

OHLONE COMMUNITY COLLEGE DISTRICT

MEMORANDUM

TO: BOARD OF TRUSTEES

FROM: DOUGLAS TREADWAY

DATE: AUGUST 10, 2005

SUBJECT: CONSIDERATION OF RESOLUTION NO. 3/05-06 – GRANTING OF AN AMENDED EASEMENT TO MICHAEL AND CYNTHIA LEAHY – NEIGHBORING PROPERTY OWNER ON WITHERLY LANE

At the July 13, 2005 Board meeting, the Board heard presentations from Mr. Leahy and his neighbors regarding his planned operations for a nonsectarian independent secondary school. At that meeting, the Board requested that Attorney Jim Eller be present at the next Board meeting to respond to the questions and concerns. Mr. Eller will be present at the meeting this evening to address those questions and concerns.

The resolution that is attached to this Board item has been modified in only one respect. The previous resolution capped the enrollment of the school to 35 full-time equivalent students. This revised resolution caps the enrollment at 40 full-time equivalent students which is the limit requested by the Leahy's in their operational use permit.

Background Information

To refresh the Board's memory, Mr. Leahy proposes to convert his private residence into a nonsectarian independent secondary school. The easement agreement which the Board of Trustees originally approved in 2001, only approved an easement for the purposes of ingress and egress from Witherly Lane for the purposes of accessing a private residence. It specifically prohibited any other type of operation. When Mr. Leahy presented his plans to the Board of Trustees in March there were several neighbors in attendance who expressed concerns about dangerous traffic conditions caused by twice daily school bus trips and questioned what might happen if the Leahy's sold the school at some future date.

Mr. Leahy would be willing to have an additional restriction added to an amended easement agreement, whereby the Montessori School would be required to issue an additional insured certificate to the College in the amount of \$2 million to mitigate any additional liability due to increased school bus traffic.

The attached resolution drawn up by the District's real estate counsel does not include the additional restrictions listed above. The Board of Trustees must decide whether they are in favor of granting an easement for the purpose of allowing the Leahy's to operate a private school. Furthermore, if the Board is in favor of approving an amended easement, then the Board must determine what restrictions it wishes to have added to the attached agreement to protect the College. Legal services are costly, and staff does not wish to incur more legal costs until they know what the Board's opinion is in this matter.

Also attached is Mr. Leahy's Statement of Proposed Operation prepared for the City of Fremont Planning Department.

RECOMMENDATION:

The President/Superintendent recommends that the Board of Trustees consider the matter of granting an amended easement to Michael and Cynthia Leahy for the purpose of operating a nonsectarian independent secondary school.