



COUNTY OF PLACER
Community Development Resource Agency

John Marin, Agency Director

PLANNING

Michael J. Johnson, AICP
Planning Director

TO: Board of Supervisors

FROM: Michael J. Johnson, Planning Director

DATE: July 24, 2007

SUBJECT: Parkside Nazarene Church and Legacy Christian School (PCPM 2006 0608) ALUC Case No.: 2006/2007 -- 05

PROPOSAL

Staff is recommending that the Board take action to conditionally overrule the September 9, 2006 Placer County Airport Land Use Commission (ALUC) determination that a proposed middle school at the Parkside Nazarene Church was incompatible with the Placer County Airport Land Use Compatibility Plan (ALUCP) and approve the proposed project, including the conditions of approval as attached in Exhibit H, and pursuant to the use permit findings in Exhibit I.

BACKGROUND

In January 1993, the Placer County Zoning Administrator approved a Conditional Use Permit (CUP-1625) for a church facility on a ±10.3 acre site on Richardson Drive in the North Auburn area. The Conditional Use Permit approved a facility consisting of a sanctuary, Christian education facilities and two parsonages. Construction on the Parkside Nazarene Church commenced in 1995 and was completed in phases in 1999. In addition to Sunday services (average attendance is 400 people), the church facility is used for Vacation Bible School in the summer and an annual Harvest Festival. In addition, the classrooms are utilized on an on-going basis for seminars and training for the Sheriff's Department and the Department of Education.

Condition 2 of the original Conditional Use Permit does not allow for day-care, nursery school, or full-time grammar, middle or high school use, except that normally associated with and incidental to regular church services (Sunday school, bible school, child care during services, etc.).

On September 7, 2006, the Placer County Zoning Administrator considered a request from the Parkside Nazarene Church in the North Auburn area to modify its Conditional Use Permit (CUP-1625) to allow for Legacy Christian School, a middle school of up to 80 students and five staff that would utilize existing church facilities during the normal school week. The Zoning Administrator took action to approve the Use Permit modification. During the hearing, the Zoning Administrator learned that the project was

within Compatibility Zone C1 of the Auburn Municipal Airport. As part of the approval action, the Zoning Administrator directed that an additional condition (Condition 7) be included in the Conditional Use Permit Modification, requiring the applicant submit proof of review and approval by the Placer County Airport Land Use Commission (ALUC) prior to the occupancy of the school site.

AIRPORT LAND USE COMMISSION (ALUC) AUTHORITY

California Public Utility Code §21670 authorizes the creation of airport land use commissions, which are responsible for the protection of public health, safety and welfare within areas around public airports. These commissions accomplish this task through the adoption of land use measures that are designed to minimize the public's exposure to excessive noise and safety hazards. The Placer County Airport Land Use Compatibility Plan (ALUCP), adopted by the Placer County Airport Land Use Commission (ALUC) in October 2000, establishes land use compatibility criteria for development within the areas surrounding the public-use airports in the County.

After the adoption of a plan, a local agency need only refer projects to the Commission for approval as defined by the plan itself. (See Public Utilities Code Section 21675.5[b].) The plan outlines which projects are still reviewed by the Commission in section 1.5.2. Within that section, Commission review of projects is required for any "major projects", which is defined in Section 1.5.3(d) as including any land use action that is "involving a question of compatibility with airport activities." In conclusion, based on state law and the Placer County Airport Land Use Compatibility Plan, the ALUC is required to take action on the approval of this Conditional Use Permit modification request.

PLACER COUNTY AIRPORT LAND USE COMMISSION STAFF REVIEW AND COMMISSION ACTION

On September 12, 2006, consistent with Condition 7, the applicant formally requested that the Placer County ALUC staff review the school project. Included in that application was a letter from the applicant's representative that described the existing church facilities and the existing and proposed uses of these facilities.

In response to the applicant's request, the ALUC completed a Request for Staff Review on September 13, 2006. The Background section in the Staff Review summarized the activities at the Zoning Administrator hearing. Also included in this staff report was a statement from the applicant that "he was unaware" that the project site was within an airport over flight area and that, given the number of students anticipated at the facility (80 students), the student density (students/acre) would be very low. The applicant's representative also stressed that there was some urgency associated with the request, as certain fees had already been paid and that the church was planning for classes to begin shortly.

In its review of the project, ALUC staff commented that the proposed Nazarene Church junior high school site is within the influence area boundary of the Auburn Municipal Airport. As such, the project is subject to the specific land use compatibility criteria related to noise and safety as well as the protection of airspace and aircraft over flight

as detailed in the ALUCP. The project is located in Compatibility Zone C1 (Extended Approach/ Departure Corridor and Primary Traffic Pattern), an area where approximately 80 percent of aircraft flights are estimated to occur (including take-offs to the west). The compatibility criteria of the Plan for this Zone establish a maximum allowable density/intensity of 75 persons per acre on average, or 150 persons per single acre, and prohibit land uses such as children's schools, hospitals and nursing homes.

As the ALUC stated in its Staff Review for the project, land uses that were established before the adoption of the current ALUCP are not subject to the provisions of the Plan. Any land uses that are proposed subsequent to the adoption of the Plan, however, are required to be found consistent with the Plan, prior to local agency approval.

In reviewing the school project, ALUC staff found that:

- the proposed use is outside of the airport's noise contours and is consistent with the noise provisions of the Airport Land Use Compatibility Plan (ALUCP);
- the proposed use will utilize the existing church facilities on the site, none of which exceed 70 feet in height, and is consistent with the ALUCP airspace protection provisions;
- with a recorded deed notice (buyer's awareness disclosure), the proposed project is consistent with ALUCP over flight provisions; and
- the proposed school is a prohibited use within Compatibility Zone C1 and is not consistent with the safety provisions of the ALUCP.

ALUC COMMISSION ACTION

At a public hearing on September 27, 2006, the ALUC considered the information provided by the project proponent and the analysis conducted by ALUC staff regarding the Legacy Christian School. The ALUC determined that children's schools are specifically prohibited by the ALUCP in Compatibility Zone C1 and that the proposed junior high school use was not consistent with the ALUCP. On October 3, 2006, the Parkside Nazarene Church submitted a letter of appeal of the ALUC decision to the Placer County Board of Supervisors.

APPEAL PROCESS

On June 26, 2007, the Board took action to tentatively approve the project, directing staff to amend the findings language of the staff report. Staff has prepared revised findings and these are attached as Exhibit H.

In order for the County Board of Supervisors to overrule the decision of the ALUC, the Board is required to make specific findings of fact supported by substantial evidence. The essential substance of the findings which accompany the Board's overruling of an ALUC decision is indicated in the ALUC statutes, specifically that the findings must demonstrate that the proposed action "is consistent with the purposes" of the statutes

as set forth in Section 21670. As stated in Section 21670(a), the purposes of this legislation are:

1. "...to provide for the orderly development of each public use airport in this state..."
2. "...to provide for the orderly development of...the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards..."
3. "...to provide for the orderly development of...the area surrounding these airports so as to prevent the creation of new noise and safety problems..."
4. "...to protect the public health, safety, and welfare by ensuring the orderly expansion of airports..."
5. "...to protect the public health, safety, and welfare by...the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses."

Attached to the staff report as Exhibit J is a detailed description of possible findings for your Board's consideration.

CONCLUSION/RECOMMENDATION

Based upon the analysis presented to the Board at its June 26, 2007 meeting, staff recommends the Board of Supervisors conditionally overrule the determination of the ALUC. The Board may overrule the action of the ALUC if it makes specific findings that the proposed project is consistent with the purpose of California Public Utility Code §21670 (Establishment of county airport land use commissions), which generally stated the protection of the health, safety and welfare through the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards in the vicinity of airports.

Should the Board take action to tentatively approve the proposed project, the proposed findings (Exhibit H), as well as the staff report and all of the other Exhibits attached, shall be circulated to the State Division of Aeronautics and the Placer County Airport Land Use Commission for a 45-day review. After that review, the Board can take final action at a subsequent meeting.

Respectfully submitted,



MICHAEL J. JOHNSON, AICP
Planning Director

EXHIBITS:

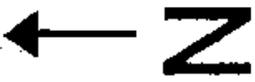
- Exhibit A - Vicinity Map
- Exhibit B - Site Plan
- Exhibit C - Airport and Land Use Commission Map
- Exhibit D - Tony Graupensperger Letter
- Exhibit E - Airport and Land Use Commission Staff Report
- Exhibit F - Airport and Land Use Commission Decision Letter
- Exhibit G - Appeal Letter
- Exhibit H- Findings by the Board of Supervisors
- Exhibit I- Conditions of Approval for the Minor Land Use Permit Modification
- Exhibit J- Sample Deed restriction described by Condition #13
- Exhibit K- Site plan demarcating area of restricted use as described in Condition #14
- Exhibit L- CEQA and Minor Use Permit findings

cc: Parkside Church of the Nazarene- Applicants
Anthony L. Graupensperger, Attorney
Placer County Transportation Planning Agency
Airport Land Use Commission
Department of Transportation -Division of Aeronautics
Jerry Martin, Airport Manager, City of Auburn
Bob Snyder, Mayor, City of Auburn

Copies Sent by Planning:
Phil Frantz – Engineering and Surveying Department
Dana Wynniger - Environmental Health Services
Building Department
Brent Backus - Air Pollution Control District
Christa Darlington - County Counsel
Michael Johnson - Planning Director
Michael Wells - Supervising Planner
Subject/chrono files



EXHIBIT A



Parkside Campus

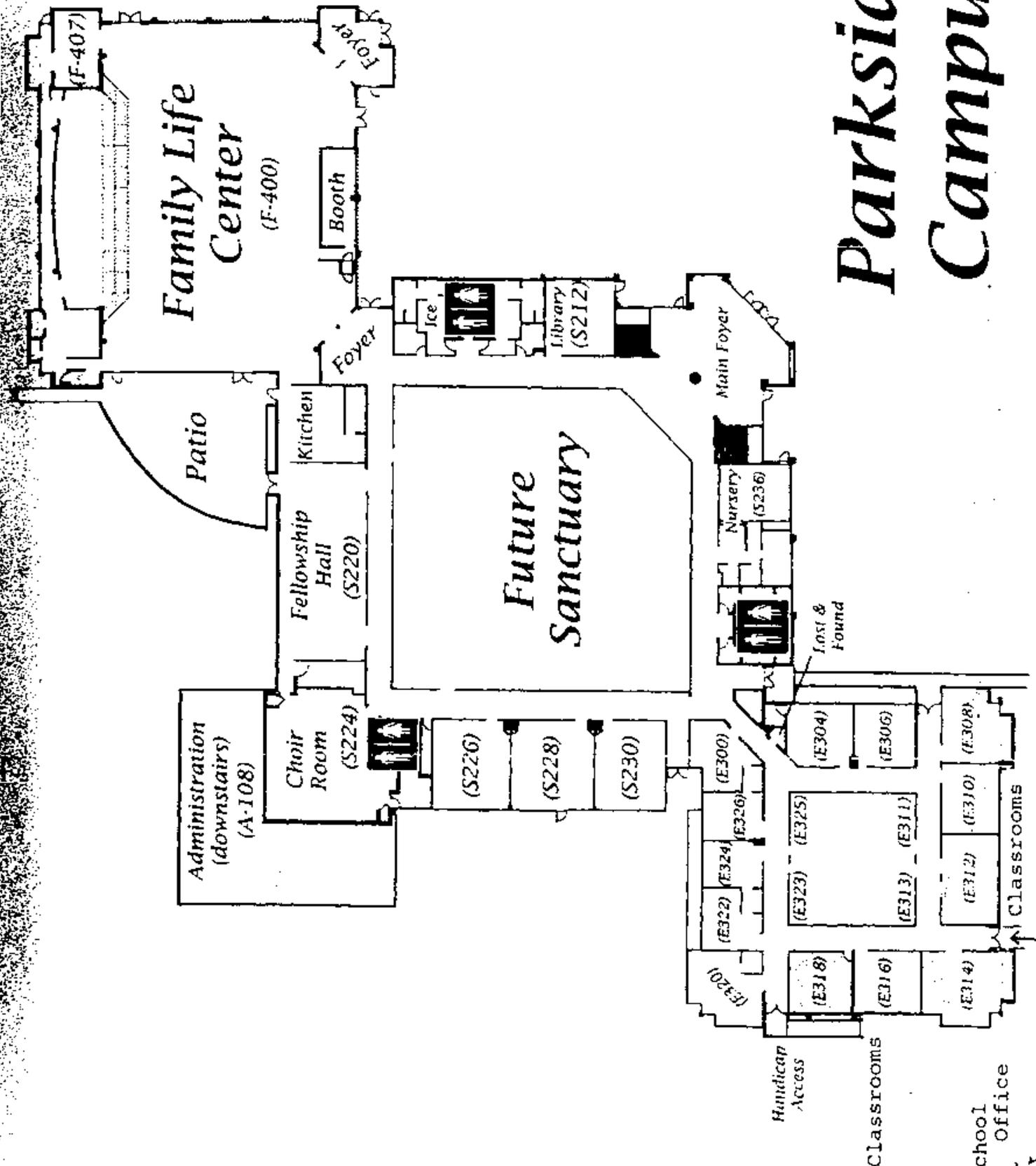


EXHIBIT B

R: 9.12.06

TONY GRAUPENSPERGER

CERTIFIED PUBLIC ACCOUNTANT

ATTORNEY AT LAW

1300 LINCOLN WAY, SUITE A • AUBURN, CA 95603-5007
(530) 888-0511 • FAX (530) 888-0921
graups@foothill.net

Stan Tidman
Placer County Transportation Agency
299 Nevada Street
Auburn, CA 95603

Re: Parkside Nazarene Church
Legacy Christian School

Dear Mr. Tidman:

I am the Attorney and CFO for Parkside Church of the Nazarene, a California Nonprofit Corporation, located on approximately ten (10) acres at 3885 Richardson Drive in Auburn, California. Our Church facility is one of the largest buildings in the Auburn area and was completed and dedicated on September 26, 1999.

The Church facility built by Haldeman Homes Inc. of Auburn is comprised of three diamond-shaped buildings. The front building is a full-purpose gymnasium that is currently being used as our Church Sanctuary and contains a basketball court and stage with related lighting and sound equipment. The center diamond is our future Church Sanctuary the is fully enclosed, dry-walled and roofed. It is currently unused but is surrounded on the North side by a full-serve kitchen and fellowship hall and on the South side by classrooms and bathrooms. Underneath the main floor of the middle diamond in our Administration Offices for Secretary and Pastors. It is accessible only from the North side. The third and final diamond is our Education Building with existing classrooms for Sunday School and Youth programs. All buildings or diamonds are connected by hallways to form one complete building.

As a way to reach out to the community and to stimulate growth for our Church and Youth programs, Parkside has partnered with the former principal and several former teachers from Calvary Chapel Christian School of Auburn, to start a Christian Junior High School in the Education Building of our church facility. For liability reasons we have incorporated as Legacy Christian School which is a California Nonprofit Corporation. Parkside has all of the necessary fire alarms, exit and emergency signage, and doorways necessary to receive an occupancy rating from the county of an E-1. To receive the necessary license to open the

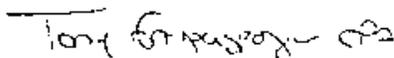
school, I on behalf of the Board of Directors, filed a modification of the existing use permit (PCPM 20060608) to allow the school to open in the exiting buildings. No new construction was asked for or is needed. The modification of the permit requested of the County is to limited to a junior high school and only for grades 6-9. Each class is limited to twenty (20) children for a total of 80 students. Their will be 3 teachers, 1 principal and 1 secretary for a total of 5 employees. Existing parking space is ample for the employees and occasional parent. The hours of operation will be from 8:00 AM until 3:30 PM Monday – Friday so as not to conflict with Chana High School adjacent to the Church whose hours of operation are from 8:30 AM until 2:30 PM. Parents will enter the facility on the North side, drive around the back of the facility and drop their kids off at the school door and exit on the South side of the building.

Our Church is a Nazarene Christian Church with membership and regular attenders of between 400 to 500 on any given Sunday. Our Church service is at 9:00 AM on Sunday mornings and Sunday School follows at 10:30 AM. Our children and youth Sunday School classes total approximately 200 per Sunday. Their classes are held in the Education Building. Adult Sunday School classes are approximately 200 per Sunday and are held in the classrooms and Fellowship Hall around the future Sanctuary in the middle diamond building.

Currently we are staffed by a Youth Pastor and Secretary and two part-time janitorial and maintenance workers. We are seeking to hire a full-time Senior Pastor and are in the interviewing process right now. The church facility is not used during the day on Monday through Friday except for an occasional funeral. Evening use during the week includes Celebrate Recovery and AA meetings and the use of our shower facilities by The Gathering Inn, a community outreach program for the homeless in our area. Parkside has always been available and used for County functions including funerals for slain peace officers, training facilities for the Sheriff and Deputies and testing facilities for Chana High School and Placer County Adult Education classes. We also are used at every election as a polling place for the area.

All permits, fees and conditions have been met for the opening of the school slated for September 25. I am enclosing maps and site plans for your records and am available at any time should anything further be needed. I can be reached at my office at (530) 888-0511 or my home (530) 888-0898. Thank you for your help in this matter.

Sincerely,



Tony Graupensperger

RECEIVED
SEP 15 2006
PLANNING DEPT.

REQUEST FOR STAFF REVIEW

**PLACER COUNTY
AIRPORT LAND USE COMMISSION (ALUC)**

299 Nevada Street
Auburn, CA 95603

Phone: 530.823.4030
Fax: 530.823.4036

Date Received: 9.12.2006
Received From: Tony Graupensperger
Airport Name: Auburn Municipal Airport
ALUC Case No.: 2006/2007 -- 05

Project Title: Parkside Nazarene Church – Legacy Christian School (PCPM 2006 0608)

Project Description: Request to modify Conditional Use Permit (CUP-1625) to allow for a new junior high school for up to 80 students in an existing church facility on a 10-acre parcel at 3885 Richardson Drive – between Dry Creek Road and Park Drive (APN 051-210-096) in north Auburn.

Application for: Rezone General/Community Plan Amendment Other

Background

On September 11, Supervisor Jim Holmes inquired about the Zoning Administrator's staff report and the site's proximity to the airport. On September 12, ALUC staff learned the following data:

- Placer County Community Development Resource Agency (CDRA) staff informed the ALUC that the proposal was considered by the Zoning Administrator on September 7. During the Zoning Administrator's review, it was pointed out that the site is in the airport's influence boundary area. The required airport land use compatibility review had not been requested prior to the hearing.

Because there were no other significant issues, the proposal was approved, conditional to the recommendations in the staff report. An additional condition was added at the hearing, specifying that prior to certificate of occupancy, the applicant is to submit proof of review and approval of the project by the Airport Land Use Commission (ALUC).

- Prior to the Zoning Administrator hearing on September 7, the applicant was unaware that the site is located in the airport area. The applicant felt that the number of proposed students to the size of the parcel would result in a low ratio of people per acre over the site. All the required fees had been paid. Because classes were planned to start soon, there is some urgency to resolving the situation.

183

**PLACER COUNTY
AIRPORT LAND USE COMMISSION**

ALUC staff provided the applicant with background on the ALUC and airport land use compatibility issues. This summary included:

- ✓ Children's schools are prohibited in the area where the existing church is located.
- ✓ Formal airport compatibility reviews for proposals within the Auburn Municipal Airport's influence boundary area are prepared by ALUC staff via referrals from Placer County for proposed discretionary reviews.
- ✓ The airport land use compatibility provisions have no authority over existing uses. They do not apply to existing uses, such as the church, even when there may be large concentrations of people on site.

The applicant agreed to provide background on the existing and proposed uses (see T. Graupensperger letter -- attached). The applicant also inquired about appeals to the Placer County Board of Supervisors. The ALUC appeal process and criteria were outlined (see following Safety discussion).

ALUC Staff Comments

The project site is approximately 5,500' from the airport runway's west end. The October 2000 Placer County Airport Land Use Compatibility Plan (ALUCP), illustrates that the site is in the Auburn Municipal Airport's influence area boundary (see attached map)¹. The ALUCP establishes land use compatibility criteria and zones based on noise, safety, airspace protection, and overflight provisions. One airport Compatibility Zone (Figure 3A and Compatibility Zone Boundary descriptions -- pages 3-4/5) lies over the site.

- Compatibility Zone C1 -- the Extended Approach/Departure Corridor. This zone covers locations beneath the predominately used south-side traffic pattern. The zone is affected by moderate degrees of both noise and risk.

Primary Compatibility Criteria (Table 2A) summarizes maximum density/use intensity, prohibited uses, and other development conditions. Compatibility Factors Map (Exhibit 4H) illustrates the site is in:

- General Traffic Pattern Envelope/Flight Direction. This is an area where approximately 80% of aircraft overflights are estimated to occur.
- Aircraft Departure Accident Risk Intensity Contours -- for take-offs to the west.

The ALUCP has no authority over land uses established prior to its adoption. The ALUCP requires that an ALUC consistency determination be completed on a proposed project before local agency approval.

Note. State law requires each local agency with jurisdiction for land uses within an ALUC's planning area to modify its general plan and specific (community) plans to be consistent with an airport land use compatibility plan. To date, Placer County has not completed this requirement.

¹ See PCTPA's web site (www.pctpa.org) for more on the ALUCP.

ALUC Staff Evaluation

1. **Noise.** The site is outside of the airport's noise contours.

The proposal is consistent with ALUCP noise provisions.

2. **Safety.** The intent of land use safety compatibility criteria is to minimize the risks associated with an off-airport aircraft accident or emergency landing (Policy 4.2.1):

a. Risks both to people and property in the vicinity of an airport and to people on board the aircraft shall be considered.

b. More stringent land use controls shall be applied to areas with greater potential risk.

Policy 4.2.3 cites land uses of particular concern are ones in which the occupants have reduced effective mobility or are unable to respond to emergency situations. Children's schools and day care centers (with 7 or more children), hospitals, nursing homes, and other uses in which the majority of occupants are children, elderly, and/or handicapped shall be prohibited within all compatibility zones except Zone D.

The proposed junior high school is a prohibited use in Compatibility Zone C1. The existing church's and the proposed junior high school's use intensity² is not factor in the consistency determination.

The proposal is not consistent with ALUCP safety provisions.^{3 4}

² Use intensity is a general planning guideline to aid in determining the acceptability of proposed land uses. The ALUCP specifies that use intensity in unincorporated Placer County is to be calculated based on required off-street parking spaces (Primary Compatibility Criteria – Table 2A, Appendix C, and Appendix D). In addition, a site's 'gross acreage' is used to determine use intensity. This gross acreage is the parcel area plus one half of the fronting street.

³ Two sections of the Education Code (17215 and 81033) require that the Department of Transportation investigate and make recommendations regarding acquisition of property for school and community college sites near airports. Specifically, before a district can acquire property for a school or community college site that would be within two miles of an airport runway or potential runway included in an airport master plan, the Department must investigate and submit a report of its findings regarding the acquisition. This requirement also applies to additions to an existing site. The primary factors considered in the site analysis are aircraft accident exposure and aircraft noise. Comments are to be requested from the ALUC. Input from the ALUC and compatibility criteria established in an adopted plan weigh heavily in the Department's final report and recommendation of the suitability of the proposed acquisition (California Airport Land use Planning Handbook -- January 2002 – pages 5-12 & 5-13).

⁴ The Handbook (page 3-6) also cites that highly risk-sensitive uses such as schools hospitals, and other uses in which the mobility of occupants is effectively limited – should be avoided near the ends of runways regardless of the number of people involved.

Note. If the ALUC staff determines a proposal is inconsistent with the ALUCP, the proposal is automatically forwarded to the full Commission for a consistency determination via a noticed public hearing. ALUCP Policy 2.4.4(e) outlines the criteria for the Commission to act on specific situations where normally incompatible uses can be considered compatible. Factors to be considered include site terrain, specific location, or other extraordinary circumstances.

An applicant is responsible for demonstrating these special conditions apply. An applicant may wish to check with an aviation or land use consultant to develop information that would help the ALUC to make a determination.

If the Commission makes a decision to approve a request, it is required to make specific findings as to why an exception is being made – specifically that the proposal will not:

- Create a safety hazard to people on the ground or aircraft in flight,
- Result in excessive noise exposure, and
- The nature of the extraordinary circumstance.

A local jurisdiction may 'override' an ALUC decision based on the following mandatory steps:

- Providing the proposed decision to the ALUC and Division of Aeronautics at least 45 days prior to a final decision. The ALUC and Caltrans are authorized to make advisory comments within 30 days of receiving the proposed decision and findings. Advisory comments are to be included in the final record of any decision to overrule the Commission.
- Holding a public hearing.
- Making specific findings that the proposed action is consistent with the purposes of the ALUC statute.
- Approving the proposed action by a two-thirds vote of the agency's governing body.

3. Airspace Protection. Compatibility Zone C1 requires an airspace review by ALUC staff for structures greater than 70'-high. Federal Aviation Administration (FAA) notice for objects greater than this height may also be required. The proposed school would be located in an existing church building. No elevations were submitted.

If no structures exceed 70', the proposal would be consistent with ALUCP airspace protection provisions.

4. Overflights. Overflight compatibility concerns encompass a combination of noise and safety issues. Compatibility Zone C1 requires that a deed notice (a buyer's awareness disclosure) be recorded for each parcel associated with any discretionary land use action reviewed by the ALUC. A sample deed notice is attached.

With the recorded deed notice, the proposal is consistent with ALUCP overflight provisions.



PLACER COUNTY
TRANSPORTATION
PLANNING AGENCY

BOB SNYDER
City of Auburn
SHERIE BLACKMUN
City of Colfax
TOM COSGROVE
City of Lincoln
MIGUEL UCOVICH
Town of Loomis
KATHY LUND
City of Rocklin
GINA CARBOLINO
City of Roseville
TED GAINES
JIM HOLMES
Placer County
RON MCINTYRE
Citizen Representative
CELIA MCADAM
Executive Director

September 28, 2006

Tony Graupensperger
1300 Lincoln Way, Suite A
Auburn, CA 95603-5007

**RE: Placer County Airport Land Use Commission
Consistency Determination –
Parkside Nazarene Church – Proposed Junior High School**

Dear Mr. Graupensperger:

Placer County Transportation Planning Agency (PCTPA) acts as the Placer County Airport Land Use Commission (ALUC) for the three public use airports in Placer County – Auburn Municipal Airport, Blue Canyon Airport, and Lincoln Regional Airport.

The Placer County Airport Land Use Compatibility Plan (ALUCP) was adopted by the ALUC in October 2000. The Airport Compatibility Plan establishes land use compatibility criteria and zones based on noise, safety, airspace protection and overflight provisions.

On September 27, 2006, via a noticed public hearing, the ALUC determined that the junior high school proposed to be located in the existing church facility is not consistent with the ALUCP. This consistency determination was based on children's schools are specifically prohibited by the ALUCP in Compatibility Zone C1 (Extended Approach/Departure Zone & Primary Traffic Pattern).

Various sections of ALUC statutes (Public Utilities Code) provide for local agencies to overrule (or override) ALUC decisions. The overruling process involves several mandatory steps. These include:

1. Providing a 45-day notice (effective January 2004) of a proposed decision to the California Department of Transportation (Division of Aeronautics) and the local ALUC. The Division and the ALUC are authorized to make advisory comments within 30 days of receiving the proposed decision and findings. Any comments from these agencies must be included in the final record of a decision to overrule the ALUC.
2. Holding a public hearing.

Tony Graupensperger
September 28, 2006
Page Two

3. Making specific findings that the action proposed is consistent with the purposes of the ALUC statute (Public Utilities Code Section 21670 – Aeronautics Law).
4. Approving a proposal by a two-thirds vote of the governing body.

In the case of the Proposed Junior High School – Parkside Nazarene Church proposal, the governing body to which your request for appeal should be directed would be the Placer County Board of Supervisors via the County's Planning Department. The County would then follow the procedures noted above and place the item on a future agenda for consideration.

For more background on overruling ALUC decisions, see *California Airport Land Use Planning Handbook* – pages 5-15/5-19 (January 2002).

Thank you for participating in yesterday's public hearing. Please contact Stan Tidman at 823.4033 or myself (823.4030) if you have any questions.

Sincerely,



ss.

Celia McAdam, AICP
Executive Director

Copies: Airport Land Use Commission
Nancy Miller - Miller, Owen & Trost
City of Auburn –
Jerry Martin, Airport Manager
Jack Warren, Public Works Director
Will Wong, Community Development Director

Placer County –
Gerry Haas, Assistant Planner
Michael Johnson, Planning Director
Dean Prigmore, Zoning Administrator

California Department of Transportation – Division of Aeronautics --
Joanne McDermott (ALUC Liaison)

TONY GRAUPENSPERGER

CERTIFIED PUBLIC ACCOUNTANT
ATTORNEY AT LAW

1300 LINCOLN WAY, SUITE A • AUBURN, CA 95603-5007
(530) 888-0511 • FAX (530) 888-0921
graups@foothill.net

✓
RECEIVED

OCT 03 2006

CLERK OF THE
BOARD OF SUPERVISORS

RECEIVED

OCT 03 2006

COUNTY COUNSEL

October 3, 2006

Placer County Board of Supervisors
175 Fulweiller Avenue
Auburn, CA 95603

Re: Parkside Nazarene Church
Legacy Christian School

On behalf of Parkside Nazarene Church and Legacy Christian School, I respectfully appeal the decision made by the Placer County Transportation Agency (PCTPA) acting as the Placer County Airport Land Use Commission (ALUC) on September 27, 2006 to rate the above-referenced School as inconsistent with the Placer County Airport Land Use Compatibility Plan (ALUCP) due to safety concerns.

In addition, if our appeal is denied, I respectfully request that the Board of Supervisors order Placer County to reimburse the Parkside Nazarene Church the fees paid to Placer County in anticipation of our project being approved, in accordance with the recommendation made by the ALUC on September 27, 2006.

I would be available to appear at the earliest possible Board meeting either in Auburn or at Lake Tahoe. If you have any questions, please do not hesitate to contact me.

Sincerely,

Tony Graupensperger CFO

Tony Graupensperger CFO
Parkside Nazarene Church

Specializing in Tax & Estate Planning

190
EXHIBIT G

EXHIBIT H
FINDINGS FOR THE PARKSIDE NAZARENE CHURCH PROJECT

The findings that accompany an overruling do not necessarily need to address each of the purposes of the statutes on a point by point basis. What is essential is that the findings, collectively, address all of the purposes of the statutes. The California Airport Land Use Planning Handbook provides an approach to preparing findings pursuant to Section 21670 of the Public Utilities Code that demonstrate that the proposed Use Permit Modification is consistent with the purposes of the statutes.

As provided for in Section 21670 of the Public Utilities Code, the board must find that its action overturning the Land Use Commission's decision shall:

1. "...provide for the orderly development of each public use airport in this state..."
2. "...provide for the orderly development of...the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards..."
3. "...provide for the orderly development of...the area surrounding these airports so as to prevent the creation of new noise and safety problems..."
4. "...protect the public health, safety, and welfare by ensuring the orderly expansion of airports..."
5. "...to protect the public health, safety, and welfare by...the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses."

1. FINDINGS ONE AND FOUR: the provision for the orderly development of the airport and how public health, safety and welfare will be protected by ensuring the orderly expansion of the airport.

The permit modification does not interfere with the orderly development of the airport because this permit modification does not allow for any new physical improvements or construction of any kind on the site. The permit only allows for junior high school instruction within an already existing facility. Such classroom activities will not result in physical changes that would impede current or future airport uses. Also, allowing for this use at the site that is currently being operated in a very similar way will not create a precedence for the allowance of schools or other activities in other areas that would interfere with airport expansion because each project that needs an entitlement is considered on a case by case basis.

THE BOARD THEREFORE FINDS that because this permit modification will

not impede the orderly development of the airport, there is no danger of disorderly development negatively impacting health, safety or public welfare.

2. FINDING TWO: the relationship of the project to California airport noise standards.

The Placer County Airport Land Use Compatibility Plan provides the projected 2015 airport noise level contours for the Auburn Municipal Airport. The Legacy Christian School project is located over 2,500 feet outside of the 60 dB Ldn CNEL noise contour, and therefore the students would not be exposed to levels of noise above Plan requirements (which take state noise level standards into consideration.)

THE BOARD THEREFORE FINDS that the project is not exposed to noise levels of concern by State standards.

3. FINDING THREE: the prevention of creating new noise and safety problems within the airport environs.

Noise

School noise impacts on the airport: The increase in noise due to the school will be negligible and will not substantively contribute to the current noise levels at the airport.

Airport noise impacts on the school: The ALUC Staff Report stated that the site is outside of the airport's noise contours and that the proposal is consistent with ALUCP noise provisions. ALUC staff indicated that Compatibility Zone C1 requires a deed notice addressing noise and safety issues. Neither the project proponent nor County staff have any objections to requiring that a deed notice be recorded on the project parcel and so, the deed restriction requirement shall be added as a condition on the project. (See Condition #13).

Safety

ALUC Position

The ALUC determined that the proposed school is a prohibited use within Compatibility Zone C1 and is not consistent with the safety provisions of the ALUCP. The ALUC Staff Review for the project refers to ALUCP policy (Policy 4.2.3. Land Uses of Particular Concern) as the citation for this determination. This Policy describes and defines a "land use of particular concern" as one in which the effective mobility of the occupants is reduced or the occupants are unable to respond to emergency situations. Children's schools, and other uses such as hospitals, nursing homes, etc., are prohibited. In their finding that the proposed project is not consistent with ALUCP safety provisions, the ALUC determined that the proposed junior high school is a children's school, a use that is a Prohibited Use in the C1 zone.

Analysis

The ALUCP does not provide a definition of "children's school". The 80 students at the proposed school will range in age from 11-14 years, (pre-teens and teenagers). Because the ALUC stated that its main concern was with the mobility of the children and their ability to respond in an emergency situation, it should be pointed out that the age of students proposed to be at this site would be mobile young people that would be more responsive in emergency situations than elementary aged children. Also, the location of the school is at the edge of the C-1 zone, in a location where planes that are beginning their landing sequence, meaning that the planes would be at their highest point.

Based on the age of the students and the location of the facility at the edge of the zone, the safety risk does not appear to be high enough to warrant the denial of this permit.

A second important issue is the intensity of land use as measured in people per acre, and is one of the Compatibility Criteria that should be considered by the ALUC during their project review process (but was not discussed in their decision because the ALUC determined that the school was not allowed , per se).

Generally, the risks associated with aviation incidents are greater for projects that are closer to airports and have a higher intensity of people. The Intensity Criteria for the C1 Zone is:

- 75 people/acre at any time on the project site
- 150 people/acre on any single acre of the project site

Usage calculations for churches are generally determined by multiplying the number of parking spaces at the site by the number 2 (Page 2-17 of Airport Land Use Plan). For a school, however, when enrollment can be limited and controlled, and the actual historical use can be determined, there is no need to use parking space extrapolations to determine the average number of people visiting the site; actual numbers are available.

The Legacy Christian School proposes a total enrollment of 80 students, with three teachers, a principal and a staff secretary. This represents an Intensity Criteria of 8.3 people/acre, a factor that is significantly below the first criteria requirement of 75 people/acre criteria for the C1 Zone.

The second intensity criteria requires that there be a maximum of 150 people on the site per acre at any one given time.

In order to meet this goal, the County will require that there be no more than 65 people (in addition to the school enrollment) shall congregate within a one acre radius of the four class rooms being used during school hours of 8 am until 4 pm, Monday through Friday, as a condition of approval for this project. (See Condition #14).

THE BOARD THEREFORE FINDS that with the inclusion of this additional condition, the proposed project is consistent with the Maximum Intensity Compatibility Criteria of the ALUCP, AND FURTHER FINDS, that the older age and small number of children proposed at a location in a building that is located under airspace that is used by airplanes during their highest point during the landing process does not create a significant new safety danger.

4. FINDING FIVE "...to protect the public health, safety, and welfare by...the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses."

A. Noise

The Placer County General Plan and Auburn Bowman Community Plan Noise Elements set standards for noise exposures from transportation sources, such as airports. In both Plans the maximum allowable noise exposure from a transportation noise source to the outdoor activity area of a church is 60 Ldn/CNEL, and there is no standard for the outdoor activity area of schools. (The Noise Elements in these Plans also have interior noise standards of 40 dB Leq for churches, and 45 dB Leq for schools.) The proposed school project meets the standards of the both the General Plan and Auburn Bowman Community Plan Noise Elements for airport transportation noise exposures.

B. Safety

The finding specifically states that the Board is to consider the extent to which excessive safety risks are created beyond what already exists as incompatible activities. The proposed use is consistent with current uses. There are several residential developments and recreation, medical and senior facilities in the vicinity of the project site. All of these developments/facilities are within Compatibility Zone C1 of the ALUCP. These include:

- Auburn Area Regional Park – a ±58 acre regional park with a lake, disc golf course, tennis courts, softball diamonds and gym located on the east side of Richardson Drive, across the street from the church facility.
- Rock Creek Mobile Home Park – an 86-unit residential development on a ±33-acre parcel located on State Route 49, adjacent to and east of the regional park, approximately 800 feet east of the church facility.
- Elders Corner Trailer Park – a 51-unit residential development located at the intersection of State Route 49 and Dry Creek Road, adjacent to the Rock Creek Mobile Home Park, approximately 1,200 feet east of the church facility.

- Auburn Greens – a residential development of 166 four-plex units south of the regional park, approximately 1400 feet southeast of the church facility.
- Miners Station and Snow Cap View Apartments - 176 residential rental units located approximately 1,100 feet south of the church facility.
- Chana High School – a public secondary school located on the adjoining parcel south of the church facility. As described, the Chana High School campus is located south of, and adjacent to, the Parkside Nazarene Church site. Since the adoption of the ALUCP in 2000, enrollments at Chana High School have generally increased, as shown in the following table:

<u>Year</u>	<u>Enrollment</u>	<u>Intensity</u>
2000/2001	169 students	24.1 students/ac.
2001/2002	155 students	22.1 students/ac.
2002/2003	203 students	29.0 students/ac.
2003/2004	187 students	26.7 students/ac.
2004/2005	192 students	27.4 students/ac.
2005/2006	169 students	24.1 students/ac.
2006/2007*	231 students (*to Jan 31, 2007)	33.0 students/ac.
	186 students average	26.6 students/ac.

- Sutter Auburn Faith Hospital, Oaks of Auburn, Siena and Emerald Hills – Medical services and senior living facilities that are located approximately 3,000 feet south of the church facility. Although these uses are not consistent with the compatibility criteria for the C1 zone, the ALUCP includes an exception for these and similar future uses on designated parcels in the immediate area.
- Rock Creek Elementary school located approximately 4000 sq feet from the south east of the project site.

Other elementary schools (grades 1-8) and secondary schools (grades 9-12) are allowed uses, with the approval of a Minor Use Permit, in the RS (Residential Single-family) zone that overlays the church property. The Legacy Christian School project proposes a small (80 student) junior high school (grades 6-9) that will utilize existing classroom space at the Parkside Nazarene Church. The proposed use is both consistent and with the site's zoning and compatible with surrounding land uses.

These entities have concentrations of people at intensities that are, in most cases, significantly greater than the intensity that would result from the operation of the proposed school. The County will insure that that no greater intensity of use of the property as a school site will occur through the requirement of Condition # 2 .

THE BOARD THEREFORE FINDS that the local noise standards are being

complied with; and

THE BOARD FURTHER FINDS that site is already devoted to incompatible uses and does not considerably increase the level of safety risk to the public using the airport or the proposed school facility.

6. The final topic for the Board's findings is THE RELIGIOUS LAND USE and INSTITUTIONALIZED PRACTICES ACT (RLUIPA), which States:

"the General rule is that no government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--

(A) is in furtherance of a compelling governmental interest; and
(B) is the least restrictive means of furthering that compelling governmental interest."

In 2005, the Scottsdale AZ City Council refused to permit the SonRise Community Church to build a pre-K-8 religious school on property adjacent to the church. The church responded by filing a lawsuit under RLUIPA in November, 2005. Based on likely arguments to be made in Court the council reversed that decision in may of 2007, granting the permit and settling the lawsuit. This is but one example of how this federal legislation is used by religious institutions.

Analysis

The goals of the Airport Land Use Commission legislation should be analyzed within the context of RLUIPA. As mentioned above, the five findings above encapsulate the purposes of the Act. The orderly development of airports, including expansions of those airports, and the management of noise and safety considerations would all likely qualify as compelling governmental interests. But, the denial of the permit is not the least restrictive means of furthering that interest.

To begin, as already stated, the issuance of this permit will not impact the development around the airport, or any potential expansion because the permit does not allow for any physical construction or change to the physical environment: it only changes a use inside an existing structure. Also, as to noise the project will not create new noise impacts, and the existing noise effects on the school are not a concern under state or local standards. And finally, there is a minimal safety risk increase based on existing conditions and the after the addition of new conditions of approval on the project. For all of these reasons, denial of the permit does not appear to be the least restrictive means for protecting the government interest.

THE BOARD THEREFOR FINDS that in order to be consistent with the RLUIPA, the Board shall overturn the ALUC decision and allow for the issuance of this permit.

**PCPMT20060608, LEGACY CHRISTIAN SCHOOL
CONDITIONS OF APPROVAL:**

1. Approval of this Modification of Conditional Use Permit (PCPM20060608) allows the establishment of the Legacy Christian School within the existing Parkside Church facility.
2. This permit approves the use of the education wing of the Parkside Church as a public middle school, serving a maximum of 80 students per year. This permit does not approve any other day-care, nursery school or full time school except that normally associated and incidental to regular church service use (e.g. Sunday school, bible school, day care facilities for children while parents attend service, etc.)"
3. Applicant shall replace dead, dying or missing landscape along west property line as set forth in the related Design Review Agreement (PDSA #1783). This condition shall be satisfied within six months of the date of final approval of this Modification. The DSA identifies twenty-two (22) Arizona Cypress along this property line. Per discussion with the applicant, these may be replaced with sequoia sempervirens (with regular watering for the first five years). Please contact the Planning Department for review of new landscape.
4. Applicants shall obtain a permit from the Building Department prior to any construction activity on site.
5. Hours of operation for the middle school shall be from 8:00 AM until 4:00 PM.
6. This Use Permit will expire on September 18, 2008 unless exercised.
7. The use of the facility as an educational institution pursuant to the request shall not commence operation until Placer County DRC has received and reviewed an approval from the ALUC.
8. Hours of operation are restricted as follows: from 7:00 a.m. to 4:00 p.m. Monday thru Friday. Should the applicant wish to request a change to the hours of operation, an application to modify this permit for purposes of re-evaluating Traffic Impact fees shall be made. Fees are calculated using the information supplied. If either the use or the square footage changes, then the fees will change.

Submit to Environmental Health Services a "will-serve" letter from Sewer Maintenance District #1 indicating that the district can and will provide sewerage service to the project. The project shall connect to public sewer.

9. Submit to Environmental Health Services, for review and approval, a "will-serve" letter or a "letter of availability" from Nevada Irrigation District domestic water service. The applicant shall connect the project to this treated domestic water supply.
10. If the project kitchen ever functions or operates in a manner that would qualify it as a food facility, as defined in the California Uniform Retail Food Facility Law, then the owner shall pay required fees, obtain a plan check and permit to operate a food facility in conformance with the requirements of said law.
11. Submit to the Environmental Health Services a "will-serve" letter from the franchised refuse collector for weekly or more frequent refuse collection service.
12. A deed notice (a buyer's beware awareness disclosure) shall be recorded against the property that shall discuss the noise and safety concerns related to the airport and this property. The deed notice shall be reviewed and approved by the County, and shall be recorded within 30 days of the final approval of this permit.
13. There be no more than 65 people congregating within a one acre radius of the four class rooms being used during school hours of 7am until 4 pm.

A statement similar to the following should be included on the deed for any real property subject to the deed notice requirements set forth in the *Placer County Airport Land Use Compatibility Plan*. Such notice should be recorded by the county of Placer. Also, this deed notice should be included on any parcel map, tentative map, or final map for subdivision approval.

The *Placer County Airport Land Use Compatibility Plan* and Placer County Ordinance (Ordinance No. _____) identify a [Insert County / City Name] [Insert Airport Name] Airport Influence Area. Properties within this area are routinely subject to overflights by aircraft using this public-use airport and, as a result, residents may experience inconvenience, annoyance, or discomfort arising from the noise of such operations. State law (Public Utilities Code Section 21670 et seq.) establishes the importance of public-use airports to protection of the public interest of the people of the state of California. Residents of property near such airports should therefore be prepared to accept the inconvenience, annoyance, or discomfort from normal aircraft operations. Residents also should be aware that the current volume of aircraft activity may increase in the future in response to Placer County population and economic growth. Any subsequent deed conveying this parcel or subdivisions thereof shall contain a statement in substantially this form.

Appendix F3

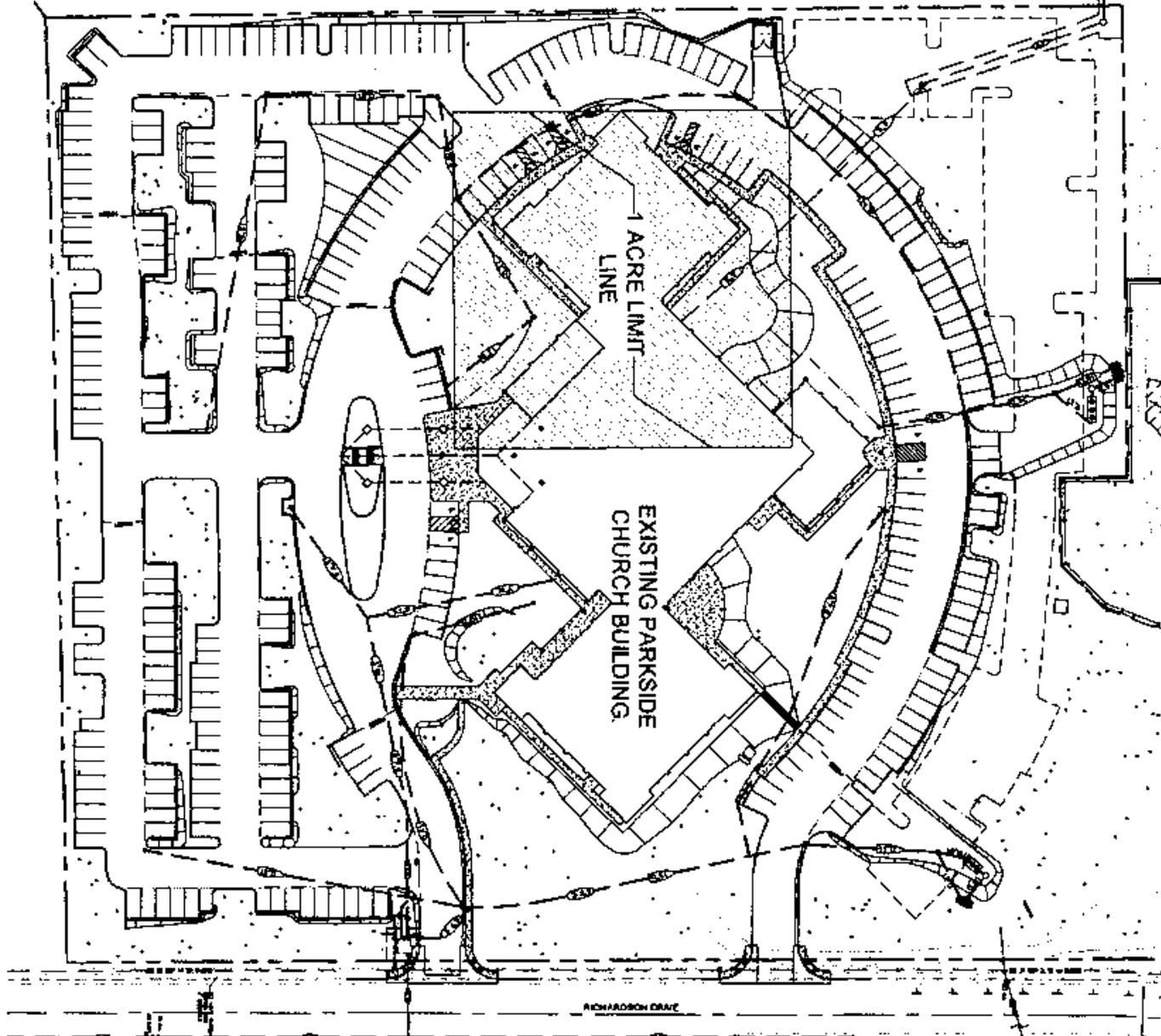
Sample Deed Notice
Placer County Airport Land Use Compatibility Plan

EXHIBIT J

199
F-7

SCALE:

1"=100'



PARKSIDE CHURCH

A.R. ASSOCIATES
275 NEVADA STREET AUBURN, CA 95603
ph: (530) 888-1288

C:\PROJECTS\06xxx\06062\06062-S.dwg 7/10/2007 9:18:51 AM PDT

EXHIBIT K ²⁰⁰

EXHIBIT L

PCPMT20060608, LEGACY CHRISTIAN SCHOOL

CEQA FINDINGS:

This project is categorically exempt from the provisions of CEQA per Guidelines Section 15301:existing facilities. The project will not result on any impacts to any natural resources and no exception to the application of this exemption applies.

MINOR USE PERMIT FINDINGS:

1. The proposed use is consistent with applicable policies and requirements of the Placer County General Plan and the Auburn-Bowman Community Plan.
2. The project is consistent with all applicable provisions of Section 17.50.010 (Residential Single-Family) of the Placer County Zoning Ordinance.
3. The establishment, maintenance or operation of the proposed use will not, under the circumstances of this particular case, be detrimental to the health, safety, peace, comfort and general welfare of people residing in the neighborhood of the proposed use, or be detrimental or injurious to property or improvements in the neighborhood or to the general welfare of the County.
4. The proposed project will be consistent with the character of the immediate neighborhood and will not be contrary to its orderly development.
5. The proposed project will not generate a volume of traffic beyond the design capacity of all roads providing access to the project site.

