



MEMORANDUM

COMMUNITY DEVELOPMENT DEPARTMENT

To: North 40 Specific Plan Advisory Committee

From: Wendie R. Rooney, Director of Community Development

Subject: Los Gatos School District Mitigation Background

Date: June 23, 2011

Background

A recurring comment raised during the past few months of public outreach on the North 40 is the concern of potential impacts that residential development may have on, predominately, the two Los Gatos School Districts. This memo provides background information regarding the extensive analysis that was conducted on student generation rates and projections during the recent 2020 General Plan update. In particular, the discussion will focus on the projections developed for the North 40 project. Finally, this memo also outlines state law limitations and restrictions for funding school facilities through local development projects.

Student Generation Rates and 2020 General Plan Projections

In spring 2010, the Town collaborated with the six school districts that serve the Town residents on the student generation rates and projections associated with the residential growth assumptions in the 2020 General Plan. In particular, the Town worked closely with the superintendents from the Los Gatos Union School District (LGUSD) (K-8) and Los Gatos-Saratoga Joint Union High School District (LGSJUSD) (9-12) on the generation rates methodology. Although the LGUSD expressed concern regarding school capacity over the 10-year period covered in the 2020 General Plan, both superintendents were in agreement with the Town on the student generation methodology. The methodology included three data sources from Davis Demographics, a consultant to the high school district; Jeanette C. Justus Associates, a consultant retained by all six districts and the Town; and Town staff calculating the actual number of existing students by using the 2010 school enrollment list (addresses) and the Town's GIS database of housing types.

Most new housing anticipated by 2020 will be different than is now typical in Los Gatos. Higher density housing in the northern part of the Town around the future light rail station and targeted high density infill sites account for as much as 90% of new housing. The number of students per home from higher density units is almost always lower than in single-family neighborhoods. Actual counts from nearby districts and districts with similar academic standing confirm fewer students on average per new dwelling as density increases.

ATTACHMENT 3d

EXHIBIT A

Town staff used actual school enrollment data from LGUSD and LGSJUSD to calculate the generation rates for condominiums and apartments. Single-family rates were obtained from the Davis Demographic Study. However, based on the fact that the North 40, as well as the Town's identified affordable housing sites, would be developed with housing products that were not presently represented in the community, the Town and school districts contracted with Jeanette C. Justus Associates to survey multi-family housing in similar high performing (using API scores) school districts to obtain the generation rates for various types of multi-family units, including mixed-use, attached (townhomes), and affordable apartments. Due to its very comparable API scores and extensive inventory of the aforementioned housing types, the Irvine, California, school district was surveyed for generation rates. Both Los Gatos School Districts accepted this methodology, and these generation rates were used as the basis for the 2020 General Plan and Environmental Impact Report (EIR) analysis.

The following tables provide the generation rates by housing type and student projections for the North 40 project. These generation rates are grouped into three school grade sets (K-5, 6-8, and 9-12). It is important to note that the southern half of the North 40 is within the LGSJUSD and LGUSD, and the northern half is within the Cambrian Elementary/Middle School District and the Campbell Union High School District. The General Plan EIR assumed the following type and number of units in the North 40:

North 40 (Northern)

Mixed Use: 240
 Affordable Apartments (Below Market Price units): 60

North 40 (Southern)

Attached (condominium): 300
 Apartments (Market rate): 60
 Affordable Apartments: 90

Generation Rates for North 40 (Northern Half)

<u>Dwelling Type</u>	<u>K-5</u>	<u>6-8</u>	<u>9-12</u>
Mixed Use	.004	.008	.006
Affordable Apartment	.182	.048	.076

Generation Rates for North 40 (Southern Half)

<u>Dwelling Type</u>	<u>K-5</u>	<u>6-8</u>	<u>9-12</u>
Affordable Apartment	.182	.048	.076
Attached (condominiums)	.081	.048	.055
Apartments	.086	.041	.075

Student Projections North 40 (Northern Half)

Dwelling Type/No of Units	K-5	6-8	9-12	Total
Mixed Use/240	.96	1.92	1.44	4
Affordable Apartment/60	10.92	2.88	4.56	<u>18</u>
Total				22

Student Projections North 40 (Northern Half)

Dwelling Type/No of Units	K-5	6-8	9-12	Total
Affordable Apartment/90	16.4	4.3	6.8	28
Attached (condominiums)/300	24.3	14.4	16.5	55
Apartments/60	5.2	2.5	4.5	<u>12</u>
Total				95

In summary, based on the generation rates, housing types, and number of units, it is reasonable to assume that once the North 40 is built out it would generate 95 students (K through 12) to LGUSD and LGSJUSD, and 22 students (K through 12) to Cambrian and Campbell Union High School Districts at any given time.

School Impact Fees and Mitigation

School districts have a variety of funding mechanisms available to them to pay for the financing of school construction, including local general obligation bonds, local Mello-Roos bonds, developer fees, property taxes, and state funding. School districts impose developer fees on new residential and commercial construction to help offset the costs of the new school construction necessitated by the development.

Prior to 1998, cities and school districts would negotiate with developers of large scale residential projects on fees, land dedications, etc.; to off-set the impacts of new students generated by the development. However, in 1998, Senate Bill 50 (SB50) "Schools Facilities Act" was adopted and imposed new limitations on the power of cities and counties to require mitigation for school facilities impacts as a condition of approving new development. SB50 authorized school districts to levy statutory developer fees for new development at a per square foot rate established by the state.

As a result of establishing the impact fee for school facilities under SB50, the state legislature determined that the impact fee is the *exclusive method* of considering and mitigating impacts on school facilities resulting from any state or local planning, use, or development of property. Essentially, SB 50 restricts local government's ability to require any mitigation for school impacts over and above the statutory fees paid by a developer to the school district. For example, not only is a city prohibited from requiring a developer to pay a monetary contribution for school facilities in exchange for a development approval, a city may not ask a developer for donation of land for a school site either. (These restrictions are set forth in Government Code Sections 65995 and 65996).

State law further prohibits public agencies from using the California Environmental Quality Act (CEQA) or any other provision of state or local law to deny approval of a legislative or adjudicative act, or both, involving planning, use, or development of real property on the basis of the proposed project's impacts on school facilities or based on a project applicant's refusal to provide mitigation in excess of the state statutory fees.

Despite the state law restrictions, nothing in the law prohibits a developer from voluntarily contributing either land or money to a school district to help offset overcrowding. The developer would have to work directly with the school district to reach such an agreement.

Local Land Use Authority

In view of the restrictions on local government's ability to address funding of school facilities (as set forth in the Government Code), the Town should be cautious about raising potential school impacts (such as overcrowding) or funding for facilities as grounds for denial of a residential project. Furthermore, the Town could not add conditions that specifically require contributions for school facilities. As noted, the North 40 development will generate both impact fees from residential and commercial construction, and the school districts will be allocated a percentage of the annual property tax generated from the development. While the property tax allocation is not known at this time, it could be fairly substantial annual revenue.

Based on SB 50, the 2020 General Plan EIR concluded that payment of these (impact) fees "is deemed to be full and complete mitigation of 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 government organization or reorganization. Therefore, there would be a *less-than significant* impact related to the provision of school facilities under buildout of the proposed Draft 2020 General Plan."

Orchard at Penryn FEIR
January 24, 2012

1. **FEIR at p. 2-27. Developer is required to make a “good faith effort” to pay the Town for traffic impact fees.**
 - Good faith effort is not the standard – need to ensure actual compliance.
 - An EIR must propose mitigation measures that will minimize the project's significant impacts by reducing or avoiding them. Pub Res C §§21002, 21100.
 - A reviewing court will not defer to the agency's determination that mitigation measures will work when their efficacy is not apparent and there is no evidence in the record showing they will be effective in remedying the environmental problem. *Gray v. County of Madera* (2008) 167 CA4th 1099, 1116. Here, there is no demonstration that the traffic impacts will actually be mitigated.
 - The mitigation measures that are adopted must be enforceable through conditions of approval, contracts or other means that are legally binding. Pub Res C §21081.6(b); CEQA Guidelines §15126.4(a)(2). Suggest changing the language to “developer *shall* be required to make fair-share payment to Town of Loomis...”

2. **Last paragraph on p. 2-27. “Reduction in project size may avoid impact.”**
 - County dismisses this and FEIR states that because impacts are not avoided altogether, this is not a feasible alternative; however CEQA requires implementation of mitigation or alternatives to projects that can avoid, lessen or reduce impacts. Thus, even if can't completely avoid, a reduced project alternative can lessen and reduce impacts and alleviate safety impacts.
 - An EIR must discuss alternatives even if all the project's significant environmental impacts will be avoided or reduced by mitigation measures. *Laurel Heights Improvement Ass'n v Regents of Univ. of Cal.* (1988) 47 C3d 376 (an EIR must include a discussion of both mitigation measures and project alternatives so that decision-makers will be provided with adequate information about the range of options available to reduce or avoid environmental impacts.)
 - Here, the reduced project alternative was summarily dismissed even though that alternative can reduce impacts, can attain most of the basic project objectives, is feasible, reasonable, and realistic. Without discussion of this alternative and a thorough evaluation, the existing DEIR does not discuss a reasonable range of alternatives.

3. **Water Supply (see also PCWA comment letter)**
 - Project doesn't demonstrate it will have adequate water supply or that an appropriate water supply assessment was conducted.

- Without requiring applicant to enter a Facilities Agreement with PCWA, no determination that there is sufficient water serving the project.

4. **Consistency with Community Plans.**

- Community Plan provides for accessibility; this project must be in compliance with the County's plans, including this one.
- CEQA requires compliance with general plan, zoning, etc. When there is no compliance, there is a land use impact (even if no safety impact). Thus, bike lanes/sidewalks are necessary.

5. **Cumulative Impacts Have Not Been Analyzed.**

- Project must mitigate for cumulative impacts but EIR refuses to do so. It provides, "Requiring the project to construct the suggested improvements in order to remediate conditions on Taylor Road that would occur as a result of cumulative development in the region would be contrary to constitutional law, as expressed in CEQA Guidelines §15126.4(4)(B)." FEIR at p. 2-29.
- An EIR must discuss cumulative impacts when they are significant and the project's incremental contribution is "cumulatively considerable." CEQA Guidelines §15130(a).

6. **Traffic Impacts.**

- P.7-10 of DEIR provides a generic trip generation rate table for AM/PM peak hour trips.
- EIR makes a conclusory statement that "The maximum number of peak-hour trips attributed to the proposed project along Taylor Road at Del Oro High School is nine." DEIR at 7-13.
- Provides no information on *how* trips to the high school were calculated.
- Burden is on lead agency to demonstrate how got to 9 counts and why it is appropriate.

7. **Response to D-7 confuses/blends issue of GHG emissions and community plan.**

- Even if GHG is less than significant impact, CEQA requires consistency with land use plans; otherwise, there is an impact
- Here, compliance with Goal 8 is required but no demonstration that project is achieving this.