

GRIFFITH & THORNBURGH, LLP
MEMORANDUM

TO: J. Brian Sarvis, Superintendent, and Eric Smith, Deputy Superintendent
FROM: Craig Price, General Counsel
SUBJECT: Waiver of Unused Site fees
DATE: September 1, 2009

The Santa Barbara School Districts are currently assessed unused school site fees totaling approximately \$125,000 per year. The current charge to the Elementary District for the Hidden Valley Site is \$44,798, and the fee to the High School District for the Tatum site is \$79,000. Both these assessments will increase this year.

The fees are imposed by the Office of Public School Construction for the State Allocation Board pursuant to the provisions of Education Code Section 17219 and implementing regulations. The fees, which are intended to be a substitute for the property not being on the tax rolls, are assessed based upon 1% of the original purchase price of a site increased annually to reflect changes in assessed value to date.

I have examined the applicable law and regulations to ascertain whether there is any basis for a waiver of the fees for either or both sides. Section 17219 provides that nonuse payments shall not be required for any year in which the school site is used for half of the year or more for any of the following purposes: "by the school district, or by any other governmental entity pursuant to agreement with the school district, for school purposes, for use as a Civic Center, or for community playground, playing field, or *other outdoor recreational purposes*." (Emphasis added).

Currently, the Tatum site is available and used by the public for various types of informal outdoor recreation uses, including walking, jogging, bicycling and outdoor nature. The Hidden Valley site, although presently fenced, offers similar recreational opportunities. Both sites provide open space recreational opportunities in the midst of urban settings where there are limited similar resources.

Although neither section 17219 nor the unused site fee regulations specify what type of "outdoor recreational purposes" will qualify for a waiver, other provisions of the Education Code do shed some light on the subject and might be helpful in obtaining a waiver. Specifically, the Naylor Act

(Education Code section 17485 et. seq.) recognizes the importance of maintaining the availability of vacant school sites which offer community recreational opportunities including lands that are used for “outdoor recreational purposes and open space land particularly suited for recreational purposes.” The Naylor Act requires pre-notification to recreational agencies prior to the sale of vacant school sites in order to avoid the loss of recreational real property to the surrounding community and provides a means for recreational agencies to acquire such properties at a discount.

With this in mind, on August 25, 2009 I had a telephone conference with Liz Cheyne at the State Allocation Board about obtaining waivers for Hidden Valley and Tatum. Ms. Cheyne, who is in the unit that oversees the unused site fee process, stated that the SAB didn’t have any hard and firm definition for “outdoor recreation purposes.” Our discussion included the recreational characteristics of both properties and how they would be treated under the Naylor Act. She was very receptive to our position and indicated that we should file for a waiver based upon the kinds of use I described was now being made at Tatum. My understanding is that the form which is to be submitted is self-certified by the district.

I recommend that we meet to discuss the steps to be taken before filing a waiver application for both sites, including the deletion of fencing at Hidden Valley, installation of appropriate signage and trash receptacles, safety inspection, review of liability issues, etc. Following consideration of such factors, I expect you will want to bring the matter to the board of education.