



DATE: October 13, 2020

CATEGORY: Public Hearing

DEPT.: Community Development

TITLE: **School Strategy Precise Plan Amendments**

RECOMMENDATION

Adopt a Resolution Amending the P-39 (North Bayshore) and P-41 (East Whisman) Precise Plans, Consistent with the Citywide School Strategy, to be read in title only, further reading waived (Attachment 1 to the Council report).

BACKGROUND

Previous Discussions

The City has been working with the Mountain View Whisman School District (MVWSD) and Mountain View Los Altos Union High School District (MVLAUHSD) to assist with school capacity needs associated with new residential development in the North Bayshore and East Whisman areas. These areas were previously mainly industrial parks and were revised to create complete communities, including residential and supporting uses, with improved transit, pedestrian, and bicycle infrastructure in 2017 and 2019, respectively. To address these issues, the North Bayshore Precise Plan and East Whisman Precise Plan included language related to a “Local School District Strategy,” intended to support capacity for students generated in these areas due to residential projects allowed by the Precise Plans.

In October 2018, Council directed staff to develop a Citywide School Strategy, including facilitated discussions between developers and the school districts to provide a better shared understanding of the school districts’ needs and create a framework to support those needs. As discussed further below, State law imposes limitations on the imposition of fees for school facilities. The adopted Citywide School Strategy identifies City initiatives that are within the City’s power to authorize, that can bridge the funding gap between what school districts need and what they are entitled to under State law.

As a result of this work, the Citywide School Strategy eliminates development-by-development discussions of “Local School District Strategies” and provides for additional collaborative opportunities outside of the development process.

Legal Framework

There are significant limitations imposed by State law on the imposition of fees for school facilities. In short, when reviewing projects, the City is prohibited from requiring school fees which exceed those already authorized by statute. In particular, State law provides as follows:

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...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 Section 65995.7, as applicable. (Government Code Section 65995(i))

In addition, payment of fees “shall be the exclusive method of considering and mitigating impacts on school facilities,” and “are...deemed to provide full and complete school facilities mitigation.” (Government Code Sections 65996 (a) and (b)) Because of these statutory restrictions, additional developer funding for schools may only occur voluntarily.

The Building Industry Association (BIA) has submitted recent letters to the City citing this law (see Attachment 2 to the [June 23, 2020 Council Report](#), which is Attachment 2 to this report).

June 23, 2020 City Council Meeting

On June 23, 2020, Council adopted the Citywide School Strategy Policy, which included the following:

- Contribution of funding to the school districts to create shared school/public facilities;
- Support of school district land acquisition through a Transfer of Development Rights (TDR) framework;
- An incentive for developers who voluntarily dedicate land to schools, allowing TDR from the dedicated land elsewhere within their project site;

- Continued discussion with the school districts regarding details of their land and facility needs; and
- The City has developed, and may periodically update, a “school funding gap” analysis to inform developers whether resources available to school districts (including State fees, the City actions above, and other funding opportunities) are adequate for their projected needs.

Council directed staff to bring back North Bayshore and East Whisman Precise Plan amendments consistent with the Policy. More information is available in the [June 23, 2020 Council Report](#) (Attachment 2) and [Council Policy K-26](#) (Attachment 3).

September 16, 2020 Environmental Planning Commission Meeting

On September 16, 2020, the Environmental Planning Commission (EPC) reviewed draft School Strategy Precise Plan Amendments. The proposed amendments at the EPC meeting took a thorough approach to separating school policy from the City’s land use regulations by removing references to schools from the plans. The EPC staff report and attachments are included as Attachment 4 ([September 16, 2020 EPC Meeting](#)).

MVWSD and MVLAUHSD submitted a proposed revision to the draft amendments, which preserved language not directly conflicting with the Citywide School Strategy, established references to the Strategy, and required developers to report on actions taken pursuant to the Strategy (Attachment 5—School District Proposed Amendments). There were two public speakers at the meeting: the Superintendent of MVWSD and the MVWSD Board President, both of whom expressed concern that the proposed language would remove schools from the vision of the area and deemphasize schools as part of the planning process.

EPC Recommendation

As described above, the amendments before EPC took a more thorough approach to removing references to schools from the Precise Plans. The EPC recommended approval of the amendments, with modifications to reference the Citywide School Strategy Policy in the Precise Plans, if appropriate, in a legally defensible manner. These modifications are in Attachment 1.

ANALYSIS

Proposed Precise Plan Amendments

Because of the legal limitations discussed above, additional school contributions may only be provided voluntarily by developers, who may be motivated by community goodwill or marketable quality-of-life outcomes for their tenants or buyers.

Based on this limitation and the opportunities established by the Citywide School Strategy Policy, the proposed North Bayshore and East Whisman Precise Plan amendments would remove development-by-development “Local School District Strategy” requirements or community benefits, including requirements to report on Citywide School Strategy actions. Pursuant to the EPC’s request, staff has made changes to the amendments to reference the Citywide School Strategy and include actions the City can take that are consistent with the Strategy.

Specific North Bayshore Precise Plan amendments include:

- Removal of “Local School District Strategy” from residential development requirements and definitions;
- Reference to Citywide School Strategy (Council Policy K-26); and
- Updated language regarding collaboration, TDRs, and shared open spaces to be more general.

Specific East Whisman Precise Plan Amendments include:

- Removal of “Local School District Strategy” from residential and office requirements;
- Removal of school land contributions from community benefits;¹
- Removal of school site height exception, which conflicts with, and would be more limiting than, comparable language in the Citywide School Strategy.

¹ Pursuant to the Citywide School Strategy, the City Council may still direct community benefit funds to schools after collecting them, but the developers cannot claim the dedication of land as a community benefit since that would force a condition of approval on the development.

- Reference to Citywide School Strategy (Council Policy K-26); and
- Updated language regarding collaboration, TDRs, and shared open spaces to be more general.

The East Whisman Precise Plan preserves language allowing school TDRs into the Precise Plan because such transfers would result in a floor area ratio higher than otherwise allowed. Detailed proposed amendments may be found in Attachment 1 (Resolution).

California Environmental Quality Act

These Precise Plan amendments are exempt from the California Environmental Quality Act (CEQA) because Environmental Impact Reports (EIRs) were prepared for both the North Bayshore and East Whisman Precise Plans. Pursuant to Section 21166 of the Public Resources Code, no subsequent or supplemental EIR shall be required unless substantial changes to the project or circumstances occur or new information becomes available that indicates the changed project, circumstances, or new information would result in a new or more severe significant impact than was identified in the previous EIR. The following facts demonstrate that the proposed amendment could not result in such substantial changes or new information under CEQA:

- New schools were not included in the project description or as inputs to the analysis of either EIR;
- The need for new schools was not (and, pursuant to the Government Code sections cited above, could not have been) identified as an impact in either EIR;
- The “Local School District Strategy” and other school-related language proposed to be removed was not identified as a precluding factor or a mitigation measure for any impacts in either EIR; and
- Pursuant to the Government Code sections cited above, the “Local School District Strategy” and other school-related language cannot provide public facilities mitigation, so removal of the requirement cannot create a public facilities impact.

Therefore, the proposed amendments would not result in new or unidentified impacts, whether or not they change the likelihood of new or improved schools serving these areas, and no subsequent or supplemental EIR is required under CEQA. Additionally, based on the information above, the proposed amendments are exempt pursuant to the “common-sense” exemption in Section 15061(b)(3) of the CEQA Guidelines since it can

be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

FISCAL IMPACT – None.

CONCLUSION

Staff recommends that the City Council amend the P-39 (North Bayshore) and P-41 (East Whisman) Precise Plans consistent with the Citywide School Strategy.

ALTERNATIVES

1. Do not approve the Precise Plan Amendments.
2. Modify the Precise Plan Amendments.

PUBLIC NOTICING

The Council agenda is advertised on Channel 26, and the agenda and this Council report appear on the City's website. A website for the topic is at: www.mountainview.gov/depts/comdev/planning/activeprojects/schoolstrategy.asp, which advertised the meeting. Property owners in North Bayshore, East Whisman, and Terra Bella, and applicants for under-review development were mailed notices. Other interested stakeholders were notified of this meeting via the e-mail notification system for the Citywide School Strategy.

Prepared by:

Eric Anderson
Principal Planner

Aarti Shrivastava
Assistant City Manager/Community
Development Director

Approved by:

Kimbra McCarthy
City Manager

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- Attachments:
1. Resolution Amending Precise Plans
 2. [June 23, 2020 Council Report](#)
 3. [Council Policy K-26](#)
 4. [September 16, 2020 EPC Meeting](#)
 5. School District Proposed Amendments