

CITY OF MOUNTAIN VIEW**ENVIRONMENTAL PLANNING COMMISSION
STAFF REPORT
SEPTEMBER 16, 2020****5. PUBLIC HEARINGS****5.2 School Strategy Precise Plan Amendments****RECOMMENDATION**

Adopt a Resolution Recommending that the City Council Amend 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 (Exhibit 1 to the Staff Report).

PUBLIC NOTIFICATION

The Environmental Planning Commission (EPC) agenda is advertised on Channel 26, and the agenda and this EPC Staff Report appear on the City's website. A website for the topic is at: <https://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 Citywide School Strategy.

BACKGROUNDPrevious 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 and East Whisman Precise Plans 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.

June 23, 2020 City Council Meeting

On June 23, 2020, the City 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 transfer of development rights 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](#) (Exhibit 2, which includes the adopted Policy as Attachment 1).

ANALYSIS

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 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 Exhibit 2).

Proposed Precise Plan Amendments

Because of the 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. Other school-related language is also proposed for removal since they are applied at a Citywide level in the Policy. These include collaboration actions, development exceptions, and authorizations for TDR out of the Precise Plan areas, though language allowing TDR into the Precise Plans has been retained to allow such transfers. Detailed proposed amendments may be found in Exhibit 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.

CONCLUSION

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

Prepared by:

Eric Anderson
Principal Planner

Approved by:

Aarti Shrivastava
Assistant City Manager/Community
Development Director

EA/AS/4/CDD
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- Exhibits: 1. Resolution Recommending Precise Plan Amendments
2. [June 23, 2020 Council Report and Citywide School Strategy Policy](#)