

JOINT POLICY WITH THE CITY OF TRACY

Subject: School Mitigation for Residential Development

The City of Tracy ("City") and the Tracy Unified School Districts ("District"), which serve a large portion within the Tracy Planning Area (as defined in the Urban Management Plan/General Plan) have a history of positive relations with respect to requiring new residential development to mitigate its impact on the District so that adequate school facilities are available when new residential development occurs.

The City and the District have cooperated in the City's development planning process by requiring consideration and analysis of the impacts of new residential development upon the District through the environmental review process and the City's Urban Management Plan/General Plan (UMP) with implementing conditions on tentative map approvals and Residential Growth Allotments ("RGAs").

The District has adopted, and may amend from time to time, a Comprehensive School Facilities Capital Improvement and Finance Plan (the "Plan").

Prior to the Leroy F. Greene School Facilities Act of 1998 (the "1998 Act") (Government Code sections 65995-65998) public school mitigation for new development was addressed as set forth in paragraph two above. This was consistent with case law which allowed cities to consider, and impose conditions on new residential development in order to mitigate the impacts of new development on school facilities. This authority, commonly referred to as Mira authority, was suspended by the 1998 Act.

Government Code Section 65995(e) of the 1998 Act states that a city does not have the ability, to condition any land use approval, whether legislative or adjudicative, on the need for school facilities. In addition, Government Code Section 65995(f) prohibits a city from imposing a requirement to participate in a Community Facilities District ("CFD", also known as Mello-Roos). Government Code Section 65995(g)(1) further states that a developer's refusal to participate in a CFD cannot be a factor in considering a "legislative or adjudicative" act. Government Code Section 65995(g)(2) further states a "person can voluntarily elect" to pay a fee through a CFD.

School districts may collect alternative fees (Level Two and/or Level Three fees) under specified circumstances. If state funding runs out at any time, school districts may impose up to 100 percent of the state average cost of school facilities

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on new residential development (alternative Level Three fees). In 2006, if a state bond measure fails, Mira authority is partially restored to the extent a city can then consider public school facilities in making a legislative decision; the City could deny or refuse to approve an application based on the inadequacy of school facilities but could not condition the project to pay fees in excess of the fee set by the state. It remains uncertain as to whether there will be additional changes to state law which would restore a city's ability to require greater mitigation from what is permitted under the 1998 Act. The City and the District intend to maintain, at all times, the maximum authority to require full mitigation.

Notwithstanding the above, the City of Tracy and the District mutually seek to obtain voluntary compliance with the Plan. The City and the District jointly adopt this policy setting forth their continued intent to cooperate in assuring adequate mitigation for the District from new residential development within the City's Planning Area.

Based on the foregoing, the City and the District agree to the following:

1. As a mitigation measure in the environmental review of each residential development application the City shall set forth the following mitigation measure:

The project applicant shall meet and confer with the District to ensure adequate mitigation of impacts. The project applicant is strongly encouraged to fully comply with the mitigation measures required under the Plan then in effect, so the District can effectively plan and meet the demands of new development on school facilities and services.

2. The City shall not issue a residential building permit without having first received written evidence of compliance with the Plan.
3. It is not intended that this Policy change, alter, modify or supersede any existing City policy or ordinance.

Adopted by Tracy City Council Resolution 99-198 on 6/1/99

Adopted by the Tracy Unified School District Board on 6/8/99