

**CITY OF FOSTER CITY/
ESTERO MUNICIPAL IMPROVEMENT DISTRICT/
FOSTER CITY COMMUNITY DEVELOPMENT AGENCY
FOSTER CITY COUNCIL CHAMBERS
620 FOSTER CITY BOULEVARD, FOSTER CITY**

AGENDA

Monday, August 31, 2009, 6:30 p.m.

SPECIAL MEETING

1. CALL TO ORDER

2. ROLL CALL

City Councilmembers/EMID Directors/CDA Members Pam Frisella, Art Kiesel, Linda Koelling, Rick Wykoff, and Mayor/President/Chair John Kiramis

3. PUBLIC

4. REPORTS

4.1 Public Meeting Regarding School Overcrowding and the San Mateo-Foster City School District's Request to Construct a Public Elementary School on City-owned Property

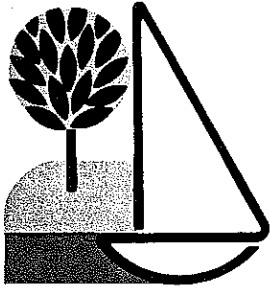
- a. Staff Report
- b. Public Comment
- c. Action - By Minute Order, Provide Direction to Staff

5. ADJOURNMENT

The public is invited to attend.

Any attendee wishing special accommodations at the meeting should contact the City Clerk's Department at (650) 286-3250 at least 48 hours in advance of the meeting.

Any writings or documents provided to a majority of the CDA Board, City Council, or EMID Board regarding any item on this agenda after the agenda packet was distributed will be made available for public inspection in the City Clerk's Office at City Hall located at 610 Foster City Boulevard during normal business hours and at the meeting.



STAFF REPORT

To: Mayor and Members of the City Council

From: James C. Hardy, City Manager *JCH by KAC*

Date: August 31, 2009

Subject: Public Meeting Regarding School Overcrowding and the San Mateo-Foster City School District's Request to Construct a Public Elementary School on City-owned Property

RECOMMENDATION

It is recommended that the City Council consider the information presented in this staff report and its attachments, the written input received by the August 27th deadline, as well as the public input provided at tonight's meeting regarding school overcrowding and the San Mateo-Foster City School District's request to construct a public elementary school on City-owned property. Following input from the public, it is recommended that the City Council, by minute order, decide whether or not use of any of the four City-owned properties for a fourth elementary school would be appropriate and if so, the terms and conditions under which the District should acquire the site from the City. Additionally, the City Council may provide any other direction or comments that address the issue of school overcrowding due to the projected increase in school enrollment in Foster City elementary and middle schools. Based on the City Council's decision and direction, the City will formally communicate its decision to the District prior to the District's requested date of September 17, 2009.

BACKGROUND

San Mateo-Foster City School District's Issue of School Overcrowding Due to Increased Enrollment, Preferred Option of Building a Fourth Elementary School and Request of the City of Foster City

The complete background and prior staff reports and correspondence between the City of Foster City (City) and the San Mateo-Foster City School District (District) may be found on the City's website at www.fostercity.org.

A brief background on this issue is that the District is currently experiencing school overcrowding in its existing three (3) elementary schools in Foster City due to increased enrollment. The District's demographer is projecting that enrollment will continue to

increase over the next few years. In response to increased enrollment, the District for the last two school years has added additional portable classrooms to existing elementary school sites and has indicated that they will continue to do so as part of a short-term solution to school overcrowding. The District is seeking a long-term solution as it estimates that 15-17 additional classrooms will be needed to accommodate this growth in student population. Also, additional space for auxiliary services such as computer labs, libraries, large group instruction rooms, bathrooms, etc. will be required.

In January, 2009, the District held a series of focus groups and presented to the participants the following long-term options:

- Option A: Increase K-3 Class Size from 20 to 30
- Option B: AM/PM Kindergarten Sessions and Increase Class Sizes in Kindergarten to 30
- Option C: Build a 4th Elementary School in Foster City
- Option D: Implement a Multi-track Year Round Calendar
- Option E: Assign 400-500 students to a School in San Mateo by Adjusting Boundaries
- Option F: Attract Foster City students to Magnet Schools by Providing Transportation

Based on the survey of the participants in these focus groups, the preferred long-term option was Option C: Build a 4th Elementary School in Foster City. The District Board at its February 19, 2009 meeting voted unanimously "to approve the administration's recommendation of Option C, that discussions continue with City of Foster City officials for a fourth elementary school in Foster City as the long term solution to increasing student enrollment with recommendations for potential sites to be presented to the Board of Trustees no later than September, 2009". The City then received a letter from the District dated February 24, 2009 to begin the formal process of identifying a potential site for a fourth elementary school.

In subsequent correspondence, the City asked for additional information that would be helpful in understanding the issues and making a decision, suggested that the option of building multi-story buildings on existing elementary and middle school sites owned by the District in Foster City also be considered as one of the long-term options and that there be a cost-benefit analysis prepared for each of the long-term options. The District rejected this approach and indicated that the focus groups had overwhelmingly selected Option C as the preferred option and therefore, it wanted to first determine the feasibility of building a 4th elementary school before studying any other options. A subcommittee of the City Council (Councilmembers Linda Koelling and Art Kiesel) and a subcommittee of the District (Board President Cathy Rincon and Trustee Colleen Sullivan) were formed to further discuss this issue. It was decided by these subcommittees that the District would send a letter to the City with a specific request regarding its interest in four City-owned properties and its proposed options for acquiring one of these four sites to build a fourth elementary school. The City would then hold a public meeting to discuss the letter and provide a formal response by September 17, 2009 (see attached letter from Pendery Clark, Superintendent, dated June 24, 2009). The

purpose of the public meeting is to seek input from all segments of the Foster City community so that the City Council will be fully informed prior to making this important decision.

Current Status of Four City Properties

The four properties the District is interested in evaluating as sites with the potential to host a fourth elementary school include two developed City parks and two undeveloped parcels:

- Boothbay Park (a portion of)
- Port Royal Park
- 4-6 Acres of the 15-Acre Site Adjacent to City Hall (Away from Power Lines)
- 3.9 Acre Site at Terminus of Halibut and Beach Park Blvd.

As the City Council and the Foster City community are very familiar with these four City-owned properties, each of these properties will be only briefly described along with their current status.

Boothbay Park

Boothbay Park is the third largest park in Foster City at 11.21 acres and is located at the southwest corner of Edgewater Blvd. and Boothbay Avenue, between Edgewater Blvd. and Galveston Street. Given its size, it is used not only by the neighborhood but by the entire City. It features a variety of park amenities (e.g., 4 tennis courts, basketball court, sand volleyball court, playground, baseball/softball field, picnic pavilion/barbecue stations, open grass area for a variety of uses from sports to an off leash dog area in the mornings, and a public restroom). It is used continuously throughout the day and throughout the week. (See attached list of uses/users.)

Port Royal Park

Port Royal Park is just under 4 acres and is located along Port Royal Avenue between the levee pedway and Port Royal Avenue. It is primarily a neighborhood park, except for the full-size soccer field that is used by both youth and adult teams. It has a playground, half-court basketball court and a public restroom. The soccer field is in high demand. (See attached list of uses/users.)

Site Adjacent to City Hall

This site is a 15-acre undeveloped parcel bordered by Civic Center Drive on the north, Foster City Blvd. on the east, Balclutha Blvd. on the south and Shell Blvd. on the west. The site is encumbered by a PG&E easement located beneath the electrical transmission lines that traverse Foster City Blvd. Parking and open space uses are permissible in this easement but habitable buildings are not. State law governing the location of public schools restricts placing public schools within a certain distance of electrical transmission

lines; hence, the District's request that, if this site is approved to host an elementary school, the required 4 to 6 acres for the school be located away from the power lines.

In 2006, the City Council initiated a process to develop the 15 acres to meet several City needs including:

- Establishing a "downtown" with retail uses and public spaces.
- Building market rate and affordable senior housing units to meet State-mandated housing and General Plan Housing Element requirements, and to provide a housing option (Continuing Care Retirement Community) not currently available in Foster City.
- Providing a significant steady source of revenue through annual lease payments that would help fund city-wide services.

Through a competitive Request for Qualifications (RFQ) process followed by a Request for Proposals (RFP) process, the City selected Pacific Retirement Services Inc. (PRS), a non-profit senior housing developer, as its partner. Since 2007, the City has been working with PRS to design and process the land-use approvals for a mixed-use project that would include a retail center, a public plaza, market-rate senior housing units in a Continuing Care Retirement Community (CCRC), and affordable rental senior housing units. On December 17, 2007, the City Council approved a detailed business term sheet that had been negotiated with PRS. On July 7, 2008, the City Council approved an amended business term sheet that increased the overall density of the project to make the project more economically viable. At its June 15, 2009 meeting, the City Council approved an Exclusive Right to Negotiate Agreement with Pacific Retirement Services, Inc. to provide additional time for PRS to seek financing for the project given the banking and credit crisis that began in late 2008 and to allow PRS the opportunity to explore using the entire 15-acre site to lower the heights of the buildings and reduce the overall construction costs. The extended negotiating period runs through September 30, 2009 with up to two extensions (one through December 31, 2009 and one through April 1, 2010) that can be granted in recognition of good faith efforts to secure funding and to reach an agreement with the City on the various legal documents governing the project and the site.

Site at Terminus of Halibut Street and Beach Park Blvd.

This site is an undeveloped parcel of just under 4 acres and is generally located at the terminus of Halibut Street (at Beach Park Blvd.), between Beach Park Blvd. and the levee pedway. In the City's five-year capital improvement project plan, this site is shown as the location of a levee park ("Destination Park") anticipated to be developed in FY 2013-2014. The park would be a rest stop for users of Foster City's section of the Bay Trail and could include a restroom, drinking fountain, picnic tables, benches and a nature "interpretive center". This proposed park is also referenced in the DRAFT updated Parks and Open Space Element of the General Plan currently under review and consideration by the City.

Options to Obtain Land to Build Fourth Foster City Elementary School

In its June 24th letter, the District proposed four options to acquire the land to build the fourth Foster City Elementary School:

- City donating the land to the District
- District leasing the property from the City
- District/City developing a Joint Use Agreement (JUA) between the District and the City, similar to the agreement currently in effect at some of our existing Foster City schools
- District using General Obligation Bond (GOB) funds to purchase the land. The District further describes three GOB options: 1) using Measure L funds; 2) placing a GOB on a District-wide ballot; and 3) placing a GOB on a Foster City-only ballot.

LEGAL ANALYSIS

The District's letter was referred to the City Attorney, along with a request to prepare a legal analysis of the various state laws governing the disposition of City-owned property. (Please see the attached legal analysis)

POLICY QUESTIONS

After consideration of information presented in this staff report and its attachments and all the written and oral input from the public regarding the issue of school overcrowding and the District's request to use City-owned property to build a fourth elementary school, staff suggests that the City Council answer the following policy questions:

1. **Should Boothbay Park be considered for use as a fourth elementary school site?**
2. **Should Port Royal Park be considered for use as a fourth elementary school site?**
3. **Should a Portion (4-6 acres away from the power lines) of the 15-Acre site adjacent to City Hall be considered for use as a fourth elementary school site? And if so, which portion of the overall 15-acres?**
4. **Should the Parcel at the Terminus of Halibut Street and Beach Park Blvd. be considered for use as a fourth elementary school site?**
5. **If any of the above-referenced properties are to be further considered for use as a fourth elementary school site, which, if any, options proposed by the District for obtaining the site would be acceptable to the City Council and form the basis for negotiations with the District?**
6. **Does the City Council wish to provide any other direction or comments that address the issue of school overcrowding due to the projected increase in school enrollment in Foster City elementary and middle schools?**

NEXT STEPS

The City Council's decision/direction regarding these policy questions should be approved by minute order. Based on the City Council's decision/direction, a formal response letter will be prepared and sent to the District prior to the District's requested response date of September 17, 2009. If a City-owned property is made available for consideration by the District for use a fourth elementary school site, the letter will include responses to the questions posed by the District for that property.

Attachments: Letter from Pendery Clark, Superintendent, dated June 24, 2009
List of Uses/Users of Boothbay Park
List of Uses/Users of Port Royal Park
Legal Analysis



San Mateo-Foster City School District

RECEIVED

JUN 25 2009

June 24, 2009

CITY MANAGER

Jim Hardy, City Manager
 City of Foster City Council Members
 City of Foster City
 610 Foster City Blvd.
 Foster City, CA 94404

Dear Mr. Hardy and City of Foster City Council Members,

This letter will serve as follow up to our May 21, 2009 Joint Subcommittee meeting. These are the four properties the District is interested in pursuing to build a fourth elementary school and that have been discussed with the City. In addition, this letter provides several viable options for acquiring the property to build a fourth elementary school in Foster City.

Results of Additional Site Assessments:

1. 4-6 acres of the 15-acre site adjacent to City Hall (area away from power lines)

Advantages

- Public Facilities District (PFD) is reserved for construction, use and occupancy of governmental, public utility and educational buildings and facilities, and other uses compatible with the semipublic character of the district
- Zoning permits use by public school district
- Lot size is suitable for a school population of 450-500 students
- Only a portion of the site would be required for an elementary school
- Allows for proper north/south orientation of buildings. This orientation makes the buildings more energy efficient as they benefit from natural light and thermal exposure
- No access issues
- No present use of site
- Existing utilities and infrastructure are available in close proximity to the site

Board of Trustees:

Jack E. Coyne, Jr.
 Mark D. Hudak
 Lory Lorimer Lawson
 Cathy Rincon
 Colleen Sullivan

Superintendent:
 Pendery A. Clark, Ed.D.

1170 Chess Drive
 Foster City, CA 94404
 Phone (650) 312-7700
 FAX (650) 312-7779
www.smfc.k12.ca.us

- Opportunities for joint use if outdoor activity areas and multiuse buildings are developed as community facilities

Disadvantages

- Although centrally located, the population growth is at the southern portion of the City
- It is not in the proposed attendance area and does not encourage student walking or neighborhood students attending neighborhood schools
- Not a residential neighborhood
- Cannot build within a 100 yards of power lines
- Foster City recently negotiated a developer agreement for 11 of the 15 acres

City Hall Site Questions:

1. What is the current status of the property and its availability for school use?
2. Please provide a copy of the developer agreement for District information and review.
3. Is the City aware of any additional information that can assist the District in assessing the City Hall site?

2. Boothbay Park

Advantages

- Location within proposed attendance area would encourage student walking
- Its southern location is in proximity to the area of projected growth
- Area is suitable for proper north/south orientation of buildings. This makes the buildings more energy efficient as they benefit from natural day light and thermal exposure
- Site area meets with California Department of Education guidelines for site selection
- Vehicular access on three sides and served by major vehicular arterial
- Existing utilities and infrastructure
- Promotes joint use of park with neighborhood and opportunities for development of a multi-purpose building to benefit the community
- Surrounding neighborhood is residential

Disadvantages

- Displacement of some existing park facilities

Boothbay Park Question:

1. Is the City aware of any additional information that can assist the District in assessing Boothbay Park site?

3. Port Royal Park

Advantages

- Its southern location is in proximity to the area of growth
- Existing utilities and infrastructure
- Promotes limited joint use of park with neighborhood
- Surrounding neighborhood is residential
- Location within proposed attendance area would encourage student walking
- Opportunities for development of a multi-purpose building to benefit the community

Disadvantages

- Displacement of some existing park facilities
- Vehicular access is through residential neighborhood
- Narrow shaped site restricts placement of buildings
- Requires two-story building to allow for adequate outdoor activity areas
- Limited street frontage results in heavy vehicular traffic through the neighborhood
- Lot size is not suitable for student population of 450-500 students
- Site access is limited to a single side of the property

Port Royal Park Site Question:

1. Is the City aware of any additional information that can assist us in assessing the Port Royal Park site?

4. 3.9 acres at terminus of Halibut and Beach Park Boulevard

Advantages

- Unobstructed views of the bay
- Generous street frontage
- Use of undeveloped land

Disadvantages

- Hazardous risk of site adjacent to levee and its susceptibility to deterioration
- Site soil infrastructure is subject to catastrophic failure due to seismic liquefaction
- Further soils analysis needs to be conducted
- Its northern location is not in the proposed attendance area
- The triangular shaped site restricts placement of buildings
- Area is not suitable for student population of 450-500 students
- No existing utilities and infrastructure are available
- Restrict view of bay from residential area
- Undeveloped state would require significant additional construction cost and time compared to other sites

Questions:

1. Are there wetland issues?
2. Are there permitting issues?
3. How long would it take to collect this information?
4. Please provide any information on the research and analysis that was completed for "Destination Park" (in addition to information that was already provided)
5. Is the City aware of any additional information that can assist the District in assessing the Halibut/Beach Park Boulevard site?

The San Mateo-Foster City School District would propose the following options for securing the land for a fourth elementary school in Foster City.

Options to Obtain Land to Build Fourth Foster City Elementary School:

Below we provide several viable options to acquire the land to build the fourth Foster City Elementary School.

- City donating the land to the District
- District leasing the property from the City
- District/City developing a Joint Use Agreement (JUA) between the District and the City, similar to the agreement currently in effect at some of our Foster City schools. Currently, the City jointly uses specified school facilities for City programs provided to City residents, as a result of the District/City existing JUA
- District General Obligation Bond (GOB) funds to purchase the land
 - There are three (3) GOB options, subject to informational polling:
 1. Using a portion of Measure L funds, which would result in a reduction of available funds and resources for already planned Measure L projects
 2. Placing a GOB on the ballot for Foster City and San Mateo district-wide facility projects not currently planned under Measure L
 3. Placing a GOB on the ballot in Foster City only for construction of a fourth elementary school and an addition to Bowditch Middle School

As was agreed at our last meeting, this letter represents the outcome of our Joint Subcommittee meetings. It is our understanding that the City of Foster City will (1) respond to the District's questions and (2) conduct a public discussion regarding whether any of these properties can be considered for a fourth elementary school site in Foster City.

We respectfully request a response to this letter and any other information you believe we need in order to make a recommendation to the San Mateo-Foster City School District Board of Trustees by September 17, 2009.

We would like to pursue formal negotiations on the identified sites as soon as possible.

Sincerely,



Pendery A. Clark, Ed.D.
Superintendent

cc: Kristi Chappelle, Assistant City Manager, City of Foster City
Richard Marks, Director of Community Development, City of Foster City
San Mateo-Foster City School District Board Members
Micaela Ochoa, Chief Business Official, San Mateo-Foster City School District
Joan Rosas, Assistant Superintendent, Human Resources, San Mateo-Foster City School District

Boothbay Park List of Uses / Users

Boothbay Park

Boothbay Park consists of 11.21 acres. It offers:

- Softball fields – 1
- Basketball court – 1
- BBQ – 10
- Children's play area – 2
- Picnic area – 2
- Restrooms – men's/women's – 1
- Soccer field (drop-in/practice) – 1
- Tennis courts – 4
- Volleyball pit (sand) – 1

Park Rental Program

Boothbay Park is the most popular public picnic area in Foster City. It can accommodate a maximum of 150 people, and it is available for private rental seven days a week. In 2008, Boothbay had 113 private rentals, with an approximate average attendance of 100 people per rental. The total revenue for the year was \$7,915.00.

Rentals at Boothbay remain fairly consistent from year to year. The totals for the last few years prior to 2008:

2005: 119 rentals, total revenue = \$8,665.00

2006: 111 rentals, total revenue = \$7,995.00

2007: 114 rentals, total revenue = \$8,030.00

Average annual attendance – 11,300

Weekend days are booked usually from March-October, with heaviest use being from May-September. Starting in June, company picnics during the week start up, and weekdays are heavily booked between June-August.

Groups of less than 25 are allowed to use Boothbay on a first-come, first-served basis. These groups primarily use the tables/grills near the tennis courts or the scattered tables near the children's play area.

Department Sponsored Special Events

Family Overnighter

- Set up starts at 3:30pm on Saturday, August 8th and breakdown is completed by Sunday, August 9th around 10:30am
- Baseball field is used for the campfire and songs and the grass field for tents and family camp games. Families are also welcome to play basketball and volleyball
- Picnic tables are utilized the entire time for dinner, s'mores, and breakfast.
- Bathrooms are left open all night for participant use
- Participants use the parking lot as well as street parking

Staff Recognition

- Annual "end of summer" recognition and potluck for all part-time staff (August)
- Pavilion used for 2-hour event

Community Bike Ride

The Community Bike Ride happens each September and is sponsored by the Parks and Recreation Committee, the Foster City Mothers Club and the Parks and Recreation Department. This event begins and ends at Boothbay Park and averages 180 participants. The entire parking lot is used for staging before and after the ride. The paved pathway through the park is also used for the children's tricycle ride.

Summer Camps

Soccer Camps

The Foster City Parks and Recreation Department uses Boothbay Park every year in July and August to put on three youth soccer camps from 8am-5pm. The camp is 135 hours of use in the months of July and August. About 200 participants attend these camps.

Tennis

Foster City Tennis Club

In 2007 The Foster City Tennis Club used Boothbay Park on an average of seventeen hours per month. The Foster City Tennis Club currently has 220 members. The Foster City Tennis Club puts together the Peninsula Cup Challenge in June every year and uses Boothbay Park from 8am-10pm for three days. About 150 participants attend this event.

Zalles Sports

In 2007, Zalles Sports used Boothbay Park on an average of 240 hours per month for private instruction. Zalles Sports puts together a Turkey Tennis Tournament in November every year and uses Boothbay Park from 8am-10pm for three days. About 100 participants attend this event.

Public Tennis Play

Boothbay also accommodates daily general public tennis play from 8am-6pm seven days per week.

Field Users

Boothbay is utilized during the majority of the year for sports games and practices. The baseball field is used primarily by Foster City Little League Baseball and Foster City Softball. The large open grass area near Edgewater Blvd. is used for soccer practices (AYSO/PYSC). These uses are free for Foster City youth teams. Drop-In soccer is also played in this area and is scheduled year-round. Fees and insurance are not required.

- Approximately 1,000 youth participate in soccer
- The frequency of play is January-November.
- Approximately 500 youth participate in Little League and Softball.
- The frequency of play is February-June.

Passive Recreation

Boothbay Park is considered one of Foster City's most popular neighborhood parks. On any given day, residents can be found enjoying the park whether walking in the park, reading in the park, or participating in family activity.

E-soccer program for children with special needs uses Boothbay Park at an average of eight hours per month. This program is coordinated through the Parks and Recreation Department.

Sea Breeze Episcopal School uses Boothbay Park at an average of eight hours per month on a rental basis.

Off Leash Use

Boothbay Park is one of five parks with off leash hours. Dogs may be off leash from 5am to 8am, seven days a week. Users are required to look after and clean up after their dogs. Dogs must be licensed and vaccinated.

Port Royal Park List of Uses / Users

Port Royal Park

Port Royal Park consists of four acres. It offers:

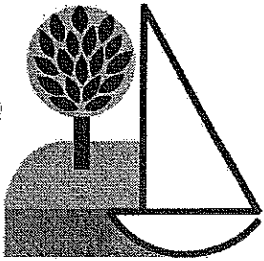
- Soccer field – 1
- Outdoor basketball court – 1
- Playground equipment – 1
- Pathway to levee pedway – 1

Field Users

Port Royal Park is used from January through November for youth sports games and practices. The Foster City adult sports program also uses Port Royal on Saturdays and Sundays for adult league games. Port Royal Park is also used as a drop-in site for adult soccer on Tuesday and Thursday from 12-2pm in the months of September through November.

Neighborhood Use and Passive Recreation

Port Royal is used on a daily basis by a variety of neighbors and age groups surrounding the park. Children can be seen using the playground equipment Monday through Sunday and many residents access the levee pedway via the park's internal pathway system. The outdoor basketball court is used on a daily basis by youth and adults alike and it is open for play year round. Port Royal Park is utilized as a neighborhood park seven days per week.



City of Foster City

ESTERO MUNICIPAL IMPROVEMENT DISTRICT

610 FOSTER CITY BOULEVARD
 FOSTER CITY, CA 94404-2222
 (650) 286-3200
 FAX (650) 574-3483

Office of the City Attorney
 939 Laurel Street, Suite D
 San Carlos, CA 94070
 (650) 593-3117

MEMORANDUM

To: Foster City City Council

From: Jean B. Savaree, City Attorney *JBS*

Cc: James C. Hardy, City Manager

Date: August 24, 2009

Re: State Law Provisions Applicable to Transfer of Land from City to District

Introduction

When examining the provisions of state law which govern the transfer of land from the City to the District, it is important to understand that the City and District are two separate legal entities established for different purposes. Foster City is organized as a general law city. Article XI, Section 7 of the California Constitution grants general law cities the power to enforce within their limits all local, sanitary, and other ordinances and regulations not in conflict with general law.

Article IX, Section 14 of the California Constitution grants the state legislature authority to organize school districts. Once organized, the legislature is granted the further power to authorize the governing board of school districts to "initiate and carry on any program, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established."

These two sections of the California Constitution, and resulting provisions of the California Education Code, clearly establish that cities have no power to build or operate schools

because the authority to do so has been specifically delegated by the state legislature to school districts.

Per California Education Code §17340, Power of board; district vote:

The governing board of any school district may, and when directed by a vote of the district shall, build and maintain a schoolhouse.

The Education Code further provides that the governing board of school districts may establish additional schools within their districts (Education Code §17342); construct and equip those facilities as the Board deems necessary (Education Code §17343).

Sale or Lease of Land

Both the City and District may acquire, dispose of or lease real property. In selling or leasing real property, the Foster City City Council is required to find that sale or lease of public property would be for the common benefit of the City's citizens. See Cal. Const. art. XI, §5; Cal. Gov't Code §37350. Prior to the sale of real property, state law requires that the Foster City Planning Commission hold a public hearing and prepare a report to the City Council indicating whether the sale of property would conform with the City's general plan. Cal. Gov't Code §65402. In addition, when selling or leasing land, the City must comply with specific provisions of the California Constitution, the California Government Code and, if park land is involved, the Public Resources Code.

Additional provisions of the Education Code must be complied with when a District contemplates the acquisition of property. The property must be evaluated at a public hearing to determine whether or not the property complies with the site selection standards established by the State Department of Education. Education Code §17211. The District Board is further required to have potential sites "investigated by competent personnel to ensure that the final site

selection is determined by an evaluation of all factors affecting the public interest and is not limited to selection on the basis of raw land cost only.” Education Code §17212.

California Constitutional Provisions Applicable to the Sale or Lease of Land

One of the District’s proposed options is for the City to donate land to the District. Donating or selling land at less than its fair market value raises legal concerns because the California Constitution art. XVI §6 prohibits the gift of public funds by a public entity to another public or private entity. While the City is not legally required to obtain an appraisal before selling real property, an independent appraisal is recommended to ensure that the City is obtaining a reasonable price for the public property it wishes to sell. This approach helps and can prevent a successful challenge to the sale based on an allegation that the transfer of property constitutes a prohibited gift of public funds. See Winkleman v. City of Tiburon (1973) 32 Cal.App. 3d 834.

Specific State Law Provisions Applicable to Sale of Park Land

Because both Boothbay and Port Royal Park have been identified by the District as potential school sites, specific provisions in both the California Government Code and Public Resources Code must be examined and complied with should the City wish to consider transferring either of these park sites to the District for school use. Government Code §37111.1 provides:

Lands dedicated for park purposes: using for other purposes

When a legislative body deems it necessary that land purchased in fee for any municipal purpose and subsequently dedicated by use for park purposes should be used for other municipal purposes, it may adopt an ordinance by a four-fifths vote, after giving notice and conducting a public hearing, declaring the necessity and providing that (a) an equal or greater amount of city property has also been acquired within the previous three years and has been dedicated and has been developed, or will within a reasonable period of time be developed, for

similar park purposes and (b) the proposed use of the park land conforms to the city's general plan.

This section shall not be applicable to land dedicated for park purposes by a donor or acquired by eminent domain procedures for park purposes or acquired by funds obtained from bonds voted for park purposes.

The provisions of this code section apply if the City wishes to consider transfer of Boothbay Park because City records reflect that Boothbay Park was purchased for park purposes in 1977. Staff has ordered a title report to confirm this information. Therefore, in order to transfer this land to the District, the Council would be required to:

A. Adopt an ordinance by a 4/5 vote, after public hearing, declaring the necessity for the transfer and finding that the land can be used for other municipal purposes.

B. Adoption of this ordinance is only authorized if:

1. An equal or greater amount of City property has been acquired within the previous three years, has been dedicated and has been developed, or will within a reasonable period of time be developed, for similar park purposes, and

2. The proposed use of the park land (i.e., for school purposes) conforms to the City's General Plan.

Based on my initial review of this matter, it is my opinion that transfer of Boothbay Park would be precluded given the language of Government Code §37111.1 because transfer of this park land to the District would not represent use for another "municipal" purpose. Additionally, the City has not, within the last 3 years, acquired and developed an equal or greater amount of land for park purposes as required by Government Code §37111.1; a prerequisite to the transfer.

The provisions of Government Code §37111.1 do not apply to Port Royal Park because it was acquired by dedication, not purchase. Staff has ordered a title report on the property in order

to determine the terms and conditions of the dedication. Further information on the terms and conditions of the dedication will be provided once the title report is received. If Port Royal Park was dedicated to the City by a private individual or entity, the terms of the dedication control how the City may use or dispose of the property. *Slavich v. Hamilton*, (1927) 201 Cal. 299. If Port Royal was originally dedicated for park purposes, the City could transfer it but only if the City is able to obtain the consent of the original dedicator (or its successors and assigns). If that consent to transfer is given, the Council would then be required to:

1. Make a finding that the land is not appropriate, convenient or necessary for park purposes and
2. Acquire an option to purchase other land of at least equal area to Port Royal Park in order to replace it. Government Code § 38403.

In addition to the above-referenced provisions of the Government Code, the City and District's authority to transfer Port Royal Park is further constrained by Public Resources Code §5401 which provides:

Acquisition of public park property for nonpark purposes without replacement of land and facilities; prohibition; application of operating and acquiring entity provisions

(a) No city, city and county, county, public district, or agency of the state, including any division, department or agency of the state government, or public utility, shall acquire (by purchase, exchange, by condemnation, or otherwise) any real property, which property is in use as a public park at the time of such acquisition, for the purpose of utilizing such property for any nonpark purpose, unless the acquiring entity pays or transfers to the legislative body of the entity operating the park sufficient compensation or land, or both, as required by the provisions of this chapter to enable the operating entity to replace the park land and the facilities thereon.

(b) Where the operating entity and the acquiring entity are one and the same, the entity is subject to the provisions of this chapter pertaining to both operating and acquiring entities, and the entity is, as acquiring entity, required to make funds or land, or both, available pursuant to Section 5405 or 5407.2, and, as

operating entity, required to acquire or improve park lands and facilities pursuant to Sections 5404, 5407, 5407.1, and 5407.2.

This provision of state law directs that if the District were to acquire the Port Royal Park, the District would be required to pay or transfer to the City compensation or land (or both) to enable the City to replace the Port Royal Park land and facilities.

In summary, it is my opinion that the sale of Boothbay Park, to the School District for the construction of a school is prohibited by Government Code §37111.1. Because Port Royal Park was not acquired by purchase, different restrictions would apply if the City were to consider selling the site to the District, but additional constraints arising from the original dedication and Government Code § 38403 would need to be closely examined in order to determine whether sale of Port Royal would be prohibited as well. If a sale were feasible, the District would be required to pay or transfer to the City funds or land to replace the park and facilities.

Provisions Applicable to Sale of Non-Park Land

Based on the information currently available, it does not appear that the provisions of the Government Code and Public Resources Code discussed above would be applicable to the 4-6 acres of the 15-acre site adjacent to City Hall or the 3.9-acre site at Terminus of Halibut and Beach Park Boulevard. The issue of a gift of public funds per California Constitution art. XVI §6 would still need to be considered by the Council if the proposed sale of this property to the District were for less than the fair market value of the property, as determined by an independent appraisal.

Lease of Land

A general law city may lease property owned, held or controlled by it for a period not to exceed 55 years. Cal. Gov't Code §37380. The term of the lease can be for up to 99 years, if all of the following conditions are met: (1) the lease is subject to periodic review by the city and

takes into consideration the then current market conditions; (2) the lease is authorized by an ordinance adopted by the city council; (3) the council holds a noticed public hearing on the lease (notice given with Cal. Gov't Code §6066 plus to all owners of land adjoining the property, any person requesting special notice, and to any present tenant of the property); and (4) after a notice inviting competitive bids is issued, the lease is awarded to the bidder who offers the greatest economic return to the city.

School district's may also enter into lease agreements per Education Code §17400, but the leases are limited to 40 years. Education Code §17403. The Education Code further restricts the total rent which can be paid over the life of the lease. Education Code §17423.

Lease of Park Land

Similar to the sale of municipal park land, the lease of municipal park land is also constrained. The California Attorney General has issued an opinion that general law cities are prohibited from leasing to a school district land dedicated for park purposes and developed as a park unless the district complies with Public Resources Code §5401 by providing money or land to replace the park. 78 Ops. Cal. Atty. Gen. 181, 184 (1995), Opinion 95-107.¹

Therefore, because Boothbay Park was acquired by purchase, it could be considered for lease, but only if the District were to pay money to acquire new park land or provide land to replace the park. The answer to whether or not Port Royal Park could be leased under similar terms and conditions cannot be definitively answered until the title search is completed because the original dedication may preclude such use.

¹ In that opinion, the Attorney General was asked if a general law city could lease to the school a portion of a city park for construction of a school, library, media center, gymnasium, swimming pool, day care center and other community recreation facilities.

In regard to those two sites, the issues related to a gift of public funds would need to be considered and addressed if the proposed lease were for less than the fair rental value of the land as determined by an independent appraisal of the property. California Constitution art. XVI §6.

Lease of Non-Park Land

The above-referenced restrictions on leasing of park land would not apply to the remaining two sites, but in regard to those two sites, the issues related to a gift of public funds would need to be considered and addressed if the proposed lease were for less than the fair rental value of the land as determined by an independent appraisal of the property. California Constitution art. XVI §6.

Financial Terms of Sale, Lease or Joint Use Agreement

If the Council determines that it wishes to further explore the sale or lease of City property to the District, the specific terms of a sale or lease would need to be negotiated. Such negotiations are confidential and both the City and District are allowed by state law to give instructions to their staff in closed sessions. If a proposed agreement is reached for the sale or lease of City property, the City would be required to make the agreement/lease available for public review/comment and thereafter take action on the agreement/lease at a public meeting. If a sale were negotiated, the District would additionally be required to comply with relevant portions of the Education Code which require public hearings prior to acquiring a site. See Education Code §§17211, 17212. Similar public hearing, consideration and action would be required if the land were leased.

As discussed previously in this memo, the District would be responsible for funding the purchase of the property and constructing the new school. If land were leased, the District would be responsible to make the annual lease payments. The District, in its June 24, 2009 letter,

indicated that one source of funds might be General Obligation Bonds from previously approved Measure L funds or a future general obligation bond. It should be noted that no bond measures are qualified for the November 2009 ballot.

A current Joint Use Agreement (JUA) between the District and the City allows the City to use District facilities (e.g., large group instruction rooms, gymnasiums, etc.). In exchange for use, the City pays the associated usage costs (e.g., maintenance, utilities, etc.). Currently all three elementary schools and Bowditch middle school are included in the JUA. If a fourth elementary school were to be built, the City and District would need to negotiate the terms and conditions under which additional space in the new school would be used by the Foster City community. As with a sale or lease of property, the JUA would be subject to negotiation between the City and District.