ORDINANCE NO. 1454

AN ORDINANCE ADDING ARTICLE XI ENTITLED
SCHOOL FACILITY MITIGATION PLANS FOR NEW
DEVELOPMENT TO CHAPTER 11 OF THE SOLANO
COUNTY CODE

The Board of Supervisors of the County of Solano, State of California, does ordain as follows:

SECTION I.

Article XI, entitled "School Facility Mitigation Plans for New Development," is hereby add to Chapter 11 of the Solano County Code, to read as follows:

ARTICLE XI. School Facilities Mitigation Plan for New Development.

Sec. 11-150. Findings.
(a) The various school districts within the County of Solano have expressed concerns that new residential development both in the incorporated and unincorporated areas of the county was placing increasing demands on public school facilities.
(b) The necessary public school facilities can not be provided by the present mechanisms being utilized by the districts.
(c) New residential development has not borne its fair share of the cost for additional public school facilities in Solano County.
(d) As a result the various public school districts had prepared for them cost of growth studies, as set forth under Government Code Sections 66100 et seq., commonly referred to as AB 1600 studies.
(e) Based upon the information developed for these studies, it was determined that development fees must be imposed on all new residential construction in order for that construction to bear its fair share of the cost for additional public school facilities in Solano County.
(f) The public schools have proceeded to have development fees, pursuant to the AB 1600 studies, adopted by the various cities in Solano County, for application to new residential construction in the incorporated areas of the County.
(g) The public schools requested that the County Board of Supervisors adopt similar development fees as an equitable measure to apply to new residential development in the unincorporated areas of the County.
(h) The Board of Supervisors has previously considered, authorized and adopted a general plan amendment which enables the Board of Supervisors to consider and adopt such a development fee on behalf of the various public school districts.

(i) The Board of Supervisors finds that it is both a necessity and fair and equitable to impose such a fee on new residential development in the unincorporated areas of Solano County in order that all new construction pay its fair share of these new facilities costs.

(j) The actual amount of the fee shall be adopted by separate Resolution of the Board of Supervisors after the second reading of this ordinance.

(k) This ordinance properly limits use of all fees collected to the expenditure for public school facilities, including the assessment of need, plans, design, construction, development, lease-purchase and other means of acquiring public school facilities, improvements, fixed assets and furnishings.

(l) Adoption of this ordinance does not have the potential to cause a significant effect on the environment. This ordinance does not authorize new development or require it. Rather it provides that if and when development is approved, under whatever laws and policies are otherwise in effect, it will be subject to a fee. This ordinance does not approve or foreordain approval of any public facilities nor mandate or alter the level of facilities to be constructed. Therefore, further review of this ordinance under the California Environmental Quality Act (CEQA) is not required.

(m) This ordinance is also exempt from review under CEQA pursuant to California Public Resources Code Section 21080(b)(8) and CEQA Guidelines section 15273(a)(4). This ordinance does not contemplate, identify, or approve expansion of the area for which public school facilities or services are provided.

Sec. 11-151. School facilities mitigation plan request.

(a) On and after the effective date of this ordinance, each applicant for a building permit for residential development (hereinafter "applicant") within the unincorporated areas of Solano County shall:

(1) submit a mitigation plan agreement, a sample of which is attached and incorporated herein as Exhibit "A" hereto, approved by the Director of Environmental Management explaining how the development for which the permit would be applied is participating in a plan to finance interim and permanent school facilities within the applicable school district; and

(2) agree to comply with the mitigation plan; or

(3) provide the Director of Environmental Management with a written statement signed by the Superintendent of the applicable school district that the property which is the subject of the building permit application is included within a Mello-Roos Community Facilities District.

A building permit shall not be issued unless and until the applicant has complied with this Section.

(b) The mitigation plan submitted pursuant to Section 11-151(a), above, shall be reviewed by the Director of Environmental Management who may approve, disapprove or modify the mitigation
plan. The Director's decision on a mitigation plan shall be in writing and shall be based upon the funding and facilities needs identified in the reports attached to resolutions implementing the schools facilities mitigation plan, as amended from time to time and incorporated herein by reference. In the event that the funding and facility needs are revised and approved by both the Board of Supervisors and Board of Trustees of the applicable school district by official action, the Director's decision will thereafter be based upon the revised funding and facilities needs.

(c) The phrase "mitigation plan," as used in this ordinance shall include, but not be limited to, financing or construction measures which provide funds or structures (through purchase, sale, or lease-back) for permanent and interim school district facilities.

Sec. 11-152. Receipt and use of funds.

(a) Monies required from an applicant as part of a mitigation plan shall be paid to the applicable school district for school facilities before issuance by county of a building permit. Each school district shall pay monies into the appropriate capital improvements fund such that all such monies collected and interest thereon are used for said school facilities, and costs related to the implementation and development of the mitigation plan. In addition, monies collected from non-residential uses or pursuant to Government Code Section 65995.1 shall be used to reduce the costs necessary to finance the mitigation plan.

(b) To the extent funds from the State of California are appropriated for school facilities addressed by this mitigation plan such funds shall be paid to the district's building fund and shall reduce, thereby, the amount needed to fund the mitigation plan.

Sec. 11-153. Permits affected.

This ordinance shall apply to each and every residential building permit either applied for or proposed to be issued on or after the effective date of this ordinance in the unincorporated areas of the county.

Sec. 11-154. Appeals.

Any person may protest the imposition of any fee imposed under the provisions of this ordinance by meeting the following requirements:

(a) Tendering any required payment in full or providing satisfactory evidence of arrangements to ensure performance of the conditions necessary to meet the requirements imposed.

(b) Serving written notice of appeal on the clerk of the board of supervisors, which notice shall contain all of the following information:

(1) A statement that the required payment is tendered, or that any conditions which have been imposed are provided for or satisfied, under protest.

(2) A statement informing the board of supervisors of the factual elements of the dispute and the legal theory forming the basis of the protest.
(c) The protest must be filed no later than 90 days after the date of the imposition of the fee hereunder.

Where a protest has been filed in compliance with these provisions, the protest resolution procedure shall be as set forth under the provisions of Government Code Sections 66020 et seq.

Sec. 11-155. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance or any part thereof is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof. The county hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared invalid or unconstitutional.

SECTION II.

Pursuant to provisions of Government Code Section 25124(b)(1), a Summary of this Ordinance shall be published once, at least FIVE (5) DAYS prior to the meeting of the Board of Supervisors at which the Ordinance is to be finally considered for adoption (second reading), and a Summary of this Ordinance, with the vote of the members of the Board of Supervisors thereon, shall also be published once before the expiration of FIFTEEN (15) DAYS after adoption of the Ordinance. Both publications shall be in the FAIRFIELD DAILY REPUBLIC, a newspaper of general circulation, printed and published in the County of Solano, State of California, and shall be in full force and effect SIXTY (60) DAYS after its passage.

A certified copy of the full text of the proposed Ordinance shall be posted in the office of the Clerk of the Board of Supervisors at least FIVE (5) DAYS prior to the meeting of the Board of Supervisors at which the Ordinance is to be finally considered for adoption (second reading). A certified copy of the final Ordinance shall be posted in the office of the Clerk of the Board of Supervisors within FIFTEEN (15) DAYS after adoption of the Ordinance, and the posting shall include the vote of the Supervisors for or against the Ordinance.

ATTEST:

[Signature]

LINDA L. TERRA, Clerk of the Board of Supervisors

I, LINDA TERRA, Clerk of the Board of Supervisors of the County of Solano, State of California, do hereby certify that the above and foregoing Ordinance was introduced at a regular meeting
thereof held this 24th day of November, 1992.

On the motion of Supervisor Davis and the second of Supervisors Carroll, this ordinance was adopted at a regular meeting of said Board on the 24th day of November, 1992, by the following vote:

<table>
<thead>
<tr>
<th>AYES:</th>
<th>SUPERVISORS: Caddle, Carroll, Davis and Chairwoman Simmons</th>
</tr>
</thead>
<tbody>
<tr>
<td>NOES:</td>
<td>SUPERVISORS: None</td>
</tr>
<tr>
<td>ABSTAINED:</td>
<td>SUPERVISORS: None</td>
</tr>
<tr>
<td>ABSENT:</td>
<td>SUPERVISORS: Stewart</td>
</tr>
</tbody>
</table>

WITNESS my hand and the Seal of said Board this 24th day of November, 1992.

LINDA L. TERRA, Clerk of the Board of Supervisors

By Linda L. Terra
EXHIBIT A

SCHOOL FACILITIES MITIGATION PLAN AGREEMENT
(Example Only)

This Agreement is entered into this ___ day of ___
19___, by and between the County of Solano (hereinafter COUNTY) and 
__________________________ (hereinafter DEVELOPER)

RECITALS

1. COUNTY adopted Ordinance No. _____ and Resolution No. ______, both of which implement policies set forth in General Plan Amendment No. G-92-01.

2. DEVELOPER and COUNTY agree that high quality education requires elementary schools which have the capacity to accommodate children in neighborhood schools and middle and high schools which are adequately sized to provide opportunities for excellence. The total cost of permanent school facilities required over the next ten years within the ________ Unified School District in 19___ dollars, is estimated to be ________ million. Local revenues currently available from developer fees over the next ____ years total only ________ million.

3. On ____________, 19___, COUNTY approved DEVELOPER’S plans to construct ___ homes in that subdivision commonly known as ____________, or other residential unit.

4. Each single-family residential unit is estimated to provide _____ elementary school, _____ middle school and _____ high school children; each condominium unit (if applicable) is estimated to provide _____ elementary school, _____ middle school and _____ high school children; and each multi-family residential unit is estimated to provide _____ elementary school, _____ middle school and _____ high school children.

5. Ordinance No. _____ requires DEVELOPER to enter into a Mitigation Plan Agreement setting forth the rights and responsibilities of COUNTY and DEVELOPER regarding the financing of permanent school facilities construction.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, COUNTY and DEVELOPER agree as follows:

1. DEVELOPER shall contribute to the County (a) $_________
for each single-family residential unit, $_______; for each condominium unit, $_______; and $_______ for each multi-family residential unit less (b) an amount equal to the amount DEVELOPER paid pursuant to California Government Code § 53080 ("developer fee") or by the present value of the future stream of tax payments paid to a Mello-Roos Community Facilities District to satisfy the requirements of Government Code § 53080.

2. The contribution provided for in paragraph 1 above shall either (a) be made by a case payment at building permit issuance or by consent, with the concurrence of COUNTY and the affected Unified School District, to the formation of a Mello-Roos Community Facilities District which results in a net value after consideration of bond issuance costs and reserve funds, at least equivalent to the amounts set forth in subsection (a) of paragraph 1. Consent to the formation of a Mello-Roos Community Facilities District shall include DEVELOPER'S failure to protest the formation of the district and DEVELOPER'S vote in favor of the imposition of the tax; or (b) be made by cash payment at issuance of a building permit if (i) DEVELOPER'S property is included in or DEVELOPER has consented to including its property in the Mello-Roos Community Facilities District to be formed by the Unified School District and (ii) DEVELOPER pays interest to the School District on the case payment at the rate of 1.3 of one percent per month calculated from building permit issuance to certificate of occupancy issuance.

3. Upon certification by the Superintendent of the Unified School District that property for which mitigation plan monies have been paid pursuant to Section 1 of this Plan, has been subsequently included in a Mello-Roos Community Facilities District described in Section _____ of Ordinance No. _____, the mitigation plan monies shall be refunded to the person or entity paying the monies with interest at the rate of 1.3 of one percent per month, commencing from the time of payment of such monies by DEVELOPER to the time of reimbursement by the applicable School District.

4. School District shall place all monies received pursuant to paragraph 1 in a separate identifiable account which shall receive interest at the School District's investment rate. These monies shall be used exclusively for the planning, acquisition and construction of new school and student support facilities.

5. The amount contributed by DEVELOPER pursuant to paragraph 1 of this Agreement shall be in full satisfaction of DEVELOPER'S obligation to contribute to the cost of financing permanent school facility construction attributable to the estimated number of children provided from DEVELOPER'S project. This paragraph shall not be construed to relieve DEVELOPER from any obligation imposed by the Unified School District or other public entity other than the County of Solano to contribute to public school
financing.

6. COUNTY agrees that during the term of this Agreement, COUNTY shall not adopt any ordinance, resolution, policy or other official action which requires or has the effect of requiring DEVELOPER to make additional monetary contributions to the cost of financing permanent or interim school facility construction attributable to the development which is the subject of this Mitigation Plan Agreement.

7. When Ordinance No. ___ and Resolution No. ___ were adopted, COUNTY recognized that further actions may be necessary to finance school facilities. In the event that a final financing plan approved by the Board of Trustees of the Unified School District provides financial resources to the School District not contemplated at the time Ordinance No. ___ and Resolution No. ___ were adopted, the Director of Environmental Management, with the concurrence of the Unified School District, will reduce the amount required to be contributed pursuant to paragraph 1 proportionately.

8. In the event that the Unified School District receives funds from the State of California which would have been used by the Unified School District to construct or contribute to the construction of the school facilities financed by the contribution provided by paragraph 1 of this Agreement, reimbursement may be made to the current property owner. Therefore, if the contribution made pursuant to paragraph 1, is made through a Mello-Roos Community Facilities District, reimbursement will be made to the current owners in the District.

Date ___________________ DEVELOPER ___________________

Date ___________________ COUNTY ___________________