

Attention

Honorable Mayor and Members of the City Council

The Agreement was unavailable at the time of printing the Agenda packet.

A copy of the Agreement will be distributed prior to the City Council meeting and copies will also be placed at the dais for your consideration.

REPORT TO CITY COUNCIL

DATE: NOVEMBER 12, 2008

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: CRAIG STEELE, CITY ATTORNEY

SUBJECT: PROPOSED AGREEMENT BETWEEN THE CITY AND HESCHEL SCHOOL

The Heschel School project, proposed for land located in the unincorporated area generally to the east of the City limits on property adjacent to Old Agoura, has been in process with the County of Los Angeles for over a decade. City staff members and elected officials have been involved with commenting on and trying to influence various iterations of the project over that long period of time. We have spent countless hours and a large amount of City funds in that effort.

Beginning a few years ago, Supervisor Yaroslavsky, in whose District the Heschel project is located, repeatedly informed City officials that he favored the project and intended to approve it. He encouraged the City to negotiate conditions of approval with the applicant that would make the project more acceptable to the City. With the direction of the City Council, the assistance of the Council liaisons, Councilmembers Koehler and Kuperberg, and the input of the Old Agoura Homeowners Association, staff have been engaged in negotiations with the County and Heschel on the terms of a comprehensive project agreement to address as many of the City's and neighbors' concerns as possible.

The proposed agreement before you is our best effort in that regard. We certainly understand that members of the City Council and members of the public may disfavor elements of this agreement or even the concept of any agreement at all. However, we were directed to undertake this negotiation and try to put the City in the best position possible if Supervisor Yaroslavsky insists on approving this agreement.

Briefly summarized, the agreement does not take permanent effect unless and until the County approves the Heschel project, with the identical conditions as have been agreed upon between City staff, County staff, and Heschel. If that exact project is approved without change, the agreement takes full effect. As of that time, the City will waive its right to challenge in court any aspect of the existing Heschel project. The City also agrees to issue an encroachment permit Heschel requires to install a CalTrans-approved traffic signal on a City street. In addition, the City will cooperate with Heschel on certain street improvements required by the Environmental Impact Report (EIR).

In return, Heschel has agreed to eliminate certain aspects of its ideal project, including less expensive traffic solutions, permanent student access off of Chesebro Road above Old Agoura,

unlimited special events, more frequent and intense lighting, and has added more land buffers from the school development.

The agreement also makes provision for Heschel's payment of significant amounts in impact fees to the City, "fair share" payments for other improvements, and the actual costs of providing certain services. Heschel had contended for some time that they were not required to pay impact fees and other exactions as a condition of approval. We feel strongly that the City's threat to sue over the project was a major factor in getting Heschel to change its thinking on these and other issues related to the approval of the project.

The heart of the agreement is the proposed conditions of approval, about which the City's staff, advised by two members of the Council, have come to agreement with County staff. The agreement is based on a concept that enforcement of a specific set of conditions agreed-upon in advance will produce a more palatable project than the one that would have been approved had the City not worked with the Supervisor's Office. The conditions of approval that are being recommended by staff are attached to the agreement and incorporated in the contract. In our opinion, the most important details of the proposed conditions are as follows. The conditions will be submitted to the County Board of Supervisors for final consideration at the November 18, 2008 hearing. Those conditions do the following:

- City staff has worked with County staff to ensure that the conditions that affect the City are acceptable and are protective of the City's interests and residents. Some of the more significant items reviewed with County staff include use of the school facility beyond the school session hours, construction traffic, grading and landscaping activities, permanent traffic improvements, and emergency response and evacuation plans.
- The conditions state that the school may hold up to 24 events per year that occur outside of the normal school hours of 7:30 a.m. to 4:30 p.m. weekdays, and which exceed 150 persons in attendance. However, student participants in regularly scheduled inter-scholastic sporting events occurring on school days are exempted. The conditions list a series of requirements, including limitations on noise and hours of use. Third party commercial events are prohibited. All third party events not directly related to school activities or functions, regardless of the number of attendees, would count toward the total 24 events.
- The school may hold no more than four major events annually, in addition to the 24 after school events, which cannot exceed 1,500 persons in attendance. As with the 24 smaller events, the conditions include requirements for these four events, which require issuance of a Temporary Use Permit (TUP) by County staff. The TUP would require submittal of a parking management and access plan for City review, and in some cases, approval. The same limitations regarding third party events apply in this case as well.
- Initial construction traffic would utilize Chesebro Road until the main site access off Canwood Street is established. The conditions state that the primary site access shall be completed within one year of grading permit issuance. However, this time period may be

extended by the County in consultation with the City due to unforeseen and unavoidable construction delays.

- The initial construction traffic would be primarily associated with grading of the majority of the site, including portions that are scheduled for later phases of development. Upon completion of initial grading, disturbed areas would be hydro seeded and planted in the interim, consistent with the landscape plans approved for the site. This ensures that no graded areas are left barren until later phase facilities are constructed.
- The school would be required to fund and/or construct off-site mitigation measures to compensate for cumulative traffic impacts in the area. The conditions establish a payment plan and improvement construction plan for the variety of traffic related improvements that would be necessary. The school would be responsible for constructing several improvements either prior to occupancy of the school, or at which point enrollment reaches a certain level or prior to certain phases of construction. The conditions identify the amount of compensation to be made to the City and the schedule for payment for those improvements that are not the direct responsibility of the school to construct.
- Prior to issuance of a building permit, the school is required to prepare an emergency evacuation plan satisfactory to the County, including the Fire Department, Sheriff's Department, and the Lost Hills Sheriff's Station, following consultation with the City. The conditions also stipulate that an Emergency Response Plan (ERP) be approved by the County Fire and Sheriff's Departments prior to the school opening each year. The requirements of the ERP are outlined in the conditions. The emergency access route would be through the site from Chesebro Road north of the school's emergency access driveway.

It is my belief that litigation against the County over approval of this project would not likely be productive at this time. This is not to say that a challenger will not have a strong case. Rather, if the City were to win the litigation, there would be very little chance that we would get a better result than this agreement provides. Every flaw we have managed to discern in the project and the process is easily fixed. On reconsideration after the time and expense of litigation, however, it seems likely that the Board of Supervisors would want to re-approve the project without the changes and conditions we have negotiated.

If the City Council elects to approve the agreement and withdraw its opposition to the project, the applicant would be required to comply with the extensive conditions set forth in the agreement and the conditions of approval. The City Council also has the option to refuse to enter into this agreement and refuse to waive its opposition to the project.

RECOMMENDATION

The City Council should consider whether to approve the agreement or provide other direction to staff.

Attachment: Draft Agreement