



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

May 1, 2020

Mayor Margaret Abe-Koga
Mountain View City Council
500 Castro St., Mountain View, CA 94041
TRANSMITTED VIA EMAIL

RE: May 5, 2020 City Council Agenda Item #6.1, School Mitigation

Dear Mayor Abe-Koga and City Councilmembers,

The Building Industry Association of the Bay Area (BIA) respectfully submits this letter both as a follow-up to its comments on October 15, 2019 and in response to the letter from the Mountain View Whisman School District (District) to the City dated April 29, 2020

As BIA commented at the October 15, 2019 City Council Study Session, controlling state law 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.

As such, the statutory Level 1 fee of \$3.79 per sq. ft. in the Mt. View/Whisman School District represents full and complete mitigation of school facility impacts from residential development in the School District.

Here are the relevant sections of 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 facilities 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.

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

Very truly yours,

Dennis Martin

Dennis Martin
BIA Bay Area Government Affairs

cc: Kimbra McCarthy, City Manager
Aarti Shrivastava, Community Development Director



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June 9, 2020

Mayor Margaret Abe-Koga
Mountain View City Council
500 Castro St. Mountain View, CA 94041

RE: June 9, 2020 City Council Agenda Item #8.1 Citywide School Strategy

Dear Mayor Abe-Koga and City Council members,

The Building Industry Association of the Bay Area (BIA) respectfully submits this letter both as a follow-up to its letter dated May 1, 2020 and in response to the June 9, 2020 Council Staff Report and proposed Resolution to Adopt a Council Policy for a Citywide School Strategy (Policy).

BIA appreciates that the City acknowledges in its report to the City Council that controlling state law has preempted the field of school facilities adequacy and mitigation measures (Gov. Code Section 65995 et seq.). The City Staff Report correctly concludes that under these statutes, local governments are prohibited from denying or withholding the approval of housing projects based upon a refusal to provide school facilities mitigation measures beyond that expressly authorized and limited by statute and, importantly, that the maximum fee amounts specified in state statute are, as a matter of state law, deemed to provide adequate school facilities.

However, BIA remains concerned that the proposed Policy describing so-called “voluntary contributions” is problematic, because it could be interpreted as tacitly inviting Council and Staff to suggest or solicit a voluntary or charitable school contribution, thereby creating a de facto expectation that conflicts with state law.

If the City were to show a pattern of favoring projects that provide voluntary school contributions over those that do not, that practice would face the same scrutiny as a formal policy requiring “voluntary” school contributions, and it would be the City, not the school districts, that would bear the legal risk.

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

Very truly yours,

Dennis Martin

Dennis Martin
BIA Bay Area Government Affairs

cc: Kimbra McCarthy, City Manager
Aarti Shrivastava, Community Development Director
Lisa Natusch, City Clerk