



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** Legacy Rezoning: School  
Impact Mitigation

**DATE:** April 17, 2007

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The purpose of this memorandum is to inform the City Council of the limitations of authority of cities to impose school fees and exactions, and the affect of the Settlement Agreement over the North San Jose Area Development Policy Environmental Impact Report litigation on the Santa Clara Unified School District and the City of San Jose.

## **BACKGROUND**

Item 11.5 on tonight's agenda is a project that involves rezoning of a large parcel of property in the North San Jose Development Policy Area for residential purposes.

City staff is informed that the Santa Clara Unified School District may object to the rezoning and request the City to adopt school impact mitigation fees.

## **ANALYSIS**

### 1. Limitations on Authority to Mitigate School Impacts

Government Code section 65996 authorizes two exclusive methods for considering and mitigating impacts on school facilities which are both within the province of school districts (rather than local agencies) as follows: (1) Education Code section 17620 authorizes the imposition of statutory development fees, charges and dedications by school districts; and (2) the School Facilities Act requires a study and findings of overcrowding by a school district to support additional developer exactions for interim school facilities which must be approved by the district with concurrence of the local agency. The following is a brief explanation of the background of the school impact mitigation limitations in state law.

Government Code section 65995, enacted as part of this comprehensive school financing legislation in 1986, states at Subdivision (e) that the financing of school facilities and the mitigation of the impacts of land use approvals on the need for school facilities are matters of statewide concern, and that the legislature occupies the subject matter of mandatory development fees and other development requirements for school facilities finance to the exclusion of all local measures. The California Supreme Court

has determined that, while prior legislation did not occupy the field of school construction financing or preempt local ordinances imposing school impact fees under their police power, the 1986 comprehensive legislation scheme "fully and expressly" occupies the field of regulation to the exclusion of all local measures.

Then, the passage of SB 50 and Proposition 1A in 1998 dramatically narrowed the ability of local government to provide funding for the construction and reconstruction of school facilities. Prior to these 1998 enactments, local governments were authorized to exact from new development the dedication or reservation of school sites, construction of new facilities, and expansion or maintenance of existing facilities, and the like when development involved a legislative act (e.g. amendment to a zoning ordinance and/or general plan). Exaction for school facilities was limited to statutory school fees only when development approvals entailed only adjudicative decisions (e.g. tentative map, parcel map, conditional use permit, variance, etc.). This distinction was done away with by SB 50 and Prop. 1A. Under SB 50 and Prop. 1A, any legislative or adjudicative decision must abide by the monetary school fee limits in Government Code section 65995(a).

Note that this law would have changed to authorize limited additional school impact mitigation if Proposition 1D had not been enacted by the voters in the November 2006 General Election. But the law remains the same since Proposition 1D approved a bond measure including \$1.9 Billion for K-12 school construction with additional funding for existing facilities upgrades and other school related expenditures.

Without the District conducting a study and adopting specific findings of overcrowding in accordance with Government Code section 65996 (which, to our knowledge, the District has not done), the funding available for new school construction is limited to: (1) the \$1.9 Billion state-wide Proposition 1D bond measure funds, and (2) the statutory fee which is a set amount under state law that increases bi-annually and is charged by square foot of development.

2. The Settlement Agreement: North San Jose Area Development Policy EIR Litigation

Sections 1.7 and 1.8 of the November 16, 2006 Settlement Agreement with the County of Santa Clara and the Cities of Milpitas and Santa Clara provide for City of San Jose funding to the Santa Clara Unified School District of \$25,000 for the District to conduct a student generation report (See Settlement Agreement Section 1.7 attached hereto). According to PBCE Director Joseph Horwedel, the District has not completed the student generation report yet. Pursuant to Section 1.8 of the Settlement Agreement (attached hereto), within 6 months of completion by the District of the Student Generation Report, the City and District are to create a school facility plan identifying potential school sites, construction costs and operational impacts on the District. Section 1.8 of the Settlement Agreement specifically states that the school facility plan "shall in no way create any additional legal or financial obligations between the City of

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San Jose and the District.”<sup>1</sup> There is no intent in the Settlement Agreement to deny or delay development approvals pending the creation of the school facility plan. Nor is there any intent or direction in the Settlement Agreement that the City would adopt any school mitigation measures beyond those that are already authorized by state law as the only means of school impact mitigation.

The Council may consider the rezoning decision without additional consideration of school impacts because the school impacts have already been evaluated to the extent authorized by law in the relevant EIR, the impacts are fully addressed to the extent authorized by law through the payment of the statutory school impact fee, and the determination is not limited in any manner by the terms of the Settlement Agreement.

RICHARD DOYLE  
City Attorney

By \_\_\_\_\_  
VERA M. I. TODOROV  
Senior Deputy City Attorney

Attachment

cc: Les White  
Joseph Horwedel

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<sup>1</sup> The Santa Clara Unified School District is not a party to the Settlement Agreement because it did not file a lawsuit against the City over the adequacy of the EIR. The District is a third party beneficiary of the terms of Sections 1.7 and 1.8 of the Settlement Agreement.

## **ATTACHMENT**

### **Settlement Agreement (Excerpt)**

- 1.7** *Within six (6) months of the Effective Date of this Settlement Agreement, San José shall pay to Santa Clara Unified School District ("District") the sum of \$25,000 to retain a consultant agreeable to both the City of San José and the District to be used by District to prepare a pupil generation report for students from the North San José Project area. Within six (6) months of the Effective Date of this Settlement Agreement, San José shall consult with District to create a scope of a school facility plan.*
- 1.8** *Within six (6) months from the completion of the pupil generation report, San José, working with the District, shall create a school facility plan, agreeable to both the City of San José and the District, to provide for designation of potential school sites. The City of San José shall prepare an analysis of the construction costs and operational impacts to District arising from approval of the North San José project based on information requested by the City of San José and provided by the District in a timely manner to the City of San José. This Settlement Agreement, preparation of the school facility plan, and preparation of the analysis of construction costs and operational impacts to District shall in no way create any additional legal or financial obligations between the City of San José and District.*