

guests' vehicles anywhere other than in campus spaces or along specified portions of California Boulevard and Hill Avenue immediately abutting – but no longer parking across the street from – Caltech property.

Nine days after the last meeting with neighbors, Caltech set aside on-campus parking for all of the South Undergraduate Houses construction contractor's employees and subcontractors. The contractor agreed to emphasize to his workers and subs of the importance Caltech attaches to full utilization of these spaces -- and the need for these workers not to use public street parking, especially in the neighborhoods. Within days, the results were impressive along California Boulevard, but Caltech will monitor the contractor's compliance effort through the project's completion late this year.

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While Caltech's administration and Board of Trustees agree the Institute can no longer afford to provide unlimited free campus parking, several directly related issues also raised by neighbors have been investigated. As a result, the campus parking committee chairman has agreed to put the idea of a scaled parking-fee structure back on the agenda this fall and make a recommendation to the administration based on the outcome of that review. In addition, when undergraduates fully re-occupy the South Undergraduate Houses their compliance with on-campus parking restrictions will be monitored and, if a compliance problem is discovered, the parking committee will look at additional measures. At present, there is no evidence undergraduates are part of the problem.

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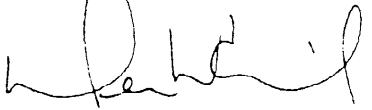
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Sincerely,

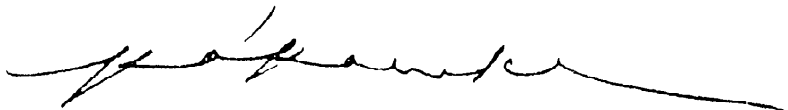
Dean Currie

Vice President for Business and Finance



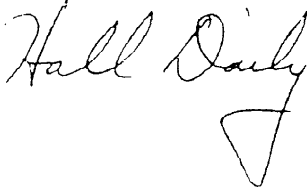
Robert L. O'Rourke

Vice President for Public Relations



Hall Daily

Assistant Vice President for Government and Community Relations



cc: Sid Tyler, City Council
Lanny Woo, City Planning Staff

Attachment F

E CALIFORNIA BLVD

S CATALINA AVE

S WILSON AVE

CORNELL RD

Pinais

ARDEN RD

ROSALIND RD


CAMERON DR

EDMUNDO RD

HOLLADAY RD


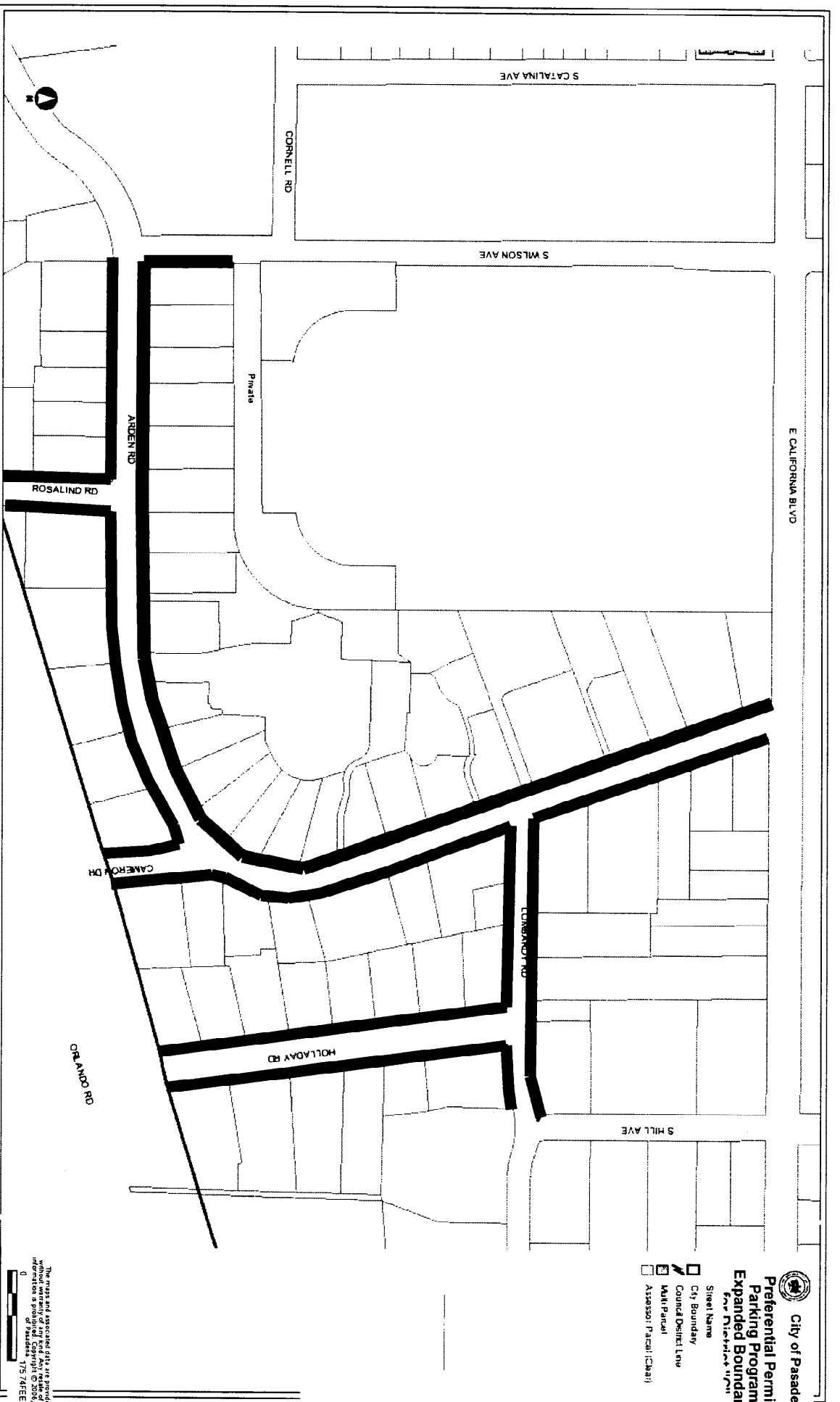
CLARENCE RD

S HILL AVE

 **City of Pasadena**
Preferential Permit
Parking Program
Expanded Boundary
for Residents with

- Street Name
- City Boundary
- Council District Line
- Multi-Parcel
- Assessor Parcel (Shape)

The maps and associated data are provided without warranty of any kind. Any reliance on this information is a risk of Pasadena. 1/5/17 EET

Attachment G



CALIFORNIA INSTITUTE of TECHNOLOGY

Hall P. Daily
Assistant Vice President

March 23, 2007

Dear Mayor Bogaard and Members of the City Council:

On behalf of the California Institute of Technology, I ask that the City Council find that Caltech is not in violation of Conditional Use Permit (CUP) #4253 for its use of the California Boulevard parking structure. Caltech therefore asks the City Council to reverse the decisions of the Hearing Officer and the Board of Zoning Appeals and to permit Caltech to continue operating the existing parking structure in accordance with the terms of the original CUP.

On June 21, 2006, a City of Pasadena Hearing Officer modified the CUP for an existing subterranean parking structure on the Caltech campus to add conditions requiring Caltech to meet with surrounding residents to address their concerns regarding parking by Caltech personnel on public streets, to submit a plan to the City to provide for the full use of the existing parking structure, and to be subject to further review by the City if the City does not deem the plan to be effective. Caltech appealed the modification of the CUP to the City Board of Zoning Appeals, which upheld the Hearing Officer's decision on September 20, 2006. Caltech asked the City Council to call up the decision of the Board of Zoning Appeals for review, and the City Council agreed to do on October 9, 2006.

The basis for adding the three conditions to said CUP no longer applies. In spite of its opposition to these new conditions, Caltech has acted in good faith with regard to the hearing officer's finding by meeting with its neighbors, adding and implementing new parking mitigations, documenting the growing utilization of the structure, cooperating with the City and neighbors regarding the expansion of a Preferential Permit Parking zone, and continually updating the campus parking strategy – or, what the zoning hearing officer termed a “plan.”

For the record, the average weekday peak utilization rate for the 682-space* structure was calculated for February 2006 and again for February 2007. The results are based on several** constants

and variables, and one exclusion. In February 2006, the utilization rate was 50%, and it climbed to 59% this February. The resulting *planned* surplus will be adequate to accommodate (a) the Cahill Center construction contractors' vehicles, which are required to be parked on campus and which will grow from zero today to 125 by late 2007, and (b) the eventual relocation of some long-term student spaces from elsewhere on campus. By late 2007, utilization should climb to roughly 80% for the duration of Cahill construction.

* — Spaces **excluded** from the count of the 697-space structure are 15 handicapped spaces. Hence, a baseline of 682 spaces was used to determine utilization.

** — The **constants** turned out to be 37 designated spaces for carpoolers and 100 reserved spaces (purchased at twice the cost of the standard parking fee); the utilization of these 137 spaces averages 100, and it has not varied from 2006 to 2007. The **variables** are unrestricted paid "commuter" and "student" spaces.

On March 5, 2007, the fifth Caltech-neighbors meeting since the zoning hearing last summer, 13 residents attended. They heard a recap of actions taken by Caltech over the past several years and received up-to-date information from the City Transportation Department about their Preferential Permit Parking zone expansion. With the installation of PPP signage this spring and with enforcement of hourly and permit parking restrictions in their area, the neighbors' concerns about spillover parking from the Caltech campus should be favorably addressed.

Caltech's parking strategy originated with the July 1989 approval of the campus Master Plan, which codified an agreement between Caltech and the City of Pasadena that the campus parking strategy "should allow for the construction of more parking than might be suggested by [formula-driven] . . . estimates" of expected on-campus parking demand "to account for the anticipated loss of all on-street [off-campus] parking." p.77 As a result, Caltech was granted an entitlement to build a number of geographically distributed parking structures on the periphery of its campus, including the California Boulevard structure, which is the subject of the Council's review. In addition, the City interpreted the Master Plan as effectively obligating the Institute to construct sufficient parking capacity (a) to replace surface parking spaces subsumed by construction of new campus buildings and (b) to create the replacement capacity before such construction would be permitted. At least two parking structures were built on the basis of this interpretation: (1) the southern Wilson Avenue structure prior to construction of the Broad Center and (2) the California Boulevard structure prior to the impending construction of the Cahill Center. The prior land use of these buildings' footprints was surface parking.

In 2001, Caltech upgraded its campus parking registration program to provide for more effective enforcement of on-campus parking violations and to ensure that Caltech parking spaces were being used only by its campus employees, students, or visitors. The effort was part of a concerted effort to

improve parking planning and allocation policies. Simultaneously, a number of incentives were initiated to reward commuters who opted to use pooling or public transit by giving them nearer-workplace spaces or cash subsidies. The aim of the incentives program was to reduce the number of drive-alone commuters and thereby to delay the costly construction of additional parking capacity. The program succeeded, but only for a few years. As complaints began to rise from employees about the scarcity or lack of proximity of available spaces, so too did neighbor complaints about Caltech employees parking on streets south of campus – the last unregulated parking zone near the campus. Such neighbor complaints were hardly new. The City’s summary of comments from 16 neighborhood meetings in February-June 1987 included a “Predominant” call for an “attempt to reduce Caltech staff, student and visitor parking on surrounding streets by providing sufficient on-campus parking and by encouraging the City to enforce existing street parking regulations.”^{p 26} One result of this was the construction of the Holliston Avenue parking structure shortly after the approval of the Master Plan two years later.

In fact, the Master Plan allows for creation of a parking capacity of “more than the projected need”^{p 26}, and the City has interpreted this as a requirement for Caltech to maintain a supply that is greater than the envisioned demand at any given time. Thus, for 16 years the Master Plan strategy was driven by a policy of *induced demand* – i.e., as supply grows, the more that supply is consumed. While consistent with the economic theory of supply and demand and also with conventional planning at the time the Master Plan was approved, this idea has been cited more recently as having a negative impact on local community efforts to control the unpopular impacts of automotive transportation. The City Council heard a report to this effect on Feb. 26, 2007.

Parking spaces on campus grew scarcer in late 2003, especially after the addition of a Preferential Permit Parking zone east of Caltech and Polytechnic School. With the prospect that funding for the Cahill Center (south of California) might be raised within the next few years, Caltech sought to exercise its entitlement to build a parking structure south of California Boulevard. City staff was well aware that adding 700 spaces to the campus’ parking capacity would position Caltech with a surplus for years to come, and this was affirmed in the Supplemental EIR that accompanied the Master Plan amendment approved by the Council in December 2006. Caltech’s request to place the California Boulevard structure farther away from its neighbors, however, resulted in City staff deciding not to exercise its discretionary authority to approve the relocation and instead to compel Caltech to get a CUP for this alteration of the entitlement. (It is this CUP – or, more accurately, the Board of Zoning Appeals’ support of a zoning hearing officer’s amendments to the CUP – that is the subject of the City Council’s review.) Near the end of this structure’s construction, the Caltech Board of Trustees determined that serious measures were required to address campus

budget challenges and approved a parking fee as one of many measures. Interestingly enough, a primary finding in the aforementioned Feb. 26 parking report to the Council is relevant:

“Dozens of studies have now demonstrated that when parking is given away free of charge, people drive more. The amount of extra driving induced is substantial.”

With the imposition of the parking fees in 2005 (for employees) and 2006 (for students), Caltech initiated a number of additional incentives to encourage alternative modes of commuting to campus:

- Frequent walkers and bike riders could register to receive three free daily parking permits per month.
- The van pool subsidy was increased from \$25 per rider per month to \$50 per rider per month, and each rider could receive three free daily permits per month.
- The public transit subsidy was increased from \$20 per month to \$25 per month.
- Carpoolers' cumulative fee reduced to \$30 per month, and carpools also receive three free daily permits, which can be used at any time.

The imposition of the fees resulted in an estimated reduction of several hundred drive-alone commuter trips to campus, but while discernible the estimate is mostly anecdotal. That it also increased the number of campus employees parking in off-campus unrestricted areas was also discernible. After residents in those unrestricted-parking areas received temporary Preferential Permit Parking (PPP) privileges during the 2006 Showcase House event, one residential block opted to continue in the permit zone; all but one of the other affected blocks joined suit after the Council's approval in December of the Transportation Department's TAC-endorsed PPP extension proposal. By early spring, the permit-only signs should be posted throughout the area. This includes a block on which Caltech is majority property owner; the Institute signed the petitions to make good on a promise to its neighbors during one of last summer's meetings with them.

At the summer 2006 neighbor meetings after the zoning hearing officer's decision, Caltech collected and reviewed a number of complaints and suggestions from its neighbors. The Institute responded to its neighbors in writing (**see attached letter**) and at a September 2006 meeting with parking strategy changes that had been undertaken, in addition to the reasons why some suggested changes could not be pursued. Among the points made were:

1. Caltech's on-campus parking capacity has cycled through bare to large surpluses in the wake of its construction of four parking structures in the past quarter-century. During most recent times when parking reached a state of scarcity, Caltech Security officers frequently placed

flyers on windshields of cars parked in near-campus neighborhoods where Caltech had received complaints from neighbors. The flyers asked motorists (a) to park in available campus spaces if they were campus employees or students, and (b) to avoid parking near or across from neighbors' driveways, especially if they're driving high-bay vehicles, and (c) to find alternatives to parking in campus neighborhoods. This practice, undertaken on several occasions during the early and late 1990's and again in 2004-05, was resumed in mid-2006.

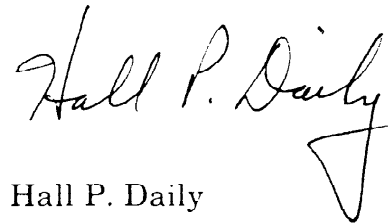
2. For many years, Caltech has offered a variety of parking incentive programs for vanpools and carpools, and more recently for commuters who use public transportation and bicycles, or who walk to work/school (as noted above).
3. Between 2004 and mid-2005, Caltech Security began calling City parking enforcement whenever any car was reported or observed parked in red zones on campus neighbors' streets, especially near driveways. These calls have been routinely made (a) if either Security or the Government & Community Office was called with a complaint of this sort, or (b) if Security officers patrolling campus perimeters observe such infractions. This practice, discontinued in 2005, was reinstated after the June 2006 CUP hearing.
4. Starting more than two years ago, campus employees were approached periodically – on campus and in off-campus neighborhoods – to encourage them to park on campus. In addition, several “all-hands” meetings have been held with groups of employees who work in buildings nearest the most affected area south of campus.
5. The assignment of 90-minutes-free surface parking spaces designated near the gyms was expanded, based on documented usage, in order to reduce the impact of gym visitors who might still park off campus. The Caltech Athletic Department increased gym users' awareness of these spaces by advertising them more prominently in the gym lobby and by talking to regular gym visitors.
6. When the Showcase House event resulted in temporary permit parking and one block extended the zone through 2006, Caltech offered the City the use of the campus Security Office as a satellite parking permit pick-up center for south-of-campus residents.
7. Last spring Caltech agreed to support the lifting of 2-hour parking restrictions along the west side of Arden Road nearest California Boulevard – at the request of Holladay Road neighbors. This block will be included in the expanded PPP zone this spring, at the request of Arden Road neighbors.
8. In response to a request by Councilmember Sid Tyler, Caltech explored other area universities' methods of controlling parking impacts along their borders. Caltech found only three: installation of parking meters (USC), hourly restrictions (many), or permit parking zones (UCLA, among others).

9. At the request of neighbors, Caltech explored daytime closure of the front door of its Morrisroe-IPAC building, which would force employees to walk much farther to enter their workplace if they park off campus. Following a review, this option was found to be infeasible for fire safety reasons.
10. Also at the request of a neighbor, Caltech considered the idea of installing a fence that would restrict daytime access to the Braun Gym by forcing gym visitors who park off campus to walk much farther to enter the gym. For several reasons, especially the implementation of the temporary PPP zone along the block of Arden Road nearest the gym, Caltech has not seen a recurrence of this off-campus parking activity by gym visitors.
11. At the recommendation of City staff, Caltech has explored an opt-out system for paid parking that would establish automatic payroll deductions for parking fees for Caltech employees unless they chose to opt out. Based on the state Labor Code, Caltech has found its present opt-in process for all voluntary payroll deductions is necessary because an employee's affirmative action (and a signature) is needed for any payroll actions.
12. Caltech has established a requirement that would require all future major construction contractors to require their employees and subcontractors to park on campus – and not in surrounding neighborhoods. The contract for the building contractor for the Cahill Center for Astrophysics included this provision.
13. Immediately after the July neighbor meetings, Caltech met with the contractor for the South Undergraduate Houses construction work and won his support to get his employees and subcontractors to park on campus. This effort proved only partially successful, and it further underscored the need for a contractual obligation (#12 above).
14. Caltech established stricter guidelines for where valet-parked cars of Athenaeum visitors may be parked: parking in any of the affected neighborhoods south of California is forbidden.
15. At the request of neighbors, Caltech explored the proposition that it simply “require” all employees and students to park on campus. Sections of the state Labor Code make that practice illegal or unenforceable for a private university.
16. At the request of neighbors, Caltech's parking committee chair considered changes in the parking fees, but no fee adjustment proposals were found to have significant potential for mitigation of off-campus parking.

As mentioned above, despite Caltech's objections to the modification of the CUP, Caltech has met with the surrounding residents on a number of occasions, and has cooperated with the City's Transportation Department and neighboring residents to implement a preferential parking program designed to restrict parking by Caltech personnel on surrounding public streets. Caltech has also adopted a number of measures to encourage Caltech

students, employees, and outside contractors to park in Caltech parking facilities. Caltech feels that the measures it has implemented have substantially alleviated the parking problems on the streets around Caltech and that the modification of the CUP is accordingly not only inappropriate but is also unnecessary. Caltech therefore asks the City Council to reverse the decisions of the Hearing Officer and the Board of Zoning Appeals and to permit Caltech to continue operating the existing parking structure in accordance with the terms of the original CUP.

Sincerely,

A handwritten signature in cursive script that reads "Hall P. Daily". The signature is written in black ink and is positioned above the printed name.

Hall P. Daily

enc: Sept. 6, Sept. 13, and Sept. 28, 2006 correspondences

cc: Jane Rodriguez, City Clerk
Richard Bruckner, City Planning & Development
Lanny Woo, City Planner
Paul C. Jennings, Provost, Caltech
Robert L. O'Rourke, Vice President, Caltech
Dean Currie, Vice President, Caltech

California Institute of Technology

1200 E. California Boulevard, CA 91125

September 6, 2006

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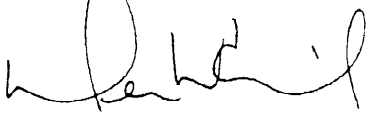
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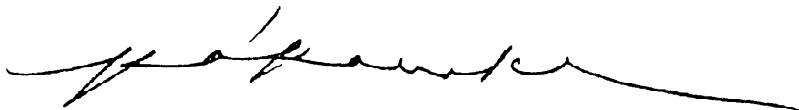
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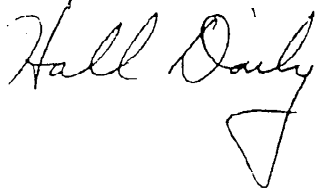
Robert L. O'Rourke

Vice President for Public Relations



Hall Daily

Assistant Vice President for Government and Community Relations



cc: Sid Tyler, City Council
Lanny Woo, City Planning Staff

Allen Matkins

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Direct Dial: 213 955 5504 File Number: C1268-002/LA731136.02

September 13, 2006

VIA FACSIMILE AND HAND DELIVERY

J. Guadalupe Flores, Chair
Gary Johnston, Commissioner
Margaret McAustin, Commissioner
Diana Peterson-More, Commissioner
Terry Tornek, Commissioner
City of Pasadena
Board of Zoning Appeals
175 North Garfield Avenue
Pasadena, CA 91109

Re: Conditional Use Permit #4253
California Institute of Technology
1200 East California Boulevard

Dear Members of the Board of Zoning Appeals:

This firm represents the California Institute of Technology ("Caltech") in connection with its appeal of the decision of the Hearing Officer to modify Conditional Use Permit #4253 (the "CUP") for the construction of a three-level, subterranean parking structure (the "Parking Structure") located at 1200 East California Boulevard on the Caltech campus. The CUP was originally approved on October 3, 2003. The Parking Structure has since been constructed and operated in compliance with the conditions of approval of the CUP. Notwithstanding the absence of any violations of the conditions of approval of the CUP, on June 21, 2006 the Hearing Officer modified the CUP to add the following new conditions:

10. The applicant (Caltech) shall conduct a neighborhood meeting to clarify concerns of neighboring residents. The meeting shall be conducted prior to creating the development of the plan for use of the parking structure, and must occur within 40 days of the date of this hearing.
11. Caltech shall within 90 days of this hearing develop a plan for the full use of the existing parking structure. The plan shall contain strategies and actions that will be taken to insure the full use of the 700 space parking structure. When the plan is complete it shall be submitted to the Zoning Administrator and the Department of Transportation for review

J. Guadalupe Flores, Chair
September 13, 2006
Page 2

and approval. When approved the plan shall be implemented. The plan may include but not be limited to the following strategies:

- a. Reduction or elimination of parking fees for parking in the parking structure.
- b. Provision of a (free) shuttle service between the parking structure and the main area of the campus.
- c. Assignment of specific parking spaces in the parking structure to students, faculty, and employees.
- d. Provide additional guards and security to make those that use the parking structure feel that they are safe in the parking structure, and traveling between the parking structure and the main campus.

12. If within 180 days of this hearing it is determined by the Zoning Administrator that the plan is not effective, this Conditional Use Permit shall be set for public hearing.

The ostensible justification for the modification of the CUP was to address complaints from neighboring residents regarding the perceived underutilization of the Parking Structure and the number of Caltech employees, faculty, and students parking on surrounding public streets. As stated in greater detail below, **the City of Pasadena lacks authority to modify the CUP in the absence of any present violations of existing conditions of approval.** Moreover, the decision of the Hearing Officer is not supported by any of the findings of fact required by the Pasadena Municipal Code ("PMC") to justify the revocation or modification of a conditional use permit. The finding on which the Hearing Officer relied to support his decision relates to the purported underutilization of the Parking Structure, which **does not** relate to any of the conditions of approval for the CUP. In the complete absence of a present violation of existing conditions of approval and the failure to make the necessary findings of fact, the modification of the CUP by the Hearing Officer is inappropriate and unauthorized.

Notwithstanding the City's lack of authority to impose new conditions for the CUP, Caltech is aware of the concerns of the neighborhood regarding the use of street parking by Caltech personnel and has talked to and met over the course of several months with concerned neighbors and has implemented numerous measures to address their concerns. A partial list of these measures is set forth in detail below. Furthermore, Caltech is prepared to voluntarily meet with City officials and concerned neighbors to pursue implementation of additional measures to resolve the parking problem. Caltech is unwilling, however, to accept the measures imposed by the Hearing Officer as new conditions to the CUP and deems such an approach impermissible as a matter of law. For the following reasons, Caltech therefore requests that you grant its appeal and reverse the Hearing Officer's modification of the CUP.

I. The Modification of the CUP is Not Authorized Because Caltech is in Full Compliance with the CUP.

Since 2003, Caltech has relied on the validity of the CUP to construct, operate, and maintain the Parking Structure in order to provide parking services to Caltech personnel in accordance with the applicable City land use plans and the Caltech Amended Master Plan adopted by the Pasadena City Council in 1999 (the "Caltech Master Plan"). Caltech's reliance on the rights set forth in the CUP are protected as vested property rights under California law, and such rights cannot be modified, revoked, or otherwise amended unless such action is consistent with state and local law. Under state law, once a conditional use permit is issued, it runs with the land and cannot be revoked without a valid notice and hearing, and such revocation must be reasonable. See, e.g., *County of Imperial v. McDougal* (1977) 19 Cal.3d 505, 510; *Community Development Commission v. City of Fort Bragg* (1998) 204 Cal.App.3d 1124, 1131-1132.

Under the PMC, a public hearing to review a discretionary permit, including a conditional use permit, may be held only if the Zoning Administrator determines that there are "reasonable grounds" for the revocation or modification of such discretionary permit.¹ A conditional use permit may only be modified if "[t]here are sufficient grounds to justify revocation that can be corrected by modifying existing conditions or imposing new or additional conditions."² As set forth below, the Parking Structure complies with the conditions of approval for the CUP. Because Caltech has not violated any of the conditions of approval for the CUP, there are no grounds to justify revocation of the CUP. Because there are no grounds to justify revocation of the CUP, the City has no authority to modify the conditions of the CUP.

According to Section 17.78.090(F)(1) of the PMC, a conditional use permit may not be revoked unless one of the following findings of fact can be made by the Zoning Administrator. Here, the Hearing Officer failed to make any of the following findings of fact and based his determination solely on the grounds that the Parking Structure is currently underutilized, and Caltech personnel are parking on City streets. As set forth below, the finding of the Hearing Officer does not conform to the requirements of the PMC. The required findings are as follows:

- a. **Circumstances under which the permit or entitlement was granted have been changed by the applicant to a degree that one or more of the findings contained in the original permit or entitlement can no longer be made in a positive manner and the public health, safety, and welfare require the revocation;**³

The circumstances under which the CUP was granted have not been changed by Caltech such that any of the findings contained in the CUP can no longer be made in a positive manner.⁴ Further,

¹ PMC §§ 17.78.090(E)(1) and 17.80.020 (def. discretionary approval).

² PMC § 17.78.090(E)(3).

³ PMC § 17.78.090(F)(1)(a).

⁴ See CUP, Attachment A, Specific Findings and Findings for Tree Removal.

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the health, safety, and welfare of the public do not require revocation or modification of the CUP. The continued use, operation, and maintenance of the Parking Structure are consistent with the PMC and the Caltech Master Plan and fulfill the parking needs of the campus community while protecting the surrounding neighborhood. Specifically, the operation of the Parking Structure authorized by the CUP is consistent with Caltech Master Plan provisions to locate parking at three main entry points of the campus, including California Boulevard.⁵ As required by the CUP, the Parking Structure has been designed to be concealed and to be integrated with the surrounding landscape in accordance with applicable provisions of the Caltech Master Plan and the findings supporting approval of the CUP. The original staff report adopted as part of the approval of the CUP stated that the Parking Structure would be "more advantageous to the surrounding neighborhood" because it would be located away from the residences on Arden Road and would reduce the potential noise associated with the exhaust system.⁶ In fact, **the CUP was only required for the Parking Structure because Caltech deviated from the original location set forth in the Caltech Master Plan in order to place the Parking Structure farther away from residential neighborhoods.**

The operation and maintenance of the Parking Structure are consistent with the conditions of approval for the CUP and the mitigation measures set forth in the Mitigated Negative Declaration incorporated as part of the conditions of approval of the CUP. None of the mitigation measures or conditions of approval address any specific threshold relating to the capacity or utilization of the Parking Structure. The Parking Structure currently operates at over half of the available capacity and is therefore far from being underutilized. The Parking Structure was constructed pursuant to the requirements of the Caltech Master Plan to accommodate **future** parking needs of the campus once additional facilities are constructed. It has always been anticipated that the Parking Structure would not reach full capacity until such facilities are constructed, but due to the requirements of the Caltech Master Plan, the construction of such facilities could not proceed until adequate parking is provided.

None of the mitigation measures or conditions of approval for the CUP prohibits Caltech personnel from parking on the public streets surrounding the campus or require Caltech to prohibit access by Caltech personnel to such parking. **Caltech is in fact precluded under state law from preventing students, faculty, or staff from engaging in otherwise lawful activity on property that Caltech does not own or control.** There is thus no justification for revocation or modification of the CUP on the grounds of underutilization of the Parking Structure or parking on public streets because neither issue was addressed in the findings, mitigation measures, or conditions of approval for the CUP. The decision of the Hearing Officer therefore cannot be supported on the basis of this finding.

⁵ Caltech Master Plan pp. 96 - 97.

⁶ Conditional Use Permit #4253, October 1, 2003, p. 3.

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- b. **The permit or entitlement was issued, in whole or in part, on the basis of a misrepresentation or omission of a material statement in the application or in the applicant's testimony presented during the public hearing for the permit or entitlement;**

This finding of fact required pursuant to PMC § 17.78.090(F)(1)(b) cannot be satisfied, is not raised by the City as grounds for reviewing or amending the CUP, and is therefore not applicable.

- c. **One or more of the conditions of the permit or entitlement have not been substantially fulfilled or have been violated;**

As discussed above, the operation and maintenance of the Parking Structure comply with the requirements of the CUP. Moreover, the City has not identified any CUP condition of approval or any other permit provisions that have not been substantially fulfilled or have been violated. This finding of fact in PMC § 17.78.090(F)(1)(c) cannot be satisfied, is not raised by the City as grounds for reviewing or amending the CUP, and is not applicable.

- d. **The exercise of rights granted by the permit or entitlement has been discontinued for a continuous period of at least 12 months;**

This finding of fact required pursuant to PMC § 17.78.090(F)(1)(d) cannot be satisfied, is not raised by the City as grounds for reviewing or amending the CUP, and is therefore not applicable.

- e. **The improvement authorized in compliance with the permit or entitlement is in violation of any code, law, ordinance, regulation, or statute;**

The operation and maintenance of the Parking Structure is in compliance with the CUP and all applicable codes, laws, ordinances, regulations, and statutes. Moreover, the City has not identified any CUP conditions of approval, any other permit provisions or applicable codes, laws, ordinances, regulations, or statutes that have been violated. In fact, the City relies on an issue that is neither part of the existing conditions of the CUP nor valid grounds to authorize the modification of the CUP. This finding of fact in PMC § 17.78.090(F)(1)(e) cannot be satisfied, is not raised by the City as grounds for reviewing or amending the CUP, and is not applicable.

- f. **The improvement/use allowed by the permit or entitlement has become detrimental to the public health, safety, or welfare, or the manner of operation constitutes or is creating a public nuisance.**

This finding of fact in PMC § 17.78.090(F)(1)(f) cannot be satisfied, is not raised by the City as grounds for reviewing or amending the CUP, and is not applicable. Parking on public streets in the surrounding neighborhood is lawful and does not by definition create a public nuisance. Even if lawful parking on public streets were determined to be a public nuisance, the Parking Structure does not contribute to parking problems because construction of the Parking Structure alleviates rather

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than exacerbates the need for Caltech personnel to park elsewhere than in campus facilities. Any nuisance is created not by the operation of the parking structure but by the individuals choosing to park on the public streets. Caltech has no control over the lawful actions of others on property that Caltech does not own or control.

II. The Conditions of Approval for the Original CUP do not Authorize the City to Modify the CUP.

The CUP conditions of approval limit the Zoning Administrator's ability to notice a hearing for purposes of reviewing the CUP. According to Condition No. 2 of the CUP, the Zoning Administrator may schedule a public hearing "at any time to *review compliance with the conditions of approval, or modify existing conditions.*"⁷ Here the purpose of the hearing, as indicated by the Hearing Officer's determination, was to consider approval of "new conditions," not to review violations of existing conditions or modifications to existing conditions. A hearing to consider new conditions therefore conflicts with the Zoning Administrator's authority set forth in Condition No. 2 of the CUP.⁸ As discussed in greater detail above, **review of public parking use by Caltech personnel is outside the scope of the CUP or the CUP requirements**, and none of the findings of fact required by PMC § 17.78.090(F)(1)(a)-(f) to justify modification of the CUP have been met. Further, as set forth below, Caltech has voluntarily implemented measures to reduce the use of street parking by Caltech personnel and is willing to consider additional voluntary alternatives to address the concerns of the neighbors.

III. Caltech Continues to Voluntarily Address Neighborhood Concerns and is Willing to Work with the City and Neighbors to Analyze New Measures.

Notwithstanding Caltech's ongoing compliance with all of the CUP requirements and the lack of legal grounds to exclude members of the public, including Caltech personnel, from parking on public streets in Pasadena, Caltech has taken numerous steps to address concerns raised by the neighbors regarding public parking on the streets adjacent to the Caltech campus. Actions taken by Caltech to address this issue include the following:

- a. Meetings with residents in the area to discuss the creation of a preferential parking permit zone on the west and northwest side of the Caltech campus, including the streets surrounding the Parking Structure. During these community meetings, the residents did not address underutilization of the Parking Structure as a problem. Instead, residents expressed concern regarding the possible parking variances granted to developers of apartments and condominiums in the area;
- b. Establishing an Ad-hoc Parking Committee ("Parking Committee") composed of Caltech personnel and administrators to address campus parking concerns, including

⁷ CUP Conditions of Approval, Condition No. 2 (emphasis added).

⁸ Staff Report, Attachment B.

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concerns raised by residents of the surrounding neighborhood regarding parking. Issues addressed by the Parking Committee include review of the utilization of reserved parking and other parking amenities at Caltech, encouraging use of the Parking Structure by Caltech personnel, and offering recommendations to the administration to encourage alternative modes of transportation by Caltech personnel. The Caltech administration is in the process of implementing a proposal by the Parking Committee to institute a campus-wide requirement that all major construction contractors operating on campus park on campus and not in the neighborhoods surrounding the campus;

- c. Daily patrolling by Caltech security personnel ("Caltech Security") of the streets adjoining the campus. Any illegal parking, such as vehicles blocking residential driveways or parking in red zones, are immediately reported to the City;
- d. Caltech Security placing flyers on windshields of vehicles parked in campus neighborhoods asking motorists to (i) park in available campus spaces if they are Caltech personnel and (ii) avoid parking near neighbors' driveways in order to prevent large vehicles from blocking the line-of-sight of neighbors exiting their driveways;
- e. Periodic meetings with Caltech employees who have cars registered with Caltech Security to encourage them to use campus parking, including the Parking Structure;
- f. Offering incentives for vanpools, carpools, public transportation uses, and cyclists;
- g. Offering a number of 90-minutes-free campus surface parking spaces for users of the Caltech gymnasium and increasing gym users' awareness of these spaces by advertising them in the gym lobby;
- h. Offering the City use of Caltech's Security Office as a City satellite center or "mini-City center" where Caltech's neighbors can register and obtain preferential City parking permits if the City will deliver locally requested permits to the satellite center;
- i. Agreeing to lift 2-hour parking along portions of Arden Road in front of Caltech properties at the request of neighbors and the City;
- j. Exploring methods employed by other college campuses to control parking spillage, including, without limitation, the use of parking meters, hourly restrictions, and special permit zones; and
- k. Setting up meetings for Councilmember Sid Tyler with VP/CFO Currie, Parking Committee Chair Ledyard, and Provost Jennings to better understand and address community concerns.

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Following the Hearing Officer's determination on June 21, 2006, Caltech invited neighboring residents to attend three separate meetings, conducted on July 20, July 27, and July 30, to discuss off-campus parking complaints and possible steps that could be taken to ameliorate the neighbors' concerns. The meetings were attended in all by 28 neighboring residents and 11 campus officials. In response to concerns expressed at the meetings, Caltech issued a letter to affected residents on September 6, 2006 outlining further steps to reduce off-campus parking by Caltech personnel. A copy of the letter is attached for your reference.

The additional steps outlined in the letter include the following:

- a. Expanded internal communication in the form of written and web-based messages and face to face meetings with employee and student groups about the impact of employee and student parking in surrounding neighborhoods;
- b. Resumption of informational leafleting of cars parked on Arden, Holladay, and Lombardy roads, reminding vehicle owners of potential safety issues associated with parking in surrounding neighborhoods;
- c. More energetic publication of parking incentives for those using more environmentally sensitive methods of commuting than driving alone to campus;
- d. Increasing awareness of the 90-minutes-free campus surface parking spaces for users of the Caltech gymnasium and increasing the number of such spaces on the basis of monitored need;
- e. Monitoring of gymnasium users who park off campus and restricting business-hours access to Braun Gym from Wilson Avenue if a problem on Arden is evident;
- f. Restricting valet service at The Athenaeum from parking guests' vehicles anywhere other than in campus spaces or on specified portions of California Boulevard and Hill Avenue immediately abutting Caltech property.
- g. Setting aside on-campus parking for all of the South Undergraduate Houses construction contractor's employees and subcontractors;
- h. Contractually requiring all future major construction contractors operating on campus to use on-campus parking;
- i. Investigating the implementation of a graduated parking fee structure based on employee salary, student status, etc.;

Caltech has scheduled a further meeting with interested residents on September 14, 2006 to discuss these and other measures designed to reduce off-campus parking by Caltech personnel.

IV. Implementation of the New Conditions of Approval Is Not Practical Under the Circumstances.

Condition No. 11 which was added by the Hearing Officer to the CUP requires Caltech to implement a plan for the full use of the Parking Structure, which plan could include reduction or elimination of parking fees for parking in the Parking Structure. Caltech is also unable to comply with neighbors' suggestions that Caltech require employees to participate in the paid parking program. As stated above, it is not anticipated that the Parking Structure will be fully utilized until the new academic facilities planned for the Caltech campus pursuant to the Caltech Master Plan are constructed and occupied. Under the existing conditions of approval for the CUP and the Caltech Master Plan, Caltech is required to implement a Transportation Demand Management Plan ("TDMP") that requires Caltech to achieve an average vehicle ridership ("AVR") rate of no less than 1.5 persons per vehicle. Caltech has achieved an AVR of 1.58. One of the measures Caltech has implemented to achieve its current AVR is the paid parking program, which discourages Caltech personnel from driving to the campus. Prior to the implementation of the paid parking program, Caltech had an AVR of less than 1.5. If Caltech were required to reduce or eliminate the paid parking program as Condition No. 11 requires, Caltech could be found to be out of compliance with the requirements of the TDMP.

In addition to jeopardizing achievement of the required AVR rate, rescinding the campus parking fee program would cost Caltech approximately \$1 million in new general budget revenue annually. The paid parking program is part of a three year program instituted by Caltech to reduce costs and increase revenues in order to eliminate an existing structural deficit and balance Caltech's operating budget by the 2008-2009 fiscal year. Termination of the paid parking program would therefore interfere with Caltech's goal of maintaining the overall financial stability of the institution. Moreover, there is no evidence that elimination of the paid parking program would alleviate the use of off-campus parking by campus personnel.

Caltech is also precluded under state law from requiring Caltech employees to park in on-campus facilities for which a fee is charged, and Caltech could not enforce such a requirement regardless of whether it charges for campus parking. Section 450 of the California Labor Code provides that "[n]o employer, or agent or officer thereof, or other person, may compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of any thing of value." In light of this statute, it would be unlawful for Caltech to require its employees to purchase parking from Caltech. In addition, since parking in the residential areas around Caltech where there are no restrictions is legal and since such activity occurs off work hours, any disciplinary action taken against employees -- regardless of whether Caltech charges fees for campus parking -- would be subject to challenge by the Labor Commissioner under Section 96 of the Labor Code, which prohibits adverse action based on "lawful conduct occurring during nonworking hours away from the employer's premises."

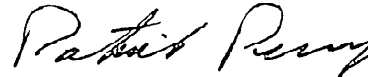
Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

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Short of rescinding the paid parking program or requiring employees to participate in the paid parking program, Caltech is prepared to undertake additional action to address neighbors' concerns, including further analysis of the existing TDMP for the campus. Caltech maintains, however, that absent further justification, the City cannot lawfully impose such actions as conditions of approval to the existing CUP. Caltech accordingly respectfully requests that you grant Caltech's appeal and reverse the Hearing Officer's impermissible modification of the CUP.

Please call with any questions or if I can provide additional information with respect to this matter.

Very truly yours,

A handwritten signature in black ink that reads "Patrick Perry". The signature is written in a cursive style with a large, prominent "P" at the beginning.

Patrick A. Perry

PAP:af



THE CALIFORNIA INSTITUTE OF TECHNOLOGY

Pasadena, California 91125

Paul C. Jennings
Provost

(626) 395-6336
FAX (626) 795-1898

September 28, 2006

Via Facsimile and
First Class Mail

Mayor William J. Bogaard
Vice Mayor Steve Madison
Councilmember Victor Gordo
Councilmember Steve Haderlein
Councilmember Chris Holden
Councilmember Paul Little
Councilmember Joyce Streater
Councilmember Sid Tyler
City of Pasadena
117 East Colorado Boulevard
Pasadena, California 91105

**Re: California Institute of Technology - Conditional Use Permit No.
4253**

Dear Mayor Bogaard and Members of the City Council:

On June 21, 2006, a City Hearing Officer approved a modification to Conditional Use Permit No. 4253, which the City had earlier approved on October 3, 2003 for the construction of a new three-level subterranean parking structure located on the Caltech campus. The reason given for the modification of the conditional use permit was to address complaints from neighboring residents regarding the number of Caltech employees parking on surrounding public streets. The problem is real and some of you may know of our efforts to try to alleviate it. However, Caltech strongly objects to the proposed modification of the conditional use permit on its content, but more importantly on the grounds that the City lacks the legal authority to unilaterally modify a conditional use permit in the absence of a violation of the conditions of that permit. We accordingly appealed the Hearing Officer's decision to the Board of Zoning Appeals, which upheld the Hearing Officer's decision on September 20, 2006. We continue to feel strongly that the decisions of the Hearing Officer and the Board of Zoning Appeals are misguided and are impermissible as a matter of law. We therefore have no choice but to regretfully request that the City Council call the decisions of the Hearing Officer and the Board of Zoning Appeals for review.

September 28, 2006
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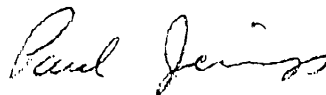
As you know, Caltech is anxious to maintain the best possible relations with its neighbors and the City of Pasadena, and we have worked hard to that end. We realize that the parking issue has caused considerable concern to both. It is our hope that we can continue down a positive path and work with our neighbors to improve the situation. A recent neighborhood meeting that I attended seemed quite positive in this regard. Unfortunately, the decisions of the Hearing Officer and the Board of Zoning Appeals have put us in an untenable position.

While we are willing to consider all of the suggestions made by the Hearing Officer and to continue meeting with our neighbors to address their concerns, we cannot accept the Hearing Officer's determination that grounds exist to revoke the conditional use permit for our parking facility. Caltech has fully complied with all of the conditions that were imposed in connection with the original conditional use permit, and any suggestion to the contrary is simply untrue. The determination that grounds for revocation exists is not something that we can in good conscience accept and leave unchallenged as it compromises our future. Thus, we find ourselves in the unhappy position of being forced to engage in a potentially contentious dispute with the City we call home. Our strong preference is to avoid that situation.

By this request, we are asking the City Council to set aside the Hearing Officer's decision. In any case, Caltech is committed to continue working with our neighbors to address their concerns. We are forced by City procedures to respond now, but this is a sensitive, important issue and we hope as the Council approaches its decision on our request that it can provide sufficient time for needed discussions to take place and for some of the positive developments we have seen to proceed further. I repeat that we are committed to being good citizens and members of the community and have acted in good faith in dealing with both the City and our neighbors.

I am enclosing a letter from Caltech's outside counsel describing in more detail the legal arguments against the Hearing Officer's determination. I have also enclosed a copy of the determination of the Board of Zoning Appeals for your reference. This is a matter of extreme importance to Caltech. We are prepared to meet with you at your convenience should you have any questions or wish to discuss this matter. In the meantime, your considered attention to this request is greatly appreciated.

Yours sincerely,



Paul C. Jennings

cc: Dean Currie
Hall Daily
Harry Yohalem

Attachment H

ATTACHMENT H
Measures Undertaken by Caltech to Address Parking Issues on Neighboring Residential Streets

1. Caltech has offered a variety of parking incentive programs for vanpools and carpools, and more recently for commuters who utilize public transportation and bicycles, or who walk to work/school:
 - Frequent walkers and bike riders could register to receive three free daily parking permits per month.
 - The van pool subsidy was increased from \$25 per rider per month to \$50 per rider per month, and each rider could receive three free daily permits per month.
 - The public transit subsidy was increased from \$20 per month to \$25 per month.
 - Carpoolers' cumulative fee reduced to \$30 per month, and carpools also receive three free daily permits, which can be used at any time.
2. Caltech Security actively reports to the City's parking enforcement cars reported or observed parked in red zones on campus' neighboring streets, and near driveways.
3. Caltech resumed informational leafleting. The leaflets informed motorists (employees, students) to park in available campus space, to avoid parking near or across from neighbors' driveways, and to find alternatives to parking in campus neighborhoods.
4. Caltech holds face-to-face meeting periodically with campus employees to encourage them to park on the campus. Several meetings have been held with groups of employees who work in buildings nearest the most affected area south of the campus.
5. Ten free 90-minute campus parking spaces were set aside near the gym, in order to reduce the impact of gym visitors who might otherwise park along Arden Road. These on-campus spaces can be expanded based on monitored need.
6. At the request of the Holladay Road neighbors, Caltech agreed to support the lifting of 2-hour parking restrictions along the west side of Arden Road near California Boulevard, and included this block in the expanded Preferential Permit Parking zone (District C).
7. Caltech required that all future major construction contractors and their employees and subcontractors be contractually required to use on-campus parking, and not in surrounding neighborhoods.
8. Caltech established stricter guidelines for where valet-parked cars of Athenaeum visitors may be parked: parking in any of the affected neighborhoods south of California Boulevard is forbidden.
9. Consistent with State Labor Code Section 221 and Section 224, Caltech will continue to use payroll deductions only for employees who voluntarily consent to pay for campus parking in that manner. About 90 percent of Caltech employees and students parking on campus use the payroll or student account reduction method of payment.