

## MEMORANDUM

**TO:** Donnie Oliveira, Bureau of Planning and Sustainability Director  
**FROM:** Morgan Tracy, Senior Planner  
**DATE:** February 8, 2024  
**SUBJECT:** David Douglas School District sign-off requirement in land divisions

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### Summary:

- The zoning code requires that David Douglas school district sign off on two types of land use decisions:
  - o Subdivisions of 11 or more lots
  - o Zone map amendments
- The Land Division Code Update project is proposing to remove the school district sign off requirement for subdivisions.
- To date, the David Douglas School District has not issued a “denial of service” determination because the enrollment capacity issues of the District have been abating since this requirement was first enacted in 2016.
- The regulation adds an unnecessary additional step in the land division application process.
- The School District capacity sign off requirement is being retained for zone map amendments.

### Asks of the David Douglas School District Superintendent (Ken Richardson):

1. Verification that the David Douglas School District is supportive of this proposal. The Planning Commission hearing is on March 26.
2. Point of Contact from their office.

### Additional background information:

Currently, applicants for subdivisions of 11 or more lots located within the David Douglas School District must receive a sign-off from the district acknowledging that there is sufficient enrollment capacity to accommodate new residents. This is a time-consuming step in the land division process, that could unnecessarily restrict housing development. The Land Division Code Update project is proposing to remove this requirement.

This sign-off requirement was added to the land division code in 2016 as part of the 2035 Comprehensive Plan Early Implementation Project, Ord. 188177. It was adopted in response to new service coordination policies adopted with the Comprehensive Plan.

Policy 8.113 states: “Consider the overall enrollment capacity of a school district – as defined in an adopted school facility plan that meets the requirements of Oregon Revised Statute 195 – as a factor in land use decisions that increase capacity for residential development.” David Douglas is the only school district within the city that has an adopted school facility plan.

At the time the Comprehensive Plan was being adopted David Douglas School District was facing enrollment capacity issues, and the City responded by downzoning some areas within the district

boundary. However, since the passage of the Comprehensive Plan, David Douglas has seen declining enrollment.

Land divisions do not increase the capacity for residential development. Capacity is established by the underlying zoning and comprehensive plan designations. In single-dwelling zones, land divisions *enable* development up to the zoned capacity, but do not *increase* its capacity. In other zones, the division of land has no bearing on the amount of residential development allowed.

While the District to date has not made a determination of inadequate capacity for a land division proposal, it is unclear what recourse an applicant has who receives a service denial letter from the district. For other services, like streets or utilities, when the development creates an impact to the system, a proportionate amount of improvement can be required. For larger projects, this can mean building a utility extension or improving street frontage. However, increasing school capacity would require expanding classroom space and/or hiring additional staff. The costs of which are likely to be disproportionate to the development impact, and thus difficult to justify the exaction<sup>1</sup>.

To clarify, similar requirements for School District sign off are retained and will continue to apply to Zone Map amendment requests (33.855.050). These proposals do affect the underlying zoning capacity, and the City retains broader authority to restrict or deny these requests when existing or planned services are inadequate for the area.

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<sup>1</sup> Nollan v. California Coastal Commission, and Dolan v. City of Tigard, set limits on governments' ability to impair property interests with land use regulations. Under those supreme court decisions, there must be a "nexus" and "rough proportionality" between the government's demand and the effects of the proposed land use.