

**DATE:** October 3, 2017

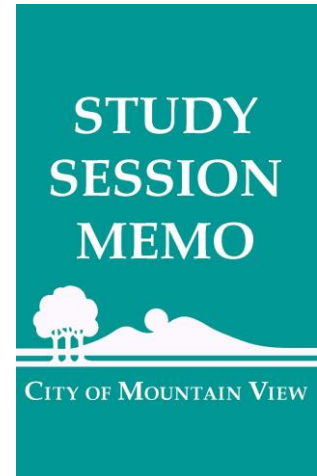
**TO:** Honorable Mayor and City Council

**FROM:** Carly Panos, Assistant Planner  
Randal Tsuda, Community Development  
Director

**VIA:** Daniel H. Rich, City Manager

**TITLE:** **Los Altos School District – Transfer of  
Development Rights and Master Agreement  
for Shared Open Space/Recreational Facilities**

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## **PURPOSE**

The purpose of this Study Session is to receive City Council input on a Transfer of Development Rights (TDR) process, designed to support acquisition of a new public school site for the Los Altos School District (LASD) in the San Antonio area, and a potential Master Agreement for shared open space and recreational facilities at the new school.

City Council is not taking formal action on these items at this Study Session. Based on Council input, staff would return to Council before the end of the year for authorization to execute the necessary agreements for TDRs, as well as authorize Gatekeeper requests for sites associated with the TDRs, as described later in this report.

## **BACKGROUND**

In 2014, voters passed Measure N, which authorized LASD to issue and sell bonds in the amount of \$150 million to be used to accommodate growing student enrollment. LASD currently has nine schools serving approximately 4,500 students in the district. Approximately 1,260 LASD students reside in Mountain View. LASD is expecting an increase in the number of Mountain View students, as well as students from other cities, as new higher-density housing developments continue to be built and occupied.

In order to address future growth and to alleviate overcrowding, LASD has been searching for several years for land to accommodate a tenth school site for a new K-8 public or charter school. However, LASD has struggled to find and acquire a site that meets their location and size criteria, and that is priced within its funding resources.

### *Prior City Coordination*

Community members and City Councilmembers have voiced support for an additional school site to accommodate growth and LASD enrollment through multiple City projects and meetings. The San Antonio Precise Plan (SAPP) contains policy and programmatic language, including community benefit language, to support a new school site.

Specifically, Council has supported use of a TDR process to encourage public/private partnerships to assist with the development of a school. A policy framework for TDRs was included in the SAPP, but a specific process was not defined in detail because there was no available information on potential sending/receiving sites at the time of Precise Plan adoption.

In 2014, the Mayor sent a letter indicating support for a school and open space in the San Antonio area. On July 2, 2015, the City Council discussed contributing Park Land Dedication funds towards the development of shared open space and recreational facilities associated with a school site in the SAPP area. Council voted 6-0-1 to support LASD and contribute Park Land Dedication funds, but the specific terms and contribution amount were not determined.

### *City TDR Policies*

The SAPP, adopted in December 2014, contains policies to allow TDRs to generate a funding source to help support development of a public school. The Plan indicates that a property owner may submit a TDR application if they have partnered with the school district to develop a public school in the area. The intent of the policy is to allow the school district to sell development rights from a school site and to allow the purchaser to utilize the development rights at another property. The value from the sale of these development rights would reduce the land acquisition cost for a school district.

On February 14, 2017, the City Council conceptually discussed incorporating a similar TDR policy into the East Whisman Precise Plan. In general, Council was supportive of studying TDRs in East Whisman but some had concerns regarding impacts additional density may have on the area.

The North Bayshore Precise Plan also contains policies that allow TDRs in certain areas, and defines the TDR process/allowances to potentially reduce the amount of development near sensitive habitat (sending areas) and focus more intensive development near transit and commercial services on or near Shoreline Boulevard

within the Plan Area (receiving areas). The City has not received any formal requests for TDRs within North Bayshore to date.

## **DISCUSSION**

### *Proposed TDR Process*

For more than nine months, LASD has been working with City staff to develop a TDR process that could assist LASD with purchasing a site for a new school within the SAPP area. This report outlines the proposed TDR process and identifies key policy questions for City Council input. The following are key components LASD and staff have identified as necessary to facilitate the TDR process:

- *Memorandum of Understanding (MOU) between LASD and City* – LASD and City staff will develop an MOU based on Council’s direction on the key policy questions contained herein. The purpose of the MOU is to document the agreed-upon TDR strategy and initiate the TDR process. Staff would bring the MOU back to Council before the end of the year for review and authorization to execute the agreement.
- *Letter of Intent (LOI) between LASD and TDR Buyers* – To ensure prospective buyers are committed to purchasing TDRs, they will be required to sign a LOI with LASD, specifying the site, the square footage being transferred, and the set purchase price.
- *Gatekeeper Authorization* – Once LOIs have been signed, staff would return to Council before the end of the year for authorization of Gatekeeper requests for property owners that have executed the aforementioned LOIs with LASD. These Gatekeepers would allow the property owners to submit a development application that includes the TDRs. As discussed later in this report, Gatekeeper authorization would not guarantee project approval. However, it would allow developers/property owners to submit applications for City staff to review.
- *Development Agreement (DA)* – A DA would be processed concurrently with the entitlements for authorized Gatekeepers. The DA would finalize the transfer of floor area from the sending site to the receiving sites.
- *Master Agreement for Shared Open Space/Recreational Area* – LASD and staff have discussed a Master Agreement for shared open space/recreational facilities associated with the new school site, and contribution of City Park Land Dedication funds as previously endorsed by the City Council. Details regarding the Agreement are discussed later in this report. If Council is comfortable with the

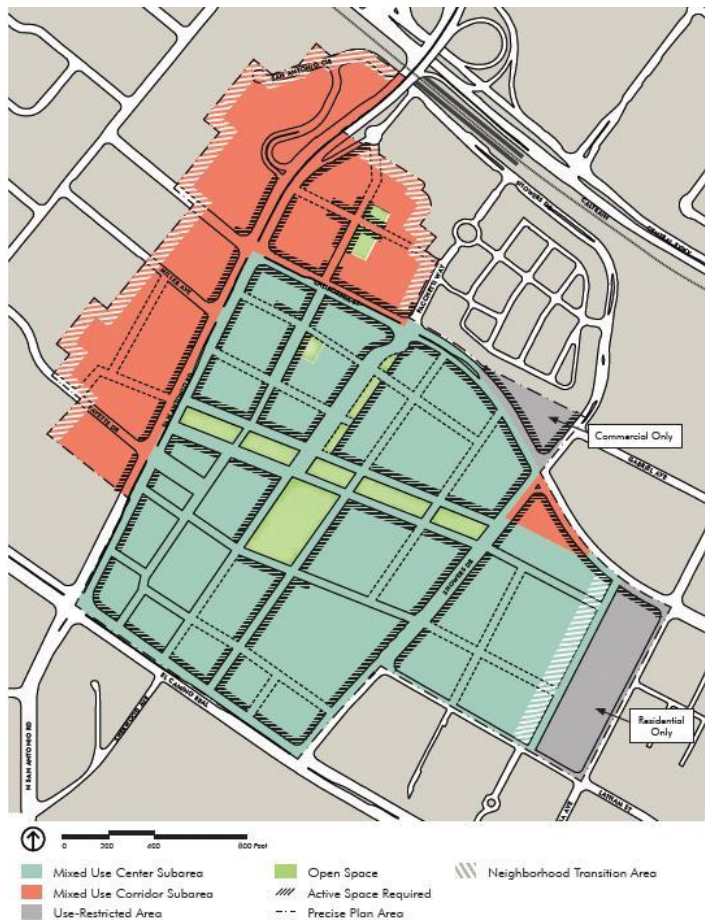
contribution amount being requested, staff would return with the final Master Agreement for Council review after LASD has secured a site.

*TDR “Sending” Site*

LASD is focused on acquiring a school site within the SAPP area; however, a specific site has not yet been secured. Once the TDR process has been finalized and the LASD determines it is prepared to proceed, staff will return to Council before the end of the year with details on the specific “sending” site within the SAPP area.

The SAPP has two sub-areas—Mixed-Use Center and Mixed-Use Corridor. The Mixed-Use Center sub-area allows a 1.35 base floor area ratio (FAR) and up to 2.35 FAR, of which up to 0.75 FAR can be office/commercial square footage, as a “Tier 1” request with the provision of public benefits. The Mixed-Use Corridor sub-area allows a 1.35 base FAR and up to 1.85 FAR, of which 0.50 FAR can be office/commercial square footage, as a “Tier 1” request with the provision of public benefits.

LASD hopes to acquire between 6 to 10 acres for the new school. For the purposes of this report, staff assumes LASD will acquire approximately 8 acres of which approximately 4 acres would be used for school facilities/supporting uses and approximately 4 acres would be used for open space/recreational area. The exact



**Figure 1: San Antonio Precise Plan Sub-Area Map**

size of the site LASD acquires and the location within the Plan Area will dictate how much square footage they are able to sell via TDRs based on the allowed FAR and amount of FAR encumbered by school buildings; however, LASD estimates approximately 600,000 square feet will be eligible for sale.

Although FAR varies based on the location/sub-area where the eventual LASD site will be located, the bulk of the allowed FAR in the SAPP is allocated to residential square footage. For example, in the Mixed-Use Corridor sub-area, a Tier 1 project would require at minimum approximately 73 percent of the total floor area to be allocated to residential development. LASD believes that significant interest in the TDRs comes from office developers and is requesting flexibility to convert the residential floor area to office floor area at the receiving site, if necessary.

**Question No. 1:** Does Council support allowing the conversion of all or a portion of residential floor area to office floor area through this TDR process?

### *TDR “Receiving” Site*

The SAPP currently allows TDRs within the Plan Area. LASD has indicated allowing the transfer outside the SAPP area is a critical component as all developers that have expressed interest in the TDRs have project sites that are located outside of the SAPP. Based on their negotiations with interested property owners and developers, LASD estimates between 250,000 to 300,000 square feet may be transferred to properties within North Bayshore and 300,000 to 350,000 square feet may be transferred to properties within or near the East Whisman Precise Plan Area. LASD has not entered into a LOI with any TDR purchasers yet, but they have identified approximate locations for potential receiving sites based on conversations with developers. LASD is still negotiating with potential buyers so it is possible that additional receiving sites outside of these areas may arise. The five approximate receiving locations are identified in Attachment 1 and discussed below.

If Council is conceptually comfortable with TDRs landing outside of the SAPP, LASD will continue coordinating with TDR buyers to sign LOIs. The specific site and square footage being transferred would be noted in the LOI and included as part of the materials considered by Council before authorizing a Gatekeeper request. A draft LOI has been attached to this report for reference (see Attachment 2).

### North Bayshore Receiving Sites

As identified in Attachment 1, the potential receiving sites within North Bayshore are

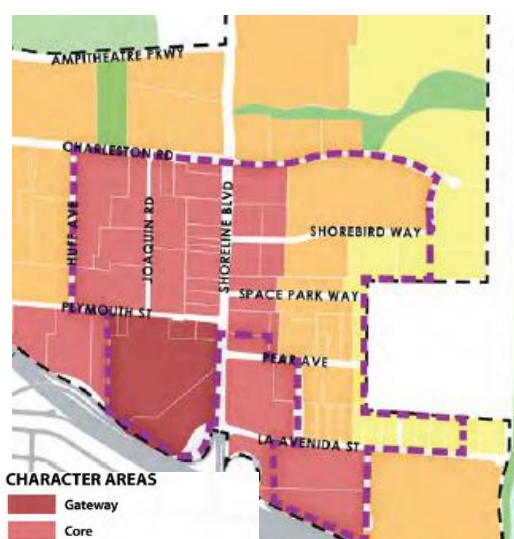


Figure 2: North Bayshore Precise Plan  
Character Areas

located within the Core Character Area. Under the adopted Precise Plan, the Core Character Area allows a base 0.45 FAR and up to 1.50 FAR. Permitted land uses include office, retail, hotel, and services.

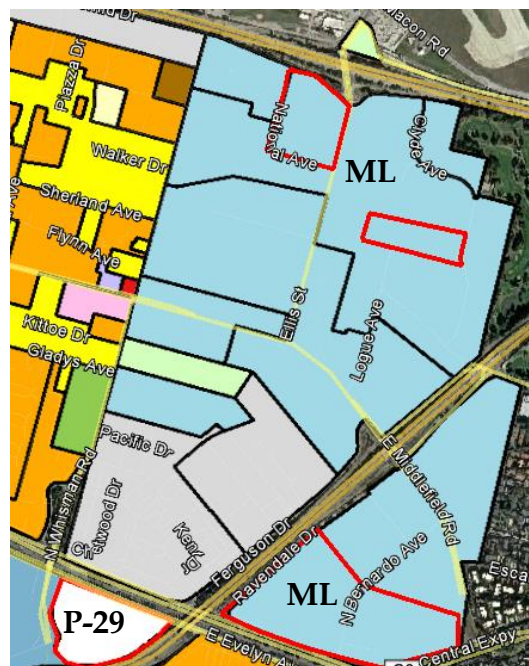
Under the draft Precise Plan, the Core Character Area supports a broad range of office, residential, entertainment, commercial, and hotel uses. The Core Character Area allows a base 0.45 FAR and up to 1.50 FAR for nonresidential projects, a base 1.0 FAR and up to 4.20 FAR for residential projects. Additional square footage from a TDR could exceed the total allowed in the Precise Plan, but the trip cap and other monitoring tools would still apply.

### East Whisman and Ferry Morse Precise Plan Receiving Sites

Figure 3 indicates the current zoning for potential receiving sites (outlined in red) within or near the East Whisman Precise Plan. The area zoned P-29 (Ferry-Morse Way) Precise Plan, which is not located within the East Whisman Precise Plan Area, allows office, manufacturing, storage, and other limited industrial uses with a maximum 0.35 FAR. This area is identified as a change area within the General Plan.

The areas zoned ML (Limited Industrial) currently allow a maximum FAR of 0.35 for industrial, office, and warehousing retail; and 0.40 for warehousing.

As shown in Attachment 1, potential receiving sites within the East Whisman Precise Plan Area are identified as medium-density residential, medium-intensity office, and high-intensity office. The Plan has not yet been adopted, but based on direction from Council to date, medium-density residential will likely allow up to 2.50 FAR, medium-intensity office will likely allow up to 0.75 FAR, and higher-intensity office will likely allow up to 1.0 FAR. LASD has provided massing studies to indicate how additional square footage may impact a site based on current and future zoning (see Attachment 3).



**Figure 3: Current Zoning for Potential Receiving Site within/Near East Whisman**

**Question No. 2:** Does Council support transferring square footage outside of the San Antonio Precise Plan Area?

### *Secondary Market*

According to LASD, TDRs are a critical component in financing the new school, given the high cost of land within the Precise Plan area and costs associated with upgrading existing school facilities, which encumbers a portion of the Measure N funding LASD received in 2014. In the event a Gatekeeper project for a receiving site is authorized, but the TDR purchaser is unable to use a portion or any of the TDR, staff requests Council input on allowing a secondary market for TDRs. This would allow the unutilized square footage to be resold to a new developer, potentially on a different site. If this occurs, staff would return to the City Council for review and authorization of a new Gatekeeper project; there is no guarantee the new site would be granted the TDR.

**Question No. 3:** Is Council supportive of allowing a secondary market for TDRs?

### *Public Benefit Exemption*

LASD is requesting that additional FAR permitted through the TDR process be exempt from public benefit contribution requirements, as moneys used to purchase the excess square footage would assist with the development of a school site, which is in itself a public benefit. Requiring public benefit contributions on this square footage would also affect the purchase price, which could be detrimental to the TDR process. This does not exempt entire projects from public benefit requirements; just the additional TDR square footage.

**Question No. 4:** Is Council supportive of waiving public benefit contribution requirements for the square footage transferred with a TDR?

### *Alternate Gatekeeper Process*

Upon receipt of the necessary submittal requirements, staff would return to Council before the end of the year for review and authorization, if supported, of TDR Gatekeeper applications. This does not require Council to authorize Gatekeeper requests if they feel the site or square footage is not appropriate; however, it allows developers with TDRs to submit applications for Gatekeepers outside of the standard Gatekeeper process. If authorized, staff would begin reviewing TDR project(s) as soon as possible after the application is received. An authorized Gatekeeper would still be required to go through the City's standard development review process. This review process would include formal application submittal, environmental review, and ultimately, Council consideration. As with any Gatekeeper, this TDR process does not obligate the City Council to ultimately approve the application.

**Question No. 5:** Does Council support considering Gatekeeper requests for specific sites and developer(s) with a signed LOI with LASD, outside of the typical Gatekeeper process?

*Master Agreement for Shared Open Space/Recreational Facilities*

In addition to using TDRs, LASD is requesting a City contribution to help finance the open space/recreational facilities associated with the school. The City Council has previously stated a willingness to contribute City Park Land Dedication funds to assist with the development of the open space and recreational facilities, in exchange for allowing the City to use such facilities as specified in a Master Agreement. The draft Agreement is attached to this report (see Attachment 4) and is titled “Master Agreement for Improvement and Recreational Use of School Sites with Los Altos School District”; for the purposes of this report it is referred to as “Master Agreement.” The City currently has a Master Agreement with the Mountain View Whisman School District for use and maintenance of the open space/recreational facilities on their school sites. In addition to the Master Agreement, supplemental agreements will be created for specific sites (the new school site as well as Oak and Springer School), consistent with the City’s current agreements with Mountain View Whisman School District. In addition to access to open space and recreational facilities, the Agreement would allow access to the multi-purpose room for occasional use.

The San Antonio Planning Area has one of the lowest ratios of open space per 1,000 residents at 1.34 acres, as compared to the City’s standard of 3.0 acres. Both the Parks and Open Space Plan and the SAPP have recommended additional park land in the neighborhood. As the plan area is built out and land values are high, this is a unique opportunity for large open space and athletic fields in the San Antonio Planning Area.

Based on appraisals LASD conducted earlier this year, the district is estimating land acquisition costs in the SAPP area will be approximately \$12.2 million per acre. Therefore, the acquisition cost for 4 acres would be approximately \$50 million. Staff is expecting that the Master Agreement will allow the City to use the open space/recreational facilities approximately 50 percent of the time and will allow LASD to use the open space/ recreational facilities 50 percent of the time, so LASD is requesting a contribution amount of approximately \$25 million. The exact contribution amount will be dependent on the size of the usable recreation space and verification of the cost of land.



As of August 31, 2017, the Park Land Dedication Fund has \$27.8 million available for use in the San Antonio Planning Area, of which \$24.9 million is uncommitted. Staff recommends maintaining a small balance of funds for the Planning Area.

**Question No. 6:** Does Council support a contribution of \$6 million per acre, up to \$23 million, of Park Land Dedication funds to LASD to assist with the purchase of open space and recreational area based on the proposed Master Agreement and understanding that the City will have access to the open space/recreational facilities approximately 50 percent of the time?

*California Environmental Quality Act (CEQA)*

Council direction at this Study Session does not constitute a “project” under CEQA. Similarly, authorizing MOU and Master Agreement execution, and approving resolutions authorizing TDRs and Gatekeeper requests do not constitute a “project” under CEQA since Council is not reviewing or approving any specific project(s). Council is simply allowing developers to submit applications to be reviewed, just as current Gatekeepers are done. Therefore, no environmental analysis is necessary at this time.

Once specific development applications are authorized and submitted for City review, each Gatekeeper project will be responsible for preparing their own environmental analysis for their respective request.

**RECOMMENDATION**

For City Council to provide direction on the following questions:

1. Does Council support allowing the conversion of all or a portion of residential floor area to office floor area?
2. Does Council support transferring square footage outside of the San Antonio Precise Plan Area?
3. Is City Council supportive of allowing a secondary market for TDRs?
4. Is Council supportive of waiving public benefit contribution requirements for the square footage transferred with a TDR?

5. Does Council support considering Gatekeeper requests for specific sites and developer(s) with a signed LOI with LASD, outside of the typical Gatekeeper process?
6. Does Council support a contribution of \$6 million per acre, up to \$23 million, of Park Land Dedication funds to LASD to assist with the purchase of open space and recreational area based on the proposed Master Agreement and understanding that the City will have access to the open space/recreational facilities approximately 50 percent of the time?

### **NEXT STEPS**

If directed to proceed, following City Council feedback, staff will continue working with LASD as appropriate. Staff and LASD would coordinate on the draft MOU and LASD would finalize LOIs with developers and begin the acquisition process for a specific school site, which may include utilizing eminent domain if LASD cannot come to terms with the property owner(s) through other means. Upon receipt of the final Master Agreement, signed LOIs, and massing studies, staff would return to City Council before the end of the year for final review and approval of the Master Agreement, review and authorization to execute the MOU, and authorization of the TDRs and Gatekeeper requests via Resolution.

### **PUBLIC NOTICING**

Notices were sent to the Wagon Wheel Neighborhood Association, the Greater San Antonio Community Association, and posted on Next Door. The City Council's agenda is advertised on Channel 26, and the agenda and this report appear on the City's Internet website. Notice of the public hearing was published in the newspaper pursuant to Government Code Section 65090.

CP-RT/7/CAM  
808-10-03-17SS-E

- Attachments:
1. Potential "Receiving" Sites
  2. Draft LOI
  3. Massing Studies
  4. Draft Master Agreement