



OFFICE OF THE CITY MANAGER

TO: City Council

DATE: November 8, 2004

FROM: City Manager

SUBJECT: DISCUSSION OF RESIDENTIAL IMPACT FEE INCREASE

On September 20, 2004, the City Council increased the Residential Impact Fee for parks from \$3,659 per unit to \$19,743 per unit based on the findings of the Nexus Study prepared by Brion and Associates. At the request of Councilmember Streator this information is being presented for discussion purposes.

The City engaged the services of a consultant, Brion and Associates, to conduct an analysis of Pasadena's existing park supply and future demand and prepare a nexus study. The nexus study indicates that the City's former impact fee of \$3,659 per unit covers only a fraction of the cost of providing new parks and recreation facilities due to new residents. The "Park and Recreation Impact Fee Nexus Study" is based on the following assumptions:

1. The City's current park acreage for developed park land and open space park land is 2.17 and 1.49 acres per thousand residents respectively, for a total of 3.66 acres of park and open space per thousand residents;
2. The number of new households in Pasadena is anticipated to grow by 8,100 between 2004 and 2024, or 12.7 percent over the current number, which is consistent with the General Plan Draft Land Use Element;
3. The total household population is anticipated to grow by 20,469 from 2004 to 2024, a 12.7 percent increase in twenty years;
4. New development's share of the City's current cost of capital improvements, and planned expansions of recreation facilities is 12.7 percent, based on new development's share of households in 2024; and
5. The land value in Pasadena (based on recent sales and appraisals of various properties) is \$2,921,284 per acre.

Based on these factors, the analysis indicates the impact fee could be as high as \$19,743 per new dwelling unit to cover the cost of new park land needed to maintain the current ratio of park acreage per thousand residents.

In the September 20, 2004 agenda report to the City Council, staff recommended the new fee be set at \$10,977 per unit. Given that 17 other plan check, permit, impact fees and taxes are assessed on new residential development, it was reasoned that increasing this fee to the full amount allowable by the nexus study could place an undue burden on projects.

Since the decision was made to increase the fee, the following issues have been raised regarding the assumptions used and the data provided in the nexus study.

1. The land value computation used in the study assumed acquisition of developed property with mixed-use and residential zoning, primarily in the Central District;
2. The City did not provide credits to mitigate the fee for developers for the cost of providing open space or other recreational opportunities;
3. The fee should have been adopted by City Ordinance rather than by Resolution;
4. Increasing the fee from \$3,659 to \$19,743 per unit at one time was too large an increase for the development community; and
5. The fee is regressive since it is levied on a per unit basis.

Each of these issues have been reviewed by staff.

ISSUES

1. Land Value Computation

The original list of land sales transactions used in the Nexus Study to calculate the acquisition cost per acre of park land contained twenty-two properties that were used as commercial sites, parking lots and vacant lots. This sampling concluded the average cost per acre to be \$2,921,284. There were no residential properties included in the sample, however, most of these sites were purchased for multiple residential developments, requiring demolition of the existing improvements. Any existing structures contributed no value to the property and the sale prices reflected land value only.

Twelve of the twenty-two properties in the original sample were located in the Central District. The value of the properties used from the Central District showed a higher valuation than the value of properties from the other parts of town.

One alternative could be to select a more representative property list to calculate the acquisition cost per acre of park land. To give the Council an example of how the selection of a more representative sampling could affect

the fee calculation, staff selected 45 vacant properties located throughout the City and conducted preliminary property valuations. It is important to note that these valuations were done as quick estimates for the purpose of this discussion and do not comply with the Uniform Standards of Professional Appraisal Practice and are intended for planning purposes only. Complete appraisal would likely yield values considerably different than shown and would take three to four months to complete.

The average cost per acre of this new 45 property sample would be approximately \$1,900,000. If this value was included in the methodology used in the Nexus Study, the fee amount would be approximately \$14,000 per residential unit.

2. Developer Credits for Open Space

Some cities offer developers credits toward their park impact fee or amount of dedicated parkland required if the developer sets aside open space for active recreational purposes as part of the development. Cities that offer such a credit are Santa Clarita, Fontana, Rancho Cucamonga, Moreno Valley, Del Mar, and Long Beach. In most cases, the cities offer a set discount of around twenty-five percent of the impact fee for planned communities that include a park and recreational open space in conjunction with the development. In addition, some cities allow developers to apply for credits if the development includes a specified number of basic local park elements.

On August 23, 2004, the City Council adopted an Ordinance that amended Chapter 4.17 of the Pasadena Municipal Code relating to Residential Impact Fees to include a Dedication of Land provision. This provision allows developers, whose impact fee equals or exceeds \$500,000, the option with Council approval of dedicating land, either on-site or off-site, and to develop a park in lieu of paying the fee.

3. Fee Increase Through Ordinance or Resolution

The City Attorney will provide additional information on this issue at the City Council meeting.

4. Fee Increase Amount

On September 20, 2004, Council increased the fee 540 percent. One alternative to the large one-time increase would be to implement the fee in a phased approach over a period of years, thereby spreading out the increase to the development community.

One example is the fee could be phased in over the next three years according to the following schedule:

Year 1 - \$10,977
Year 2 - \$15,360
Year 3 - \$19,743.

In five years, staff would re-evaluate the assumptions contained in the Nexus Study and recommend a new study which could lead to a new fee amount.

Implementing a phased approach could accelerate development in the City as developers try to push through projects to avoid the upcoming fee increase.

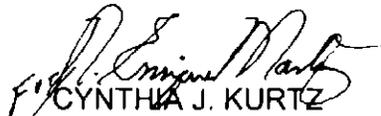
5. Is The Fee Per Unit Regressive?

The argument can be made that the current fee structure is regressive because all units, regardless of size or valuation, pay the same amount. Staff considered the possibility of assessing the fee on a square footage basis rather than a flat per unit fee. After reviewing methods used by other cities, it was determined that square footage assessments are typically used by cities to assess fees to commercial developments not residential developments. Using a square footage assessment on residential development would require an in-depth study to prove the validity of the assumption that the larger the dwelling unit, the greater the impact.

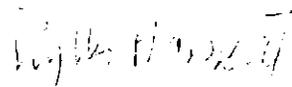
FISCAL IMPACT

This report is for information only.

Respectfully submitted,


CYNTHIA J. KURTZ
City Manager

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**NEW CORRESPONDENCE
FOR
NOVEMBER 8, 2004
COUNCIL MEETING**

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O'Malley M. Miller
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VIA FACSIMILE, E-MAIL AND U.S. MAIL

The Honorable William J. Bogaard
City of Pasadena
100 N. Garfield Ave., Room 237
Pasadena, CA 91109

Re: Resolution Raising City Park Fees to \$19,743

Dear Bill:

I urge you and the members of the Pasadena City Council to reconsider the resolution adopted September 20, 2004 raising the Residential Impact Fee from \$3,659 per new dwelling unit to \$19,743 per unit. The fee increase was hastily adopted after only a single night of consideration by the City Council and without proper opportunity for public discourse.

The %540 increase in the fee is both exorbitant and unprecedented. Never before have fees increased in the City of Pasadena this dramatically and literally overnight. The cost of building and maintaining park spaces, which has traditionally been born by the public at large, now falls unfairly on the shoulder of new residents who will ultimately pay the fee.

Before the City even considers such a dramatic leap in fees, the City Council should provide a full and fair opportunity for interested parties to be heard. The City Council adopted the fee increase by mere resolution on September 20th. The procedure did not provide sufficient notice or an opportunity for interested parties to participate in the Council's decision to adopt such a staggering increase in fees. Prior to September 20th, the City Manger's Office had recommended a fee increase to \$10,997 per unit. Not until the September 20th meeting had

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The Honorable William J. Bogaard
September 27, 2004
Page 2

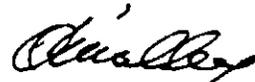
anyone discussed raising the fee to \$19,743. Therefore, no party had notice that the Council would more than quadruple the existing fee at the September 20th meeting. Because adequate notice was not given, the City Council should officially reconsider the fee increase and thereby provide an opportunity for interested parties to come forward and be heard.

Furthermore, the City Council, despite contrary recommendations from the City Manager's Office, based the fee increase on the maximum allowable under the Nexus Study conducted by Brion and Associates. We believe the Nexus Study contains serious flaws. For example, the Nexus Study improperly inflated the cost of purchasing new park land. The Study used an estimated figure of over \$2.9 million per acre. Brion and Associates based their figure on the cost of purchasing prime residential and mixed-use properties. There is no reason to believe that the City intends to condemn valuable residential property for new parks. The inflated purchase price infects the entire Nexus Study resulting in a serious overestimate of the park fee. The City Council should allow an opportunity for the public to properly consider and discuss the Nexus Study underpinning the fee increase before going forward.

In addition, the legality of the fee increase bears closer scrutiny. Because of flaws in the Nexus Study, we believe that the fee does not bear a reasonable relationship to the park needs created by new development. Therefore, the fee violates a number of state statutes including the Mitigation Fee Act (California Government Code §66000 et seq.) and the Quimby Act (California Government Code §66477). Further, if the fee does not bear a reasonable relationship to the burden placed on the community, the fee also constitutes a special tax under Proposition 13 and thus requires approval by two thirds of the electorate under the California state constitution.

For the above reasons, I urge you and the City Council to reconsider the fee increase.

Very truly yours,



O'Malley M. Miller

cc: Pasadena City Council
Ms. Cynthia J. Kurtz

SARES•REGIS Group

November 4, 2004

VIA FACSIMILE AND
FIRST CLASS MAIL

Mayor William J Bogaard
Vice Mayor Sid Tyler
Councilmember Victor Gordo
Councilmember Stever Haderlein
Councilmember Chris Holden
Councilmember Paul Little
Councilmember Steve Madison
Councilmember Joyce Streater
Pasadena City Hall
100 North Garfield Avenue
Pasadena, CA 91109

Re: Residential Impact Fee

Dear Mayor Bogaard and Members of the City Council:

As the owner of the former East Campus of the Ambassador College and the Holly Street Village Apartments, SARES•REGIS Group considers itself to be a significant stakeholder in Pasadena. It is in this role that we write this letter concerning the recent adoption of Resolution No. 8392 which increased the City's Residential Impact Fee by 540%. We feel strongly that this decision was made with highly flawed information and is therefore placing an undo and legally defective burden on the shoulders of Residential Developers.

For over 10 years SARES•REGIS Group has been providing comprehensive real estate services through its Commercial, Multifamily and Homebuilding Divisions, currently managing over \$2 billion in assets on behalf of its institutional partners and clients. These assets include 10.5 million square feet of commercial property and more than 12,000 apartment units. The company has also purchased and/or developed approximately 36 million square feet of commercial property and more than 19,000 residential homes and apartments.

We are aware that the Council has not had the opportunity to officially review the details of our proposed project, since we have recently completed the PPR process. Our planned project will consist of just over 800 for sale condominiums and rental apartment homes, 30,000sq.ft. of commercial/retail space and a public parking structure with several hundred parking stalls. The project is located on nearly 12 acres bounded by Green Street, Pasadena Avenue, DeLacey Avenue and Del Mar Boulevard. The actions taken by the Council on September 20th put us in a difficult situation, since we have already closed on the land at a price negotiated based on a land value which did not consider such a significant fee. Therefore, we would strongly urge the Council to consider a structured phasing or grandfathering process after re-evaluating this fee. This Council has seen the benefit and fairness of such a policy in the implementation of the recently enacted Inclusionary Housing Ordinance.

As our PPR indicates, it is our intention to create a community with a combination of rental apartment homes and for sale entry level condominiums in differentiated enclaves. In a highly desired city such as Pasadena, with rising land and home costs all around us, there is clearly a need for both affordable and entry level or workforce housing. Our proposed project would provide 125 inclusionary units on-site, in addition to the several hundred units of, what by Pasadena standards, would constitute entry level or workforce housing. This community would not just accommodate those residents that qualify through the City's inclusionary housing program, but would provide the opportunity for local teachers, police, firefighters, nurses, people who grew up here, but no longer desire to live with their parents, graduates of local schools such as CalTEch, etc. become homeowners in the heart of the Central District.

If the Council's decision on this fee were to stand, it would be a \$12,000,000 impact to our project. This is in addition to the \$3,000,000 we had anticipated based on the park fee in existence at the time we closed on the land and in addition to the total of 15 other fees the City currently charges residential developers. This financial burden has unforeseen consequences that we feel the City should be aware of. When given the flexibility to develop an aesthetically pleasing, socially responsible community, most developers will choose to. However, when the city puts severe financial burdens on development, developers are forced into choices based on keeping the deal economically viable. A perfect example of this is the on-site inclusionary aspect of our project. As you are aware the cost of providing for inclusionary units on-site is exponentially more expensive than paying the in-lieu fee, based on today's market rates. The removal of our 125 inclusionary units and payment of the in-lieu fee is just one example of measures developers such as SARES-REGIS Group will be forced to consider if you choose not to reconsider your decision. In total, the costs imposed upon our project by the City of Pasadena would be greater than the cost of the land, should this fee stay in place. When backed into a corner, altruism takes a back seat.

The Nexus Study used to justify the fee is highly flawed. For example, the study references other cities in Southern California with seemingly high impact fees, including Irvine. SARES-REGIS Group has developed numerous projects in Irvine and is familiar with the structure of their park fee. Irvine has specific and clearly defined measures by which a developer can mitigate the fee by providing park style and resident amenities on site. If a landowner elects to maximize density to the detriment of onsite open space and amenities that serve the residents, then they are responsible to pay the full fee for the burden that will be shouldered by the city. We strongly urge the Council to institute a system by which landowners can reduce the park fee through responsible development.

It is for these and a multitude of other legal and substantive issues, which will be addressed in correspondence from the appropriate experts, that we respectfully request the Council to rescind Resolution No. 8392 and begin the process of a more thoughtful and accurate analysis of the true impacts of development on the City's park system.

Sincerely,
SARES-REGIS Group



Michael J. Winter
Vice President
Director of Multi-Family Development

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November 4, 2004

**VIA FACSIMILE AND
FIRST CLASS MAIL**

Mayor William J. Bogaard
Vice Mayor Sid Tyler
Councilmember Victor Gordo
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Councilmember Chris Holden
Councilmember Paul Little
Councilmember Steve Madison
Councilmember Joyce Streater
Pasadena City Hall
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Pasadena, California 91109

Re: Residential Impact Fee

Dear Mayor Bogaard and Members of the City Council:

This firm represents a number of institutional and residential developers in the City of Pasadena who have serious concerns regarding the City Council's recent adoption of Resolution No. 8392 increasing the City's Residential Impact Fee from \$3,659 to \$19,743 per residential unit. All parties understand and acknowledge the City Council's desire to maintain the current ratio of residents to park land and understand their legal obligation to comply with the State Quimby Act. No one therefore opposes an appropriate increase in fees benefiting parks and open space per se. The primary source of concern is the magnitude of the 540 percent increase in the Residential Impact Fee adopted by the City Council on September 20, 2004. We have reviewed the administrative record compiled by the City in connection with the adoption of Resolution No. 8392 and have identified a number of defects in the information on which the City Council relied in making its determination. Specifically, the Park and Recreation Impact Fee Nexus Study (the "Nexus Study") prepared by Brion and Associates fails to comply with the provisions of the Quimby Act and other applicable provisions of state law because it fails to differentiate among the potential impacts of various types of residential development on park and recreational facilities, fails to properly consider applicable land use and housing policies set forth in the City's General Plan, relies on projections of population growth that are inconsistent with available demographic data, and mischaracterizes the cost of acquisition of additional property for use as

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Mayor William J. Bogaard
November 4, 2004
Page 2

parks and open space. The Nexus Study is therefore fundamentally flawed and has supported a result that is neither fair nor compliant with applicable legal requirements.

Section 66014 of the California Government Code provides that when a local agency charges fees associated with discretionary approvals and building permits, "those fees may not exceed the estimated reasonable cost of providing the service for which the fee is charged." Section 66477 of the Government Code similarly provides that the amount of fees to be paid for parks and recreational facilities in connection with the approval of new subdivisions "shall bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivisions." Section 66477 further provides in part that the amount of fees paid for new subdivisions

shall be based upon the residential density, which shall be determined on the basis of approved or conditionally approved tentative map or parcel map and the average number of persons per household. There shall be a rebuttable presumption that the average number of persons per household by units in a structure is the same as that disclosed by the most recent available federal census.

As set forth in more detail below, the Nexus Study projects a population growth rate and average number of persons per household that are far in excess of what is justified on the basis of historical growth rates and population figures documented on the basis of United States Census Bureau data. The mistaken population projections have led to a miscalculation of available park and open space land, which is compounded by the omission of significant available park and open space resources that are located in Los Angeles County within or adjacent to the City's sphere of influence and which the City has identified in the environmental impact report for the draft General Plan update. In addition to other shortcomings, the Nexus Study has utilized a cost for acquisition of additional park land which is impermissible under state law. The City Council is therefore urged to reconsider its adoption of the Residential Impact Fee increase.

A. Introduction.

The facts and arguments set forth below may be summarized as follows:

- The Nexus Study mistakenly fails to differentiate between housing types or locations, thereby resulting in a one-size-fits-all approach which does not accurately reflect a reasonable relationship between the amount of the fee and the anticipated impact of future residents on the City's park and recreational facilities.

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Mayor William J. Bogaard
November 4, 2004
Page 3

- Directly contrary to policies set forth in the City's General Plan, the increased fee will result in less residential development City-wide and drive up the cost of what new housing is developed, placing the cost of new housing beyond the reach of significant segments of the City's workforce population. Moreover, the reduction in new housing development will result in reduced fees for parks and open space, thereby frustrating the goals that the increased fee is intended to achieve.
- The Nexus Study underestimates existing park land by failing to consider the full range of parks and open space resources available to City residents in the form of adjacent County-owned facilities and school facilities potentially available to the City through joint use agreements with the school district.
- The Nexus Study overestimates the City's projected population growth by failing to use statutorily mandated Census data and relying on unsupported projections of the potential number of new residential units and the potential number of residents per unit.
- Contrary to governing legal precedent, the Nexus Study has estimated the cost to acquire land for new park facilities on the basis of residential property instead of undeveloped land.

The Residential Impact Fee accordingly fails to comply with applicable requirements of state law governing the ability of local jurisdictions to impose fees on new development. The City Council is accordingly urged to reexamine its recent adoption of the increased fee on the basis of the objections set forth below.

B. The Nexus Study Fails To Differentiate Between Housing Types.

The Nexus Study provides for a Residential Impact Fee of \$19,743 per residential unit, regardless of the size, location, or expected impact that the residents of such units may have on City parks and recreational facilities. As set forth in the attached Memorandum prepared by Alan D. Kotin & Associates, this "one size fits all" approach is not only counter-intuitive, but may also result in unintended consequences that would undermine various goals and policies designed to promote the development of new housing at a price that is within the reach of significant segments of the community.

By adopting this approach, the Nexus Study necessarily assumes that vastly different types of housing units will create identical impacts on park resources. Thus, single family residential units are assumed to create the same impacts as multifamily residential units; studio

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Mayor William J. Bogaard
November 4, 2004
Page 4

and one bedroom multifamily units are assumed to have the same impacts as two, three, or four bedroom multifamily units; housing in denser urban infill contexts are assumed to have the same impacts as suburban development in more traditional residential contexts, and housing for seniors is assumed to have the same impacts as housing for the general population. It stands to reason that larger residential units that are more likely to house families with children will create different demands on park resources than will studio or one bedroom units that are more likely to be occupied by individuals or couples without children. Lifestyle choices reflected by decisions to occupy urban infill developments are also likely to reflect different attitudes toward the need for park and open space amenities than would be expected from occupants of single family suburban residential developments. Moreover, the expectations of seniors with respect to park and recreational facilities are likely to be vastly different than the expectations of younger, and potentially more active residents. The Nexus Study has made no effort to differentiate between the various housing types to which the new fee would indiscriminately apply. This constitutes a major flaw which justifies a reexamination of the way in which the proposed fee should be applied.

C. The Nexus Study Fails To Account For The Geographical Location Of Park Resources.

Just as the Nexus Study fails to account for differences among various housing types, the Nexus Study fails to consider the location of residential developments in proximity to existing parks and recreational resources. According to the environmental impact report ("EIR") for the City's General Plan update, the City is divided into three separate park districts. The west district, which extends from Marengo Avenue to the western City limit, contains approximately 32.39 acres of developed park land. The central district, which extends from Marengo Avenue on the west to Allen Avenue on the east, similarly contains approximately 32.37 acres of developed park land. The east district, which extends from Allen Avenue to the eastern City limit, contains approximately 49.7 acres of developed park land. The City also has approximately 416.66 acres of City-wide parks, which include 216 acres of open space.

Section 66477 of the Government Code requires the amount of fees to be paid for park and recreational facilities to bear a reasonable relationship to the use of the park and recreational facilities by future inhabitants. Future inhabitants are most likely to use park and recreational facilities located close to their homes. Due to the disparity of available park land in the various districts, the need for additional parks should accordingly be different in the west and central districts than it is in the east district. The corresponding demand for new park land in the east district should therefore be substantially lower than the demand in the west or central district. The Residential Impact Fee should accordingly reflect the difference in demand among the three park districts. By failing to take the proximity of new residential development to existing park

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Mayor William J. Bogaard
November 4, 2004
Page 5

resources into account, the Nexus Study fails to establish a reasonable relationship to the use of the park and recreational facilities by future residents. The Nexus Study therefore fails to comply with the requirements of state law and cannot be used as the basis for establishing new impact fees.

D. The New Residential Impact Fee Will Thwart The City's Ability To Achieve Its Goals Of Providing Reasonably Priced Housing Available To Large Segments Of The Community.

The Draft Land Use Element of the City's General Plan establishes the following policies:

Policy 15.1 – Provide a range of housing sizes and types for the many sizes and types of families in the community.

Policy 15.2 – Increase the total number of market rate and affordable housing units within the City.

Policy 15.3 – Increase, where feasible, the equitable distribution of affordable housing throughout the City, including an inclusionary housing ordinance.

Policy 15.4 – Increase the supply of large family affordable housing units with adequate outdoor play space for children.

The proposed Residential Impact Fee will increase the cost of developing every new residential unit in the City by \$16,084. This represents a significant disincentive for residential developers who are already paying record prices for land and who will be required either to construct larger, for-sale units to recoup the cost of the increased fee, or to pass the fee through to residential tenants or buyers in the form of higher rents and home prices. This impact will be disproportionately felt by those segments of the population such as teachers, nurses, firefighters, and police, whose incomes are too high to qualify for affordable housing units under the City's inclusionary housing ordinance but are too low to permit a range of housing choices within the City.

At the same time, the expected benefits of the increased fee are unlikely to be realized because the resulting increase in housing costs will reduce the amount of new residential construction in the City, thereby reducing the overall amount that will be received for the acquisition of new park land. The unintended consequences of the increased Residential Impact Fee will therefore result in additional hardship for those residents whose interests the foregoing policies are intended to promote, without achieving the corresponding benefits that the increased fee is anticipated to accomplish. The increased fee therefore does not appear to have been

Allen Matkins Leck Gamble & Mallory LLP
attorneys at law

Mayor William J. Bogaard
November 4, 2004
Page 6

carefully considered relative to its consistency with the City's own public policy goals and should accordingly be reevaluated.

E. The Nexus Study Underestimates The Amount Of Available Land For Parks And Open Space.

The Nexus Study estimates that the City currently has a total of 531.16 acres of park land, which includes 315.16 acres of active park land and 216 acres of open space. This figure does not include Michilinda Park, Eaton Canyon Park and Nature Center, Eaton Canyon Golf Course, and the Rim of the Valley Trail, all of which are located in Los Angeles County within or adjacent to the City's sphere of influence. This figure also excludes school properties for which the City has executed joint use agreements with the Pasadena Unified School District for recreational activities on an as-needed basis. According to available information, the City currently owns approximately 60 acres of undesignated property, some of which could be converted to park use. We also understand that the City is also negotiating with the Metropolitan Water District for the lease of approximately 29 acres adjacent to Hahamonga Park and is in negotiations for the acquisition of between eight and nine acres near Eaton Canyon, none of which is referenced in the Nexus Study. Instead, the Nexus Study ignores all of these additional resources notwithstanding the fact that they are identified and discussed in the Public Services/Recreation section of the EIR for the City's General Plan update.

The EIR also calculates the amount of active park land in the City at 314.79 acres, or 2.23 acres per 1,000 people. According to this calculation, the City's current population is 141,161 people. As set forth in more detail below, the Nexus Study overestimates the City's current population as 144,957 people. If the population figure from the EIR is used, the City currently has 3.76 acres of park land and open space per 1,000 people instead of 3.66 acres per 1,000 people as stated in the Nexus Study. According to the EIR, the City does not currently have a threshold for parks and recreational resources. Instead, the EIR uses the National Recreation and Parks Service standard of three acres of parkland per 1,000 residents. Pursuant to this standard, the City currently has .76 acres of park and open space land per person in excess of the national standard, not counting the additional resources available in the form of immediately adjacent County parks and school recreational facilities. The Nexus Study has accordingly failed to consider all available park and open space facilities available to the residents of Pasadena and has correspondingly overstated the extent to which those facilities fall short of accepted standards.

Allen Matkins Leck Gamble & Mallory LLP
attorneys at law

Mayor William J. Bogaard
November 4, 2004
Page 7

F. The Nexus Study Has Overestimated Projected Population Growth.

The Nexus Study mistakenly projects a population growth factor of 12.7 percent over the next 20 years, resulting in a total population of 161,226 people by 2024. This projection is based on an estimated current population of 144,957 people, which is inconsistent with population growth projections set forth in the City's General Plan and is substantially greater than what is indicated by historic growth patterns reflected in United States Census figures. The population projections in the Nexus Study therefore result in a distorted representation of current expected population growth in the City and lead to correspondingly unrealistic and unjustified conclusions regarding future impacts on park resources. The Nexus Study also fails to comply with applicable requirements of the Government Code which mandate consideration of the figures disclosed by the most recent available federal census. Available data may be summarized as follows:

- The Land Use Element of the City's existing General Plan projects a population of 152,798 people in 2010, which corresponds to a 16 percent increase over the City's population of 131,591 people in 1990. The Land Use Element also projects a total number of 59,136 residential units in 2010, an increase of 12 percent over the 1990 level of 53,032 residential units.
- The Housing Element of the City's existing General Plan mentions that the Southern California Association of Governments projects that the City's population will increase by 19 percent from 133,936 in 2000 to 160,000 in 2015, but acknowledges that "population trends observed by the Census Bureau suggest significantly less population growth." The expectation of lower population growth is based on an assessment of historical population figures which indicate that the City's total population increased between 1970 and 1990 by 16 percent from 113,327 to 131,591, most of which occurred between 1980 and 1990 when the population increased by 13,041 people. This was followed by an increase in population of 2,345 people between 1990 and 2000, which corresponds to an increase of less than two percent. According to the Housing Element, the total number of housing units in the City increased during the same period by 1,082 from 53,032 in 1990 to 54,114 in 2000, an increase of just over two percent. At the same time, the average household size decreased from 2.53 people in 1990 to 2.51 people in 2000.
- The Draft Land Use Element of the City's current General Plan update projects an increase in population of approximately 16,064 people between 2000 and 2015, which corresponds to a 12 percent increase. The Draft Land Use Element also

Allen Matkins Leck Gamble & Mallory LLP
attorneys at law

Mayor William J. Bogaard
November 4, 2004
Page 8

projects an increase in the number of residential units to 59,500 in 2015, which corresponds to an increase of 5,386 units over the 54,114 units identified by the Census in 2000.

Contrary to the foregoing information derived from Census figures, the Nexus Study relies on estimates provided by the California Department of Finance ("DOF"), which indicate a population increase of 11,021 people between 2000 and 2004, or an astonishing 8.2 percent in just four years. According to the DOF figures on which the Nexus Study relies, the number of residential units in Pasadena has increased by 1,568 from 54,132 in 2000 to 55,700 in 2004. If historical population growth rates of eight percent per decade are utilized, the current population should have increased from 133,936 in 2000 to 137,150 people in 2004. Based on projections in the City's General Plan, the number of housing units should have increased by six percent per decade, resulting in an increase in the total number of residential units in the City of 1,082 units from 54,114 in 2000 to 55,196 in 2004. The annual increase in the number of housing units would equal 270.5 instead of the 405 units per year projected by the Nexus Study. According to the more ambitious projection in the Draft Land Use Element of 59,500 residential units by 2015, the rate of increase over 2000 would be approximately 360 units per year, which is still considerably less than the figure relied on by the Nexus Study. At a rate of 360 new residential units per year, the City would have 55,550 residential units in 2004, and an increase of 7,200 units by 2024 instead of the 8,100 units projected by the Nexus Study. The total number of residential units would therefore total 62,750 in 2024, and the number of households, assuming the vacancy rate of 4.23 percent set forth in the Nexus Study, would be 6,895. Even utilizing the inflated population figures relied on by the Nexus Study, at 2.64 persons per household (which is much higher than the 2.51 persons per household borne out by available Census data), the total population would therefore increase by a maximum of 18,023 people to 158,780 in 2024. In order to maintain the same level of park and open space acreage per 1,000 residents, it would therefore be necessary for the City to obtain 39.11 acres of new park land and 26.85 acres of new open space. This contrasts with 44.5 acres of park land and 30.5 acres of open space identified in the Nexus Study. The Nexus Study has accordingly overestimated the amount of park land and open space required to maintain current standards by at least 5.39 and 3.65 acres, respectively.

G. The Nexus Study Has Utilized An Impermissible Cost For Acquisition of New Park Land.

The Nexus Study assumes a cost of \$2,921,284 per acre to acquire new park land. This figure is based on recent residential and mixed use land sales in the City. This compares with a cost of \$527,000 per acre for acquisition of open space land, on which the City previously relied

Allen Matkins Leck Gamble & Mallory LLP
attorneys at law

Mayor William J. Bogaard
November 4, 2004
Page 9

in establishing the Residential Impact Fee. In Norsco Enterprises v. City of Fremont, 54 Cal.App.3d 488 (1976), the court rejected an attempt by the City of Fremont to base its in lieu park fees on the cost of developed land instead of the cost of undeveloped land. The court reasoned that if the developer were to dedicate land instead of paying in lieu fees, the dedicated land would necessarily have been unimproved. "The City having instead taken 'in lieu fees,' it seems reasonable that such fees be of an amount equal to the value of the unimproved land for which they were substituted." *Id.* at 499. The court accordingly reduced the amount of the fees to reflect the cost of acquisition of undeveloped property.

The estimated \$2.9 million per acre cost of acquisition of new park land is therefore impermissible under prevailing legal precedent. The estimated cost of acquiring both park land and open space should accordingly be reduced to \$527,000 per acre, which the Nexus Study identifies as the cost of acquisition of undeveloped land. The cost to acquire 39.11 acres of new park land and 26.85 acres of new open space at \$527,000 per acre should accordingly be no more than \$33,179,920, as opposed to the \$146,078,430 projected in the Nexus Study. Using estimates provided in the Nexus Study, the cost of improvements for park land would be \$150,000 for 39.11 acres and \$15,000 for 26.85 acres of open space, for a total of \$6,269,250. The total cost of acquiring and improving new park land and open space should therefore not exceed \$39,449,170, which would correspond to an impact fee of no more than \$5,479 per new residential unit, based on 7,200 residential units projected to be developed in the City between 2004 and 2024.

H. Conclusion.

The Nexus Study clearly fails to adequately justify the extent of the proposed increase to the City's Residential Impact Fee. Even if the Nexus Study were based on accurate projections and permissible costs for the acquisition of land for park and open space use, increasing the fee by 440 percent in a single step is ill advised and counterproductive. The City Council should accordingly consider the following alternatives to increasing the Residential Impact Fee as provided in Resolution No. 8392:

- The amount of the Residential Impact Fee should be reduced to reflect realistic projections of population growth and the legally permissible cost of land for park use.
- Increases in the Residential Impact Fee should be phased in incrementally over time up to the maximum amount justified by the Nexus Study, as corrected.

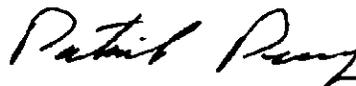
Allen Matkins Leck Gamble & Mallory LLP
attorneys at law

Mayor William J. Bogaard
November 4, 2004
Page 10

- Credit against the Residential Impact Fee should be provided for recreational and open space facilities developed on site in connection with residential or mixed use projects.
- The Residential Impact Fee should be significantly reduced or eliminated for all residential units in projects in which required affordable units are constructed on site.
- The Residential Impact Fee for residential units constructed pursuant to approval of a Planned Development ("PD") project shall be as set forth in the resolution adopting the PD approval.
- Residential units constructed by private educational institutions to house students, faculty, or staff shall be exempt from the Residential Impact Fee.

Your careful attention to this request is greatly appreciated. Please call with any questions or if I can provide additional information with respect to the foregoing.

Very truly yours,



Patrick A. Perry

PAP:lvb

cc: Ms. Cynthia Kurtz
Michelle Beal Bagnicris, Esq.
Mr. Richard Bruckner

A



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akotin@adkotin.com

Memorandum

TO: Sonia Ransom, Esq., Allen Matkins Leck Gamble & Mallory LLP DATE: November 1, 2004
FROM: Allan D. Kotin
RE: **OBSERVATIONS ON PASADENA PARK FEE NEXUS STUDY**

At your request, Allan D. Kotin & Associates (ADK&A) has reviewed the document provided by you entitled "Final Nexus Study - Park and Recreation Impact Fee, Nexus Study, City of Pasadena" by Brion Associates dated June, 2004. The purpose of this review was not to provide a detailed critique of the information or technology used but to provide some general observations on the underlying policy decisions in the way in which the fee was established.

Before sharing my observations with you, I should note for the record that I am not expert in park fees, park management or park development. I am, however, generally familiar with the logic behind setting impact fees to finance critical infrastructure as a function of new development. My familiarity comes from not only my practice as a financial adviser to both public agencies and private developers, but also from my teaching experience. I have for almost a decade taught a graduate course entitled "The Development Approvals Process at the School of Policy Planning and Development" at the University of Southern California. A critical element in that curriculum is the entire topic of infrastructure finance and specific attention is given to the establishment, imposition, and fairness of impact fees. It is in this context that I offer the following observations. These are suggestions for further investigation and evaluation by the City prior to accepting the report's recommendations rather than any formal challenge.

My comments are divided into three basic topics, the first of which is the interaction of the general policy with other policies articulated by the City of Pasadena. A second topic has to do with the "one size fits all" approach to setting a single fee independent of location, type of housing, and probable composition of residents. Finally, I would note as an intermittently close observer of development patterns in Pasadena that there may be some of the problems posed by the timing of the imposition of this fee.

Apparent Policy Conflict

A critical focus of policies of the Local Policy Issue of the City of Pasadena has for some time been the provision of additional housing, and particularly housing that would serve not merely the low income population, but also the "work force" or moderate income population. In the rather exaggerated world of current housing prices, this suggests the provision of ownership housing up to values as high as \$400,000 and rental housing as high as \$1,500 a month. It is my understanding that some portion of this market will be served by the proposed Sares-Regis Project at the

ADK&A

Memorandum

RE: OBSERVATIONS ON PASADENA PARK FEE NEXUS STUDY

Working Draft Subject to Change

Ambassador College East Campus property. Perhaps more important than the specifics of the Sares-Regis Ambassador Project is the general idea that a park impact fee predicated on the acquisition of many acres of land at very high cost seems in direct contradiction to the promotion of adequate housing in two important respects.

The first and more obvious and controversial respect, is that as housing development becomes more expensive, it tends to polarize the housing inventory creating only the required affordable housing and then only very expensive housing as a way of underwriting it. To the extent that significant impact fees are added to the cost of development, it intensifies this polarization which has already been a severe problem in the City.

The second observation is a little less obvious and has to do with the extremely limited supply of available land. As an observer of Pasadena, I find it difficult to contemplate the substantial addition of parkland except at the expense of residential land, thereby further driving up the price of residential land, limiting the housing supply, and further exacerbating the housing problem.

One feature I found somewhat puzzling in the Nexus Study was the emphasis on new land acquisition rather than intensification of uses of the existing parkland.

This leads to an even larger policy conflict. Much has been written recently and many people have come to espouse the cause of "Smart Growth" which implies the husbanding of resources by emphasizing infill development rather than continuous suburban sprawl. A critical element in this argument is to make more use of the existing infrastructure rather than to acquire more infrastructure in an environment with few other resources available to fund it, and each incremental element of infrastructure becomes a greater burden on an already overpriced housing inventory. To that extent, it would seem that Pasadena, which has come out in favor of infill development and makes use of many of the other principles that guide the Smart Growth movement, would ignore that in setting an impact fee predicated on having more parks rather than making better use of the ones that already exist.

Problems With "One Size Fits All"

The Brion study recommends a single fee for all new housing units of \$19,743. Even without any discussion of whether the mechanism by which the fee was set or the premises under which the Nexus study was conducted are valid, there seems to me to be an inherent weakness in assigning a single fee to all types of housing. The literature suggests that even if a simple per capita approach is used, there should be a lower fee for multi-family housing than for single family housing. Furthermore, logic would indicate that some attention should be given to the size and mix of multi-family housing as well. An apartment complex dominated by one and two bedroom units would be very different in its park usage from one appealing to families and dominated by two, three or even four bedroom units.



Memorandum

RE: OBSERVATIONS ON PASADENA PARK FEE NEXUS STUDY
Working Draft Subject to Change

Closely related to this issue, but much less scientific is the observation that people moving in to "infill housing" are much less likely to be strongly oriented to parks and open space. The lifestyle choice represented by deciding to live in a location close to downtown, explicitly in a highly urbanized context, offering a different set of rewards to home occupancy or home ownership is ignored by this study. People electing to live along Green Street or Colorado Boulevard would, by definition, be somewhat less oriented to intensive park use than those electing to live in quiet, more remote residential areas where playing on the street is, even to a limited degree, still part of modern living.

For both these reasons, I think that the City would be well advised to reexamine the manner in which the fee is imposed independently of whether or not it chooses to address the core calculations of the total fee.

There also exists an issue of disparity of needs as between the three park districts in the City of Pasadena. Since these discrepancies are not merely matters of acreage, but are directly related to issues of land use intensification and demographics of new residents, These other issues, land use intensification and demographics, are discussed elsewhere and this item reinforces the need for further analysis already noted.

The Timing of the Policy in Relation to Other Events

It seems to me that there are two aspects to the timing of the study and the proposed imposition of this park impact fee that merit some examination. One has to do with the timing relative to the development of the Ambassador College east campus property and the other has to do with the timing relative to the adoption of a new Citywide park plan.

As someone peripherally involved with two prior efforts to redevelop the Ambassador property by Lincoln and Shea¹, I am puzzled by the fact that, to my knowledge---which admittedly may be incomplete---there was no discussion of substantial special park impact fees in either of those transactions. That such a fee should be proposed now with a relatively short turnaround for public review and comment at just the time when a development plan for the east campus property seems about to be approved must raise the question of whether or not the timing is targeted to a particular developer, notwithstanding the presumably citywide and general character of any proposed impact fee structure.

Turning next to the issue of the Citywide park plan now under way, it seem to me that it would make much more sense to base the impact fee on an analysis of the requirements indicated by the plan and simply through the imposition of per capita ratios of parkland. It is manifest that virtually every

¹ When evaluating for both the City and Art Center the alternative locations for the Art Center expansion, the then Lincoln Property proposal for a site on Green Street in the east campus property was considered. Later when Shea Properties was working the church on a successor development plan, I was interviewed by representatives of the developer and the City in connection with a prospective fiscal impact study.



Memorandum

RE: OBSERVATIONS ON PASADENA PARK FEE NEXUS STUDY
Working Draft Subject to Change

highly urbanized community in Southern California falls short of theoretical targets for ratios of parkland to population. While on one hand, this can be argued as a basis for trying to correct the shortage by buying increasingly expensive land to expand the park inventory, there is an equally good argument that has been made elsewhere that increased use of existing parkland, cooperative development with school districts, and other techniques are a better way to meet the need for expanded park facilities.

Without the benefit of the new Citywide park plan, a decision cannot be made as between which of the techniques makes the most sense for expanding park facilities. In the absence of such a decision, there is no basis for estimating the cost of the required infrastructure. Only in the unlikely event that the park plan specifically recommends only the acquisition of new parkland or primarily the acquisition of new parkland on the open market, would the very high cost of the impact fee proposed in the Brion study be justified.

For most types of infrastructure, impact fees are typically set as a function of infrastructure plans and, in some instances, such formal infrastructure plans are legally required as a prerequisite to imposing any impact fee. While park are rather specialized cases and are sometimes analyzed in terms of ratios of park land to population, the clearly preferable method is to have an infrastructure plan in place and to price that plan and then to assess the costs of that appropriately to the prospective users of the facilities.

A Note of Caution and Concern

Allan D. Kotin & Associates, under both its present and former corporate names, has been intermittently a consultant to the City of Pasadena and its Community Development Commission for almost 20 years. This is a relationship I very much value, and would not want to jeopardize. The observations presented herein are written at the request of the law firm representing Sares-Regis but were not influenced by the opinions of either the attorneys or their clients.

The observations in this memo specifically reflect my professional opinion and should not be taken as an attack on the underlying premise that a park fee is needed and that, given current costs, it may well be a very substantial fee. I recognize the critical need for cities to assess such impact fees in order to maintain their infrastructure, particularly given the dysfunctional character of California municipal taxation. The purpose of this memorandum is to merely suggest there are some aspects of this particular fee and this particular study that warrant further investigation and perhaps some further refinement before the finally determined fee is imposed.



November 4, 2004

The Honorable Bill Bogaard, Mayor
CITY OF PASADENA
117 E. Colorado Boulevard
Pasadena, California 91105

Re: Park Fee

Dear Mayor Bogaard:

We have been asked by the Sares Regis Group to review the Park and Recreation Impact Fee Nexus Study prepared by Brion & Associates with Nilsson Consulting, dated June 2004. The enclosed letter is our analysis of the Nexus Study that raises some concerns with the accuracy of the study and its conclusions. Of primary concern is the high park in lieu fees required by the cities of Thousand Oaks and Irvine. The Nexus Study indicated these fees were close to \$30,000 per unit. We are very familiar with how Irvine implements its Quimby Act requirements and the park in lieu fee paid for by developers is typically closer to \$5,000 per unit.

The Nexus Study appears not to consider the credits and exemptions jurisdictions give for on-site private parks and open space, recreational improvements and the provision of affordable housing. Typically, all park fee regulations provide for a payment of a park fee, or the provision of park land and/or a combination of both. The park fee is based on a land value, population per unit based on density and credit for the provision of on-site park land and recreational improvements. Many jurisdictions also give exemptions or credits for the provision of affordable housing.

Thank you for your consideration of this information in your review of the Park Fee. If you have any questions or need any additional information, please do not hesitate to contact us.

Sincerely,

SAPETTO GROUP, INC

A handwritten signature in black ink that reads "Pam Sapetto". The signature is written in a cursive, flowing style.

Pam Sapetto
Principal

Enclosure

cc: City Council Members



November 4, 2004

Mr. Ed Eyerman
Saris-Regis Group
18825 Bardeen Avenue
Irvine, California 92612

Re: Pasadena: Park and Recreation Impact Fee Nexus Study

Dear Ed:

In preparing this analysis we concentrated on the cities listed in the Nexus Study that seemed to have very high park fees. The following is a summary of our results. Figure 2: Average Single Family Unit Park Fee Comparison by City lists Thousand Oaks as \$29,000 per unit. The real cost per unit is \$3,000 to as high as \$6,000 per unit. Figure 2 list Irvine as over \$30,000 per unit. The actual amount is closer to \$5,000 per unit when credits are applied for on site private neighborhood park and recreation improvements. In addition, many jurisdictions include exemptions and credits for the provision of affordable housing. This really puts Pasadena's park fee extremely high compared to other cities.

Anaheim:

Anaheim has adopted ordinance provisions for park and recreational facilities that are similar to Culver City, Irvine and Thousand Oaks. Anaheim requires the dedication of land and/or payment of in lieu fee or a combination of both. Land value is set by Anaheim annually and population is based on density. On site land dedicated is determined by density of the project in the case of five or more units the land dedication requirement is 228.25 square feet per unit (balconies and private space is included). Anaheim also requires a fee for parks set at 2 acres per 1,000 people. The Nexus Study states the average fee in Anaheim for multi-family development is \$5,225. This amount is typical of the other cities with similar provisions.

Kosmount Report gives Anaheim a low cost rating.

Culver City:

Culver City has adopted Ordinance 94-013 that establishes procedures for an in lieu fee for park dedication. The fee is based on land value as well as dwelling unit density. Credits up to 50% are given for private park land and improvements within the development. This credit is not reflected in the Nexus Study. Also, affordable housing units and senior units are exempt from paying park

Mr. Ed Eyerman
November 4, 2004
Page 2

fees during the time the units are affordable. The Nexus Study list a fee of \$13,068 per dwelling unit for a 72 unit project. The 50% credit would bring this to \$6,534 per unit and even lower if affordable housing units were factored in also.

Kosmount Report gives Culver City a medium to high cost rating.

Irvine:

Irvine has adopted park dedication requirements in the Subdivision Code Section 5-5-1004. The Nexus Study states that Irvine requires 5 acres of Regional Park, 3 acres of Neighborhood Park and 2 acres of Community Park for a total of 10 acres per 1,000 residents. This is not correct. Irvine does not have a regional park requirement. The requirement is a total of 5 acres per 1,000 persons consisting of 2 acres of community and 3 acres of neighborhood. The City allows an in lieu fee for community park dedication based on land value for residential land based on an appraisal that averages residential land value. Irvine uses an average land value rather than land in hillsides or Irvine Business Complex that would have a higher value. Irvine adjusts person per unit based on dwelling unit density. A high density multi-family project (40 DU/acre) would only have 1.3 people per unit.

Irvine grants park credit for onsite private parks and recreation equipment. This credit can be up to 100% of the neighborhood park requirement in that Irvine gives credit for a combination of land and improvements. Credit can also be granted for community park land dedication if the proposed land development consists of 10,000 or more residents. A 1,000 unit residential project at 1.3 people per unit would result in 2.6 acres of community park dedication. At \$1.8 million per acre of land value, this would result in a community park in lieu fee of \$4,680,000 or \$4,680 per unit. Since credit is given up to 100% of on site neighborhood park land and improvements, the total fee per unit is less than \$5,000. This is greatly different from the over \$30,000 per unit indicated in the Nexus Study. In addition, Irvine gives a reduction in total park land required if the project includes affordable housing units that meet the General Plan Housing goals.

Irvine's ordinance is similar to Culver City and Thousand Oaks in that it is based on population by density, land value by appraisal and credit granted for land and recreation improvements.

Kosmount Report gives Irvine a medium to low cost rating.

Thousand Oaks:

Thousand Oaks has adopted a parkland dedication and in lieu fee ordinance provisions similar to Irvine and Culver City. Parkland is based on 9 acres per 1,000 people except one half of it is required by the City, the Conejo Recreation and Park District and local school district. The remaining half (4.5 acres) is the requirement of the subdivider and can be paid for in land dedicated or in lieu fee or a combination of both. Credit is given for large land developments. Land value is based on an appraisal. Population is determined by the density of the project. The Nexus Study states the Average Fee per Single Family Unit is about \$29,000. The park fee is calculated by the Conejo Recreation and Park District. Mr. Bill Polarmo, Park Operation Analysis,

Mr. Ed Eyerman
November 4, 2004
Page 3

who calculates the park fee for the District, stated that the average park fee is \$3,000 to as high as \$6,000 per unit.

Kosmount Report gives Thousand Oaks a medium to low cost rating.

San Mateo:

San Mateo has adopted park land dedication requirements within the Subdivision Code Section 26.64. The code establishes standards to determine population based on 1.08 people per bedroom or 2.16 people per dwelling unit. Land value is based on appraisal. Park standard is 2 acres per 1,000 persons. Credit is given for land and recreational improvements. Table 7 on page 22 of the Nexus Study, states that the park fee for a project of 72 units is \$349,010 or \$4,847 per unit. Figure 2 on page 21 indicates the fee is \$12,000 to \$7,000 per unit. The study does not explain the discrepancy.

Kosmount Report gives San Mateo a medium to low cost rating.

Burbank:

Burbank has adopted Article 7, Park Facility Development Fee, of the Municipal Code. The park fee amount was adopted in 1986 by Resolution No. 21,795. The fee is nominal and amount to \$150.00 per bedroom for Park Facility Development Fee and \$500.00 for Parkland Dedication Fee charged per dwelling unit. No credit is given and there are no standards for open space.

This is not truly a development impact fee that compares to Pasadena. This is true of other cities such as Monrovia and Torrance.

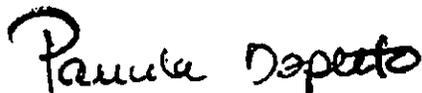
Kosmount Report gives Burbank a medium to low cost rating.

The Kosmount Report, although it is lacking in a detailed development fee analysis for each city, it does give an indication to the attitude city's have towards fees and costs. Looking at the park fee amount and correcting the Nexus Study, the fees for most cities average \$5,000 per unit. Only Culver City is potentially higher and Kosmount lists this city as medium to high cost. Pasadena is rated as a medium cost city.

Please call if you have any questions.

Sincerely,

SAPETTO GROUP, INC



Pamela Sapetto
Principal