



BIA Bay Area
Contra Costa Centre Transit Village
1350 Treat Blvd., Suite 140
Walnut Creek, CA 94597

June 22, 2021

Mayor Ignacio Velasquez, Chair
Hollister General Plan Advisory Committee
375 5th St., Hollister, CA 95023

RE: 6.22.21 City Council Agenda Item A.1. General Plan Update Policy Options, (1) New School Funding Policy, (2) Parks and Recreation Policy

Dear Mayor Velasquez & City Council Members,

The Building Industry Association of the Bay Area (BIA) respectfully submits this letter both as a follow-up to its comments on March 30, 2021 and in response to the PlaceWorks Executive Summary Memo of Policy Recommendations dated June 11, 2021.

New School Funding Policy

BIA strongly objects to the New School Policy proposed language contained in the Executive Summary Policy Options Memo i.e.,

“Require the preparation of a Specific Plan, Financing Plan or other similar document as a pre-condition for annexation or redesignation of land for a new urban use. The plan shall identify means to ensure adequate funding to support construction of all needed public facilities, including water, sewer, storm drainage, roads, sidewalks, parks and public schools”.

It is clear the intent of the proposed new language is to condition project approvals in future Specific Plans or Financing Plans or similar documents to exact more in school fees from development than state law allows.

In addition, the policy language *“Grant additional density, more flexible setbacks and building heights, and/or reduced parking requirements for projects that voluntarily provide additional school funding”* is equally unacceptable. Under SB 50 Cities cannot establish any schemes that would unlawfully condition housing development in contradiction to state statute.

BIA emphasizes that controlling state law i.e., SB 50 has preempted the field of school facilities adequacy and mitigation measures (Gov. Code Section 65995 et. Seq.). Under these statutes, local governments are prohibited from denying or withholding the approval of housing projects based on a refusal to provide school facilities mitigation measures beyond that expressly authorized and limited by statute. The only language that should be

included in the New School Funding Policy Section as it relates to new housing development is an acknowledgement that SB 50 preempts the field of new school facility construction funding.

Here are the relevant sections of state law:

65995(g)....

(3) For purposes of subdivisions (f), (h), and (i), and this subdivision, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(h) The payment or satisfaction of a fee, charge, or other requirement levied or imposed pursuant to Section 17620 of the Education Code in the amount specified in Section 65995 and, if applicable, any amounts specified in Section 65995.5 or 65995.7 are hereby deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073, on the provision of adequate school facilities.

(i) A state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073 on the basis of a person's refusal to provide school facilities mitigation that exceeds the amounts authorized pursuant to this section or pursuant to Section 65995.5 or 65995.7, as applicable.

Under the 1998 School Facilities Act, the Legislature created a comprehensive school facility financing and mitigation regime that calls for Home Builders, the School Community, and the State to share in facility construction cost. It was a painstaking compromise that the BIA fiercely defends. A cornerstone of that regime is the complete preemption of local authority to consider and mitigate school facilities impacts from new development.

Parks and Recreation Policy

While the city may adopt an increased standard for parkland by new developments from 4 acres of park space/1,000 persons to 5 acres of park space/1,000 persons it should be noted that new development cannot be charged for more than 3 acres/1,000 per the provisions of the Quimby Act

66477.

(a) The legislative body of a city or county may, by ordinance, require the dedication of land or impose a requirement of the payment of fees in lieu thereof, or a combination of both, for park or recreational purposes as a condition to the approval of a tentative map or parcel map, if all of the following requirements are met:

(1) The ordinance has been in effect for a period of 30 days prior to the filing of the tentative map of the subdivision or parcel map.

(2) The ordinance includes definite standards for determining the proportion of a subdivision to be dedicated and the amount of any fee to be paid in lieu thereof. The amount of land dedicated or fees paid shall be based upon the residential density, which shall be determined on the basis of the approved or conditionally approved tentative map or parcel map and the average number of persons per household. There shall be a rebuttable presumption that the average number of persons per household by units in a

structure is the same as that disclosed by the most recent available federal census or a census taken pursuant to Chapter 17 (commencing with Section 40200) of Part 2 of Division 3 of Title 4. However, the dedication of land, or the payment of fees, or both, shall not exceed the proportionate amount necessary to provide three acres of park area per 1,000 persons residing within a subdivision subject to this section, unless the amount of existing neighborhood and community park area, as calculated pursuant to this subdivision, exceeds that limit, in which case the legislative body may adopt the calculated amount as a higher standard not to exceed five acres per 1,000 persons residing within a subdivision subject to this section.

Feel free to contact me with any questions at psausedo@biabayarea.org.

Very truly yours,



Patricia Sausedo, Director South Bay
BIA Bay Area Government Affairs

cc: David Early, Placeworks
Abraham Prado, Interim Development Services Director/Manager