

DEVELOPER FEE STUDY



EAST SIDE UNION HIGH SCHOOL DISTRICT 2014

Prepared By



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Executive Summary

A. Introduction

School districts are continually engaged in capital facilities activities whether large or small. From the maintenance and modernization of existing buildings to the construction of new facilities, districts must annually budget and plan their capital activities. Facilities needs are typically funded through restricted accounts so as not to encroach on the general fund. These accounts include a variety of mechanism such as local general obligation bonds, state bonds, redevelopment funds, community finance districts, debt instruments such as Certificate of Participation (COP's), income from unused/leased properties, sale of capital assets and, if justified mitigation fees.

Mitigation fees are not taxes but fees authorized in the Mitigation Fee Act of 1986. They are fees imposed by local authorities, including school districts, to offset the impact of development on a jurisdiction. When a local agency demonstrates a causal link between the development project and the agency's capital facilities, the agency is allowed to impose an offset fee. This fee is limited to no more than the documented impact and can only be instituted for the period that the development project impacts the authority. In other words, if the local agency captures the full amount it has estimated is needed to meet facilities needs generated by the development, fee collection must cease. Also, if the agency can no longer show a nexus between the development and the agency's facilities, that too justifies the cessation of the fees. To allow maximum protection of both the developer and the local agency, these fees must be periodically justified through studies adopted in a public hearing process.

Use of these fees must be justified and are restricted to those capital expenditures directly attributable to student enrollment caused by new development. These expenditures include, but are not limited to, planning, design and construction of new school facilities, expansion or reconfiguration of existing facilities, site acquisition, and the provisions of interim housing and/or portable classrooms. Developer fee funds may not be used for routine or deferred maintenance of existing facilities or for non-capital expenditures.

When there are two districts sharing an attendance boundary - as is the case with East Side Union High School Districts and its feeder elementary school districts - the fee is prorated between the two districts using locally agreed upon percentages. Per the agreement in place,

East Side Union High School District can collect up to 33.33 percent of the statutory fee, also known as Level I Developer Fee.

B. History of Mitigation Fees

Level I developer fees were authorized in 1986 as part of the Mitigation Fee Act (Government Code Section 66000 et seq.). This act governs the imposition of fees by a local public entity as a condition of approval of a development project. Such fees allow the public entity, in this instance a school district, to collect funds from new development projects for infrastructure and facilities necessitated as a result of the development. In order to impose such a fee, a reasonable connection, or nexus, must exist between the new development and the improvement of a facility for which the fees are to be assessed. In addition, it must also be determined that the projected improvements to be financed by the impact fees will benefit those required to pay them, and this fee must be proportionate to the amount of benefit received. The reasonableness of the fee is established through the developer fee study.

When mitigation fees were authorized the initial valuation was \$1.50 per square foot of new residential construction and \$.25 per square foot of commercial development. The Level I fees are assessed at 100% of a school district's cost to mitigate impacts from new development and use local standards for the assessment criteria. Imposition of developer fees or the increase of existing fees is exempt from the California Environmental Quality Act (CEQA).

With the passage of SB50 in 1998, a cap was placed on the amount that could be charged under the Level I fee calculation. The Law allowed for adjustments of the cap as noted in Government Code Section 65995(b)(3) which specifies in part, "... shall be increased in 2000, and every two years thereafter, according to the adjustment for inflation set forth in the statewide cost index for Class B construction, as determined by the State Allocation Board at its January meeting, which increase shall be effective as of the date of that meeting." The Level I developer fee is currently capped at \$3.36 per square foot of residential development and \$0.54 per square foot of commercial or industrial development.

C. Recommendation & Findings

This study finds that the cost to offset the impact of residential development to the East Side Union High School District is \$3.73 per square foot - an amount in excess of the District's share of the maximum allowable fee. Of the allowable amount, East Side Union High School District can retain \$1.12 per square foot for residential construction fee. Additionally, the District was able to justify an increase in the commercial and industrial construction fee to \$0.18 per square foot. It is recommended that the District proceed with adopting the new fee after conducting a

public hearing and meeting public notice requirements. Justification of the maximum developer fee is based on the following conclusions:

1. The District is operating beyond its capacity to adequately house students.

The East Side Union High School District has an enrollment of 26,593 students¹ with a projected enrollment of 28,845 pupils in the 2017/18 school year. The District will exceed its capacity to adequately house students - defined here as teaching stations in existing permanent school facilities and in portable facilities less than 20 years old. The District can house 27,437 pupils, leaving 1,408 projected pupils that will need to be housed in interim facilities. This projection does not take new housing developments into account.

2. New development will continue to impact the District.

A review of developer fee data from 2009-10 to 2013-14 reveals a pattern of continuous residential development in the community. The availability of developable property makes it likely that this rate of development will continue in the future. The District, at its adequate capacity, cannot absorb the students expected to reside in new housing developments.

3. The District meets the criteria for eligibility to impose a fee.

The East Side Union High School District meets the criteria for imposing a Level I developer fee through the adoption of a Developer Fee Justification Study. This report identifies the use and purpose of the fees that will be collected.

4. The District can show an impact from commercial and industrial development.

Using the San Diego Traffic Generator Study² as its basis, the District can demonstrate a cost to house pupils that would emanate from local housing as a result of families coming to the area to work in new businesses.

For these reasons, the East Side Union High School District may proceed with the adoption of the increased Level I developer fees for residential construction and commercial/industrial construction projects.

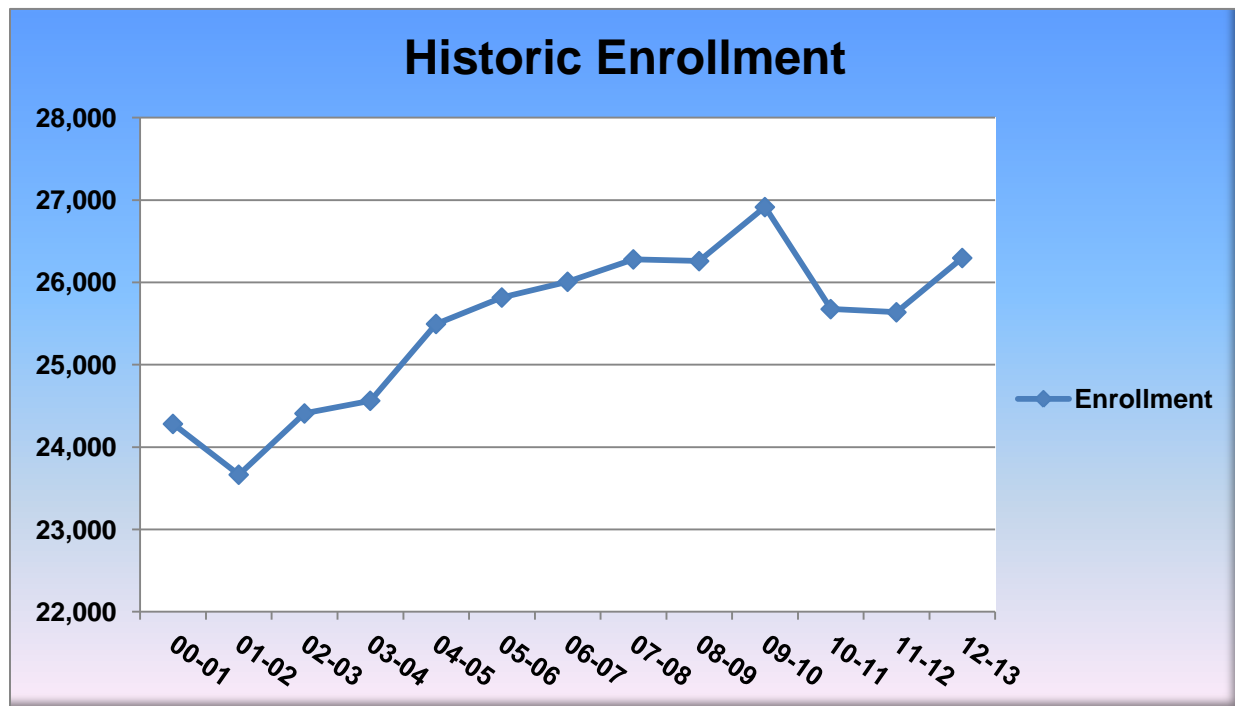
¹ Based on 2012/13 school year

² See page 14 of this report on Commercial Industrial Fee Calculation

Justification for Imposition of the Developer Fee

A. District Enrollment Trends

The East Side Union High School District is located in Santa Clara County. As with most of the California school districts, the recent recession resulted in a reduction in enrollment. With the close of the recession, the student population has started to gradually increase. The following chart depicts the change in enrollment since the 2000-2001 school year³.



³ The historical enrollment only includes 9-12 enrollment and charter schools chartered by the District. Source document is DATAQUEST located at <http://data1.cde.ca.gov/dataquest/>

The standard for enrollment projections used for facility planning purposes is the Cohort Survival Method. It is the measure used by the State of California's State Allocation Board to predict educational enrollment trends to justify new construction eligibility under the Leroy F. Green School Facilities Act of 1998, commonly known as the School Facilities Program. Cohort assumes that the historical survival rate of the members of a designated cohort (or group such as kindergarten class which is tracked through graduation) can be used as a basis for predicting the size of similar cohorts (or other kindergarten classes) as they pass through the system. There are admitted limitations to the accuracy of the cohort method which includes, but not limited to:

1. a decline in the current year's enrollment, as compared to previous year's enrollment, in grades K-2 will result in an artificially reduced projection in enrollment at the 9-12 grade levels, or
2. a small population base, particularly those populations under 1,000 pupils will unrealistically overstate the increase or decrease in the projected enrollment.

It is important to note that the cohort method requires that the enrollment of the feeder school districts to be entered in order to provide the necessary projected enrollment at the 9-12 grade level served by the District.

In addition, the School Facilities Program requires that the enrollment of charter schools within its geographic area be included in the computation of projected enrollment. Should the charter school close, the displaced high school students will need to be housed within the facilities currently available to the District.

Using the District's enrollment data as posted on the Department of Education's website⁴, excluding the impact of new housing development, for the four most recent school years, a projected enrollment of 28,845 was calculated⁵. That projected enrollment is compared to the most current year in the table below.

East Side Union High School District		
Grade	2012/13	2017/18
9-12	26,593	28,845

⁴ DATAQUEST located at <http://data1.cde.ca.gov/dataquest/>

⁵ Official enrollment information for the District and its feeder elementary school districts for the 2013/14 school year is not currently available.

B. Calculation of Capacity

The East Side Union High School District has 1,231 total teaching stations including:

School	Permanent	Portable	Leased	Total
Andrew Hill	83	13		96
Calero	19			19
Evergreen Valley	93	12		105
Independence	155			155
James Lick	58	4		62
Mount Pleasant	76		5	81
Oak Grove	89	9	24	122
W. C. Overfelt	90			90
Piedmont Hills	70	25		95
Santa Teresa	91	6		97
Silver Creek	94	12		106
Yerba Buena	83	23		106
Apollo Cont.		5		5
Foothill Cont.	22	3		25
Pegasus Cont.	5			5
Phoenix Cont.		5		5
Kipp San Jose		22		22
Leadership Public		20		20
Summit Rainier		9	6	15
Total	1,028	168	35	1,231

It is typical for school districts to augment classroom capacity by adding portable classrooms, often called relocatable classrooms, to house students that cannot be accommodated in permanent classroom facilities. Portable classrooms are leased, leased-purchased or purchased by school districts. But how are these portable classrooms incorporated within the classroom inventory which is the basis for a capacity calculation? One reasonable standard is to exclude all portable classrooms that are purchased or leased for use as interim housing during modernization and new construction projects. East Side Union High School District has 35 leased portable classrooms and as such excluded them from their adjusted classroom inventory.

The permanent inventory of teaching stations noted in the above chart includes 74 classrooms that are less than 700 square feet. The School Facilities Program does not recognize these small teaching stations as available for housing students and these teaching stations have been excluded from the adjusted classroom inventory.

Lastly, the District has 28 portable classrooms that were constructed at least 20 years ago. Since the State perceives that the useful life of a portable classrooms is 20 years, these structures have been excluded from the adjusted classroom inventory.

Excluded Teaching Stations	
Type	Number
Leased Portables	35
Small Classrooms	74
Old Portables	28

The remaining classroom capacity serves the high school level and allows for continuation high school population and special education population that are housed at the school sites. The continuation high school classrooms and special education classrooms are separated out because they house fewer students. The capacity is established by loading classrooms with the average number of pupils that will be housed by grade level. The average loading is called a loading standard. Loading standards can vary due to factors such as collective bargaining agreements, supplemental funding such as parcel taxes, boards policy and legislative directive. Typically loading for California school districts, and the ones used here, are:

Grade served	Student : Teacher ratio
Standard 9-12	27:1
Continuation 9-12	18:1
Severe SDC	9:1
Non Severe SDC	13:1

For purposes of this report, the number of classrooms (CR) allocated to serve the continuation high school, non-severe SDC and severe SDC student population was determined based on the need to house the most recently reported enrollment in those programs for the 2012/13 school year.

Grade served	Current enrollment	Student : Teacher ratio	Number of CRs
Continuation 9-12	700	18:1	39
Severe SDC	444	9:1	49
Non Severe SDC	808	13:1	62
Total			150

After adjusting for the classroom exclusions and the allocation of teaching stations to the above educational programs, the number of remaining teaching stations available to serve the general 9-12 student population is 944 with a student capacity of 25,488.

Classroom Inventory	
Total Teaching Stations	1,231
Minus Leased Portables	35
Minus Old Portables	28
Minus Small Classrooms	74
Minus Cont. and SDC Classrooms	150
Net available to serve General 9-12	944

The resulting capacity of the District to serve the projected enrollment is shown as follows:

Determining District's Current Student Capacity			
Grade served	Classrooms	Student : Teacher ratio	Capacity
General 9-12	944	27:1	25,488
Continuation 9-12	39	18:1	702
Severe SDC	49	9:1	441
Non Severe SDC	62	13:1	806
Total	1,094		27,437

In comparison to the projected enrollment, without considering the new housing developments, the district cannot adequately house all of the 28,845 projected enrollment. The inclusion of students generated from new developments will further exacerbate the District's ability to serve the projected student enrollment.

C. Impact of New Development

A review of the District's developer fee logs for the period of 2008-2009 to 2013-2014, shows continued residential development albeit less during the recent recession. Commercial development has been limited reflecting the recent national recession conditions.

The average size of new single family homes being constructed is 2,047 square feet of living space.

Santa Clara County, and the area surrounding East Side Union High School District has sufficient available developable space to accommodate ongoing development at the pace maintained for the past six years. It is likely that there will be an increase in the number of single family and multi-family dwelling units being constructed in the foreseeable future.

D. Student Yield

Student yield, or the number of students emanating from new housing units within a district's attendance boundaries, can be assessed for a district as a whole or for categories of housing. The State of California, through the State Allocation Board, has established the student yield rate that is accepted statewide as the measure for growth purposes⁶. That yield is broken up into elementary school districts serving up to grades K-8, for high school districts serving grades 9-12 and for unified school districts serving grades K-12. The yield for a 9-12 school district is .02 which is equated to one (1) pupil per every five (5) homes constructed. This yield rate is used in the calculations to follow.

E. Conclusion

The East Side Union High School District, while showing a gradual recovery of the loss in enrollment during the recent recession, will be functioning beyond its capacity to adequately house its projected student enrollment. This classroom shortage will be exacerbated by the increase in the student population generated from new housing development. The District has established the nexus to proceed with calculating the fee.

⁶ http://www.documents.dgs.ca.gov/opsc/Forms/SAB_50-01.pdf , page 4 of 5 of the form SAB 50-01, Instruction for Part H

Calculation of the Fee

A. Introduction

The Level I fee is a statutory baseline amount that can be justified by most school districts. Unlike the alternative developer fee (Level II Fee), statute does not prescribe a specific method of computing this fee. Instead, statute identifies the rationale that must be applied to the calculation. Imposition of this fee is contingent upon establishing a nexus, or relationship in two ways.

First, there must be a nexus between the development project being assessed and the generation of students in the school district. Nexus answers the question, "will this development have an impact on the district?" The nexus is demonstrated through the identification of expected housing development described earlier in this report and through the student yield established for the School Facilities Program.

Second, the mitigation fee must have a reasonable relationship to the development project. The question here is whether the fee being imposed is reasonable in comparison to the impact created by the development. This is accomplished in a two step process that:

- a) establishes a reasonable cost per student to provide adequate school facilities, and then
- b) converts that per student cost to a cost per square foot of development (residential or commercial/industrial).

B. Residential Development Fee

Mitigation is based on the cost to provide facilities for pupils. This cost is established by calculating how much it costs to provide a complete school for the master planned capacity of students then dividing that cost down to the per pupil level. Following is the method used to establish an equitable assessment of the development fee.

1. **Determine the cost to house each student.** The cost to house a student has six elements: Land acquisition, service site, general site, off site, utilities and construction costs. These costs were calculated in Appendix I by averaging the costs of recently completed projects in northern and central California. The summary of those costs categories follow below:

Cost to Adequately House a Student				
Grade Level	Property Acquisition	Utilities, Service Site, General Site & Off Site	Construction	Total
9-12	\$4,805	\$6,890	\$26,858	\$38,553

- Determine the average square footage of residential built in the past five years.**
 The residential units permitted and in various phases of construction within East Side Union High School District between 2009-2010 and 2013-2014 averaged 2,047 sq. ft. in building area.
- Determine the adjusted cost to house new students.** The costs identified in Step 1 are based on the cost to provide housing for one student. In reality, something less than a whole student is found to emanate from each housing unit. To realize an accurate cost per residential unit, the cost per pupil is adjusted by the yield for each unit. The yield is 0.2 for high school grade levels. Recognizing that the cost to house pupils differs between grade levels, the cost increments were multiplied by the applicable grade level yield. This means that it costs East Side Union High School District approximately \$7,711 per average housing unit to provide adequate school facilities to serve the high school student generated by the residential unit.

Determining the Adjusted Cost/Pupil			
Grade Level	Cost per Pupil	Student Yield	Adjusted Cost per Pupil
9-12	\$38,553	0.2	\$7,711

- Determine the cost per square foot by dividing the cost per pupil by the average size of the new residential units.** In Step 3, the cost per pupil was adjusted to achieve a cost per residential unit. This step determines the average cost per square foot of new housing unit to adequately serve the student generated by a new residential unit. It has been determined that the average size of a new residential unit is approximately 2,047 square feet. Therefore, the estimated District's per square foot cost to house a student has been determined to be \$3.77 per square foot.

Cost per Square Foot to House a Student			
Grade Level	Cost per Pupil	Residential Sq. Ft.	Per Sq. Ft. Cost
9-12	\$7,711	2,047	\$3.77

Government Code Section 65995(b)(1) presently limits the statutory fee to a maximum of \$3.36 for all grades K-12. If the jurisdiction has separate elementary and high school districts, the maximum fee is prorated based on a locally negotiated agreement. East Side Union High School District and its feeder elementary school districts have agreed to a proration of fees on the following basis:

Division of Level I Residential Fee		
District Configuration	District's Portion	Net Assessable Fee
Unified (K-12)	100%	\$3.36
Elementary (K-8)	66.67%	\$2.24
High School (9-12)	33.33%	\$1.12

5. Conclusion

The District's per square foot cost to house a pupil exceeds the District's prorated share of the statutory developer fee of \$1.12 (shown in the table above). Therefore, East Side Union High School District has justified imposition of a prorated share of the established maximum allowable Level I Residential Development Fee of \$1.12.

C. Limitation on Fee

There is a final limitation on the fees in that fee collection is limited to no more than the amount of funding required to accomplish the facilities needed for students generated through new housing development.

The school district must annually justify its expenditures and plans for ongoing expenditures. These costs will include items such as site acquisition, soft costs such as design costs, fees, testing, inspection construction, interim and temporary housing costs, etc.

If, at some future date, the District is unable to identify eligible project costs that equal or exceed the funding expended from new development, the District will need to take steps to reduce the funds collected. This may be accomplished through a reduction in the fee or a temporary cessation of collections.

D. Commercial and Industrial Fee Calculation

The Link between the creation of new jobs and student enrollment has been acknowledged by the State Allocation Board and in statute. However, this link is not as directly quantifiable as that of the new residential unit. Not all of these new employees will move into new housings units or relocate into the community.

There are also significant differences in the relationship among the categories of businesses in the number of employees and the square footage required to conduct business. For instance, warehouses occupy thousands of square feet yet require very few employees while medical offices have a higher ratio of employees to facility space. Even more extreme are storage facilities which occupy hundreds of thousands of square feet, but often no more than one employee.

Given this information, how is a reasonable developer fee to be determined when there are such variations between business types? The legislature codified one method in Education Code Section 17621(e)(1)(B) after pioneering research was completed by the San Diego Association of Governments (SANDAG). In their "*1990 San Diego Traffic Generator Study*", the SANDAG staff standardized the number of employees generated for every 1,000 square feet of commercial and industrial development by category and then determined the number of households created by those employees as the "Households per 1000 SF of Development". Household creation rates reflected the varying proximities of employee residencies to the work place. For instance, agricultural workers tended to live closer to the workplace than employees in the scientific R&D sector.

The industry categories used in the SANDAG study, and its subsequent update, are identified in the following chart. However, only those likely to occur within the East Side Union High School District's boundaries are considered. Only one commercial/industrial facility type was excluded; "Agricultural".

Households Created By Commercial Development			
Development Type	Employees per 1000 SF of Development	Households per Employee	Households per 1000 SF of Development
Commercial Offices	4.78	.035	0.1673
Corporate Offices	2.68	.035	0.0938
Lodging	1.55	.046	0.7130
Scientific R&D	3.04	.035	0.1064
Industrial Park	1.68	.035	0.0588
Industrial-Bus Parks	2.21	.035	0.0774
Neighborhood Shop Ctr	3.62	.046	0.1667
Bank	2.82	.046	0.1297
Agricultural	0.31	.055	0.0171
Community Shop Ctr	1.09	.046	0.0501
Medical Offices	4.27	.035	0.1495

Commercial Impact Calculation

Before establishing a per square foot cost for East Side Union High School District to house students entering the school district as a consequence of commercial and industrial development, an average cost per household must be established. This is done by multiplying the \$3.77 Level I cost to house students established in this report by the average expected size of residential units of 2,047 Sq. Ft. The result is an \$7,717 per household cost.

Cost per Household to House Students		
Average Size of Residential Unit	Cost per Sq. Ft. to House Students	Cost per Pupil per Household
2,047	\$3.77	\$7,717

The above per household cost is then multiplied by the SANDAG calculation for households created by different types of commercial and industrial development and divided by 1,000 square feet of development. The result is the per square foot cost to house a student generated by all commercial and industrial development types. This value is averaged over the ten (10) commercial and industrial development types germane to the District's geographic area.

Commercial and Industrial Development per Pupil Cost			
Development Type	Households per 1,000 SF of Development	Cost per Pupil per Household	Impact per Sq. Ft. of Development
Commercial Offices	0.1673	\$7,717	\$ 1.29
Corporate Offices	0.0938	\$7,717	\$ 0.72
Lodging	0.7130	\$7,717	\$ 5.50
Scientific R&D	0.1064	\$7,717	\$ 0.82
Industrial Park	0.0588	\$7,717	\$ 0.45
Industrial-Bus Parks	0.0774	\$7,717	\$ 0.60
Neighborhood Shop Ctr	0.1667	\$7,717	\$ 1.29
Bank	0.1297	\$7,717	\$ 1.00
Agricultural	0.0171	NA	\$ 0.00
Community Shop Ctr	0.0501	\$7,717	\$ 0.39
Medical Offices	0.1495	\$7,717	\$ 1.15
Total Cost per Sq. Ft. for all Types			\$13.22
Average Sq. Ft. Cost per Type			\$ 1.32

The average impact for commercial development is divided in half to compensate for employees that will purchase homes from existing housing stock and is computed to be \$0.66 per square foot.

Commercial and Industrial Developer Fee	
Average Sq. Ft. Cost per Type	\$1.32
Adjustment for purchase of existing housing stock (50%)	\$0.66
Net cost per Sq. Ft. to District	\$0.66

As with the residential fee calculation, the commercial fee is prorated with the feeder elementary school districts. The East Side Union High School District may collect 33.33 percent or \$0.18 per commercial and industrial square foot.

Division of Level I Commercial and Industrial Developer Fee		
District Configuration	District's Portion	Net Assessable Fee
Unified (K-12)	100%	\$0.54
Elementary (K-8)	66.67%	\$0.36
High School (9-12)	33.33%	\$0.18

Conclusion

The District's costs of \$0.66 per square foot fully justifies the collection of the Commercial and Industrial Developer Fee of \$0.18.

Levying and Administration of the Fee

A. Procedural Requirements

Public Notice

Government Code Section 66016 requires a school district to hold at least one "public and open meeting" at a regularly scheduled board meeting for the purpose of public comment on the proposed fees. Notice of this meeting must be placed in a newspaper of general circulation twice prior to the meeting with the first notice published at least 10 days before the meeting date. During the notice period, the data establishing the basis for the fee must be made available to the public at sites where the document(s) can be viewed and/or purchased for a reasonable fee. The accessibility to the information should be included in the public notice.

At least 14 days prior to the hearing, a notice is to be mailed to interested parties filing a written request for mailed notices. These request are valid for a period of one year. These parties may request and receive copies of the documentation supporting the fee for a reasonable cost based on estimated cost to prepare the paperwork, including staff time and direct copying costs.

Public Hearing

During the regularly scheduled meeting, the governing board will formally open a hearing and take public comment on the matter. At the hearing, staff and/or consultants should be available to present oral and written findings supporting the need for the fee. After taking comments, the governing board will close the hearing and immediately move to act on adopting the resolution on the developer fee.

Effective Date of Fee

The fee becomes effective 60 days following adoption of the board resolution.

Urgency Adoption of Fee

Government Code 66017(b) allows that a local agency may adopt the fee with urgency on an interim basis if such action is deemed by the governing board to "protect the public health, welfare and safety." Such an action requires a four-fifth vote of the governing board. This resolution is effective immediately upon adoption and is enforceable for a period of 30 days. At the end of the 30 days, the board may extend the interim authority for an additional 30 days with another four-fifth vote. No more than two extensions may be granted.

Notification of Local Authorities

The governing board shall submit a copy of the adopted resolution and a map detailing the school district's attendance boundaries to local planning agencies and/or the agency charged with collection of the fee.

B. Administrative Requirements

Establishing a Special Account

The District shall maintain a special account for the developer fees and any interest accruing from the fees collected.

Use of Fees Collected

The fees collected and deposited to this special account are restricted for use on capital facilities needs associated with the impact of new residential and commercial development as noted in the District's capital improvement plan. An administrative fee intended to cover the cost for collecting and managing the fund shall not exceed three (3) percent annually is allowed. Allowable expenditures include administrative expenses, costs associated with the justification of the fee, the payment of leases, bonds and other debt instruments used to procure capital facilities including portable classrooms, permanent classrooms, reconstruction of existing facilities, property acquisition and the professional services related to those activities. The expenditures made through this account should be made in accordance with the Capital Improvement Plan. Developer fee collection shall not under any circumstances exceed the amount necessary to fund the identified capital improvements.

Developer fees are deposited into restricted capital facilities accounts and cannot be co-mingled with the District's general funds.

Time Limitation

These funds must be used or encumbered within five years of collection or become refundable.

Reporting Requirements

In the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the district shall make an accounting available to the public. This accounting is required within 180 days after the last day of the fiscal year.

This accounting will identify a description of the fee and its amount as well as a beginning and ending fund balance. Also in the report will be the portion of the collected funds that have been expended, that which remains, and the purpose to which those have been and will be put to use. The report will also identify all other sources of funds that will be used to complete the financing of the capital facilities and restate the relationship between the fee and the purpose for which it is charged. The report must also identify the approximate date upon which the school district anticipates receiving adequate revenue to complete any improvement required as a result of students emanating from residential or commercial construction projects. Full reporting requirements are identified in Government Code Section 66001 and 66006.

Provision for Refunding of Fees

Should the district not expend the funds collected within the five year period, those funds and any attendant interest earnings shall be returned on a prorated basis to the currently recorded owner(s) of the property(ies) upon which the subject fees were collected. However, if the administration cost of such a refund exceeds the unexpended revenue available, the district may determine that the revenues be allocated for some other purpose meeting the requirements of Government Code Section 66001 and keeping with the identified Capital Improvement Plan(s).

Protests

Any party subject to the developer fee may protest the imposition of the fees within 90 days of the tendering of payment by submitting payment in full and subsequently serving the district with a written notice of protest. The notice must include a statement of the reasons for the dispute and confirmation that the fee was paid under protest. Such protest shall be filed within 90 days after the imposition of the fees on the development. The protest, if not satisfactorily addressed with the district, can be forwarded to a court of law for adjudication per the process detailed in Government Code Section 66020.

C. Limitation of Fee

There are some limitations on the types of residential development subject to the development fee. These limitations primarily affect mobile homes, senior citizen facilities and small construction projects.

Mobile Homes

Mobile homes meeting the following criteria are subject to the residential developer fee:

- The mobile home is only being installed for the first time at any location. Mobile homes which have been moved from one location to another within the jurisdiction are exempt.
- The pad that will receive the mobile home must not have been previously had a mobile home placed upon it.
- The construction of the pad where the mobile home is to be placed must have commenced after September 1, 1986.

Exempted Categories

Development that is exclusively used for religious purposes is exempt from payment of the fee. Also in this category are private schools and government owned developments.

Senior Housing

Residential development of any nature that is designated as a senior only complex at the time it received approval from local planning agencies is subject to the commercial/industrial fee, not the residential assessment.

Small Projects

Residential remodel projects that create 500 square feet or less are exempted from payment of fees. Similarly, projects involving reconstruction of a home that has been destroyed or demolished are only subject to fees for any net positive difference between original inhabitable square footage and the square footage of the new dwelling.

Storage Units

Commercial storage unit facilities are a new candidate for exclusion from the commercial fee. These facilities have the lowest employee to floor space ratio of all commercial and industrial entities. The exemption of the units should be monitored carefully to avoid confusion with a more typical warehouse environment which has a greater number of employees. Warehouses are storage facilities for goods being moved actively from one place to another whereas storage units are for individual consumers long term storage needs.

Appendix

I. Calculation of Construction and Site Acquisition Costs

For the purpose of this report, establishing the costs related to constructing school facilities is derived from data taken from the Office of School Construction's (OPSC) database which tracks construction costs on over \$20 Billion in new construction funding. Costs are limited to the State's per-pupil allowance and reasonable costs for site specific needs such as utilities, service site development, off site development, general site development and site acquisition costs.

Components of Costs

A school district's cost to house students emanating from new housing units has six components: Off Site, Service Site (major grading), General Site (landscaping), Utility Service, Land Purchase and Building Cost. In addition to the above costs directly related to the actual construction and site acquisition, the district will incur soft costs including those costs relating to designing the project, obtaining State approvals of the project, labor compliance monitoring, appraisals for new land, furniture and equipment purchases and construction inspection costs. State agencies involved in the process include the Department of Education, Division of the State Architect, Department of Toxic Substance Control and Department of Industrial Relations.

These costs were drawn from projects of a similar scope to those potential projects identified. Comparison projects were confined to school district with high school projects in and around the Bay Area. As previously mentioned, the data was obtained from the OPSC's Project Tracking webpage. Selected projects met four criteria:

- They were approved under the School Facilities Program and met all program guidelines.
- They approximated an acceptable range of costs.
- They were from nearby districts or districts with similar characteristics.
- They were new schools of relatively similar size and enrollment.

The cost per student was calculated by achieving a cost per pupil for each site then averaging the per pupil costs between the sample projects. Following is an overview of each cost category and the methodology used to determine the cost per student.

Off Site Costs

Off Site costs include the preparation of public property adjacent and limited to two sides of the site as dictated by state and local agencies as well as by the site's specific needs. These categories include curbs, gutters, sidewalks, street lighting, street paving (half of the street's width), vegetation and street signage.

Service Site Costs

Service Site costs relate to preparing the portion of the site where the school facilities will be placed. Including among those costs are clearing the site, rough grading, appropriate compaction of soil, some erosion control measures, drainage facilities retention basins, etc.

Utilities Cost

Utilities costs include the installation of communications, water, electrical, gas and sewage main supply and connection lines from the respective utility point of connections to the site's meter, switchboard, transformer, etc.

General Site Costs

General Site costs include the final grading, installation of vegetation, development of parking lots, installation of sidewalks/path of travel within the property boundary and irrigation.

Sample Project Costs

The projects used to establish an average cost for the above costs are identified in the table below. Three projects were identified and their costs averaged to achieve a representative cost.

High School Costs						
Project/District	# of CR	Capacity	Service Site	Off Site	Utilities	General Site
Christopher High ¹ Gilroy USD	80	2,160	\$2,486,952	\$3,515,687	\$159,515	\$1,007,955
Kimball High Tracy Jt. USD	81	2,187	\$2,895,223	\$3,465,624	129,970	\$1,744,665
New High Los Banos USD	61	1,647	\$2,821,063	\$855,345	\$97,090	\$1,469,959
Totals	222	5,994	\$8,203,238	\$7,836,656	\$386,575	\$4,222,579

¹ two (2) applications

The State Allocation Board (SAB) provides 50 percent of the total grant to any new construction project and the value above represents the 50 percent State share. Therefore, the costs used for this report are double the amount shown in the chart below.

High School Costs		
Category	Cost	Cost per Pupil
Service Site	\$ 8,203,238	
Off Site	\$ 7,836,656	
Utilities	\$ 386,575	
General Site	\$ 4,222,579	
Totals	\$20,649,048	\$3,445

Construction Cost

Other than the costs noted previously in this appendix, the SAB apportions the school construction costs on a grant per pupil basis. The allowances provided by the SAB does not differentiate between the 9-12 general education population and those students attending an continuation school program. Since it is very difficult to estimate the number of students with special needs, this analysis will not differentiate them from the general 9-12 enrollment generated from new housing development.

The amount of these grants was established in law with provisions for an annual cost of living adjustment. This cost element is intended to cover the design, construction of buildings, and furniture and equipment, as well as other soft costs. Those allowances were updated at the SAB's January 2014 meeting as follows:

Construction Cost	
Grade Level	Per Pupil Allowance
9-12	\$13,429

The SAB provides 50 percent of the total grant to any new construction project and the value above represents the 50 percent share. Therefore, the construction cost used for this report is double the amount shown in the above chart or \$26,858 per 9-12 pupil.

Property Acquisition

A variety of alternatives can be used to calculate the cost of acquiring a school site. Recent land purchases and recently completed appraisals are the most accurate indicator of the cost that will be accepted by the State when establishing site acquisition costs. Other acceptable methods include gathering similar data from nearby school districts and surveying real estate professionals for local property costs. East Side Union High School District is not a good source for empirical data since it has not constructed a new high school in many years. Instead, research with the State's Project Tracking system yielded some recent high school site purchases in nearby school districts. These included the same projects noted as part of the computation for the site development costs and the 50 percent State share of the property acquisition costs are noted in the following chart.

Sampling of High School Site Costs			
Project/District	Acres	Capacity	Site Acquisition
Christopher High ² Gilroy USD	40	2,160	\$10,406,449
Kimball High Tracy Jt. USD	53	2,187	\$ 1,734,250
New High Los Banos USD	65	1,647	\$ 3,180,308
Totals	158	5,994	\$15,321,007

The size of a new proposed school site is determined by the master planned capacity of the new school. The purchase cost is divided by the site's master planned student capacity to determine the per pupil cost. The student capacity identified herein is a guideline. It is the product of several planning considerations such as availability of land, projected need, density of development and local educational standards. Acreage identification for acquisition is consistent with the 1966/1987 California Department of Education's **Guide to School Site Analysis and Development**, reprinted in 2000 and reflective of regulations in effect as of January 1, 1998. This guide is used per the requirements of Government Code Section 659995(h). The acreage allowance used in this report is based on the anticipated master plan capacity of 1,800 9-12 students and would required 44.6 acres.

² constructed in two (2) phases/applications

High School Acreage Calculation		
Grade Level	# of Students	Acreage Allowance
9-12	1,800	44.6

These acreage determinations reflect only the useable acreage required for the school site. When acquiring property for a school, it is typical to purchase a site 10 or 20 percent larger than the useable acreage to allow for siting issues that can be caused by irregular site shape, land rendered unsuitable for student use such as easements, steep hills, gullies, creek beds, large rock outcroppings, wetlands/marshlands and land in flooding areas. On sites where such restrictions are present, additional acreage will be required to meet the usable sites acreage allowance.

Based on the projects selected for this report, the average cost per acre is \$193,937. This translates to an average per pupil cost of \$4,805 based on a master planned 1,800 student high school.

Per Pupil Property Acquisition Costs	
Category	Value
State Share	\$15,321,007
+ Local Match	\$15,321,007
= Total Cost	\$30,642,014
÷ Total Acres	158
= Cost per Acre	\$ 193,937
x Acres Required	44.6
= Cost of Site	\$ 8,649,581
÷ # of Pupils	1,800
= Cost per Pupil	\$ 4,805

II. Applicable California Codes

Government Code Section 65995

65995. (a) Except for a fee, charge, dedication, or other requirement authorized under Section 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), a fee, charge, dedication, or other requirement for the construction or reconstruction of school facilities may not be levied or imposed in connection with, or made a condition of, any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073.

(b) Except as provided in Sections 65995.5 and 65995.7, the amount of any fees, charges, dedications, or other requirements authorized under Section 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, may not exceed the following:

(1) In the case of residential construction, including the location, installation, or occupancy of manufactured homes and mobilehomes, one dollar and ninety-three cents (\$1.93) per square foot of assessable space. "Assessable space," for this purpose, means all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area. The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters. "Manufactured home" and "mobilehome" have the meanings set forth in subdivision (f) of Section 17625 of the Education Code. The application of any fee, charge, dedication, or other form of requirement to the location, installation, or occupancy of manufactured homes and mobilehomes is subject to Section 17625 of the Education Code.

(2) In the case of any commercial or industrial construction, thirty-one cents (\$0.31) per square foot of chargeable covered and enclosed space. "Chargeable covered and enclosed space," for this purpose, means the covered and enclosed space determined to be within the perimeter of a commercial or industrial structure, not including any storage areas incidental to the principal use of the construction, garage, parking structure, unenclosed walkway, or utility or disposal area. The determination of the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure shall be made by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county. For the determination of chargeable fees to be paid to the appropriate school district in connection with any commercial or industrial construction under the jurisdiction of the Office of Statewide Health Planning and Development, the architect of record shall determine the chargeable covered and enclosed space within the perimeter of a commercial or

industrial structure.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be increased in 2000, and every two years thereafter, according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting, which increase shall be effective as of the date of that meeting.

(c) (1) Notwithstanding any other provision of law, during the term of a contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before January 1, 1987, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential construction, neither Section 17620 of the Education Code nor this chapter applies to that residential construction.

(2) Notwithstanding any other provision of state or local law, construction that is subject to a contract entered into between a person and a school district, city, county, or city and county, whether general law or chartered, after January 1, 1987, and before the operative date of the act that adds paragraph (3) that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of construction, may not be affected by the act that adds paragraph (3).

(3) Notwithstanding any other provision of state or local law, until January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, shall be required to comply with that condition.

Notwithstanding any other provision of state or local law, on and after January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, may not be subject to a fee, charge, dedication, or other requirement exceeding the amount specified in paragraphs (1) and (2) of subdivision (b), or, if a district has increased the limit specified in paragraph (1) of subdivision (b) pursuant to either Section 65995.5 or 65995.7, that increased amount.

(4) Any construction that is not subject to a contract as described in paragraph (2), or to paragraph (3), and that satisfies both of the requirements of this paragraph, may not be subject to any increased fee, charge, dedication, or other requirement authorized by the act that adds this paragraph beyond the amount specified in paragraphs (1) and (2) of subdivision (b).

(A) A tentative map, development permit, or conditional use permit was approved before the operative date of the act that amends this subdivision.

(B) A building permit is issued before January 1, 2000.

(d) For purposes of this chapter, "construction" means new

construction and reconstruction of existing building for residential, commercial, or industrial. "Residential, commercial, or industrial construction" does not include any facility used exclusively for religious purposes that is thereby exempt from property taxation under the laws of this state, any facility used exclusively as a private full-time day school as described in Section 48222 of the Education Code, or any facility that is owned and occupied by one or more agencies of federal, state, or local government. In addition, "commercial or industrial construction" includes, but is not limited to, any hotel, inn, motel, tourist home, or other lodging for which the maximum term of occupancy for guests does not exceed 30 days, but does not include any residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code.

(e) The Legislature finds and declares that the financing of school facilities and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities are matters of statewide concern. For this reason, the Legislature hereby occupies the subject matter of requirements related to school facilities levied or imposed in connection with, or made a condition of, any land use approval, whether legislative or adjudicative act, or both, and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities, to the exclusion of all other measures, financial or nonfinancial, on the subjects. For purposes of this subdivision, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(f) Nothing in this section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities. However, the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 may not be required as a condition of approval of any legislative or adjudicative act, or both, if the purpose of the community facilities district is to finance school facilities.

(g) (1) The refusal of a person to agree to undertake or cause to be undertaken an act relating to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5, including formation of, or annexation to, a community facilities district, voting to levy a special tax, or authorizing another to vote to levy a special tax, may not be a factor when considering the approval of a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, if the purpose of the community facilities district is to finance school facilities.

(2) If a person voluntarily elects to establish, or annex into, a community facilities district and levy a special tax approved by landowner vote to finance school facilities, the present value of the special tax specified in the resolution of formation shall be calculated as an amount per square foot of assessable space and that amount shall be a credit against any applicable fee, charge, dedication, or other requirement for the construction or reconstruction of school facilities. For purposes of this paragraph, the calculation of present value shall use the interest rate paid on the United States Treasury's 30-year bond on the date of the

formation of, or annexation to, the community facilities district, as the capitalization rate.

(3) For purposes of subdivisions (f), (h), and (i), and this subdivision, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(h) The payment or satisfaction of a fee, charge, or other requirement levied or imposed pursuant to Section 17620 of the Education Code in the amount specified in Section 65995 and, if applicable, any amounts specified in Section 65995.5 or 65995.7 are hereby deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073, on the provision of adequate school facilities.

(i) A state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073 on the basis of a person's refusal to provide school facilities mitigation that exceeds the amounts authorized pursuant to this section or pursuant to Section 65995.5 or 65995.7, as applicable.

Government Code Sections 66001 - 66008

66001. (a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency, the local agency shall do all of the following:

(1) Identify the purpose of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(b) In any action imposing a fee as a condition of approval of a development project by a local agency, the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

(c) Upon receipt of a fee subject to this section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 66006.

(d) (1) For the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the local agency shall make all of the following findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted:

(A) Identify the purpose to which the fee is to be put.

(B) Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.

(C) Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements identified in paragraph (2) of subdivision (a).

(D) Designate the approximate dates on which the funding referred to in subparagraph (C) is expected to be deposited into the appropriate account or fund.

(2) When findings are required by this subdivision, they shall be made in connection with the public information required by subdivision (b) of Section 66006. The findings required by this subdivision need only be made for moneys in possession of the local agency, and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date. If the findings are not made as required by this subdivision, the local agency shall refund the moneys in the account or fund as provided in subdivision (e).

(e) Except as provided in subdivision (f), when sufficient funds have been collected, as determined pursuant to subparagraph (F) of paragraph (1) of subdivision (b) of Section 66006, to complete financing on incomplete public improvements identified in paragraph (2) of subdivision (a), and the public improvements remain incomplete, the local agency shall identify, within 180 days of the determination that sufficient funds have been collected, an approximate date by which the construction of the public improvement will be commenced, or shall refund to the then current record owner or owners of the lots or units, as identified on the last equalized assessment roll, of the development project or projects on a prorated basis, the unexpended portion of the fee, and any interest accrued thereon. By means consistent with the intent of this section, a local agency may refund the unexpended revenues by direct payment, by providing a temporary suspension of fees, or by any other reasonable means. The determination by the governing body of the local agency of the means by which those revenues are to be refunded is a legislative act.

(f) If the administrative costs of refunding unexpended revenues pursuant to subdivision (e) exceed the amount to be refunded, the local agency, after a public hearing, notice of which has been published pursuant to Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which fees are collected subject to this chapter and which serves the project on which the fee was originally imposed.

(g) A fee shall not include the costs attributable to existing deficiencies in public facilities, but may include the costs attributable to the increased demand for public facilities reasonably related to the development project in order to (1) refurbish existing facilities to maintain the existing level of service or (2) achieve an adopted level of service that is consistent with the general plan.

66002. (a) Any local agency which levies a fee subject to Section 66001 may adopt a capital improvement plan, which shall indicate the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees.

(b) The capital improvement plan shall be adopted by, and shall be annually updated by, a resolution of the governing body of the local agency adopted at a noticed public hearing. Notice of the hearing shall be given pursuant to Section 65090. In addition, mailed notice shall be given to any city or county which may be significantly affected by the capital improvement plan. This notice shall be given no later than the date the local agency notices the public hearing pursuant to Section 65090. The information in the notice shall be not less than the information contained in the notice of public hearing and shall be given by first-class mail or personal delivery.

(c) "Facility" or "improvement," as used in this section, means any of the following:

(1) Public buildings, including schools and related facilities; provided that school facilities shall not be included if Senate Bill 97 of the 1987-88 Regular Session is enacted and becomes effective on or before January 1, 1988.

(2) Facilities for the storage, treatment, and distribution of nonagricultural water.

(3) Facilities for the collection, treatment, reclamation, and disposal of sewage.

(4) Facilities for the collection and disposal of storm waters and for flood control purposes.

(5) Facilities for the generation of electricity and the distribution of gas and electricity.

(6) Transportation and transit facilities, including but not limited to streets and supporting improvements, roads, overpasses, bridges, harbors, ports, airports, and related facilities.

(7) Parks and recreation facilities.

(8) Any other capital project identified in the capital facilities plan adopted pursuant to Section 66002.

66003. Sections 66001 and 66002 do not apply to a fee imposed pursuant to a reimbursement agreement by and between a local agency and a property owner or developer for that portion of the cost of a public facility paid by the property owner or developer which exceeds the need for the public facility attributable to and reasonably related to the development. This chapter shall become operative on January 1, 1989.

66004. The establishment or increase of any fee pursuant to this chapter shall be subject to the requirements of Section 66018.

66005. (a) When a local agency imposes any fee or exaction as a condition of approval of a proposed development, as defined by

Section 65927, or development project, those fees or exactions shall not exceed the estimated reasonable cost of providing the service or facility for which the fee or exaction is imposed.

(b) This section does not apply to fees or monetary exactions expressly authorized to be imposed under Sections 66475.1 and 66477.

(c) It is the intent of the Legislature in adding this section to codify existing constitutional and decisional law with respect to the imposition of development fees and monetary exactions on developments by local agencies. This section is declaratory of existing law and shall not be construed or interpreted as creating new law or as modifying or changing existing law.

66005.1. (a) When a local agency imposes a fee on a housing development pursuant to Section 66001 for the purpose of mitigating vehicular traffic impacts, if that housing development satisfies all of the following characteristics, the fee, or the portion thereof relating to vehicular traffic impacts, shall be set at a rate that reflects a lower rate of automobile trip generation associated with such housing developments in comparison with housing developments without these characteristics, unless the local agency adopts findings after a public hearing establishing that the housing development, even with these characteristics, would not generate fewer automobile trips than a housing development without those characteristics:

(1) The housing development is located within one-half mile of a transit station and there is direct access between the housing development and the transit station along a barrier-free walkable pathway not exceeding one-half mile in length.

(2) Convenience retail uses, including a store that sells food, are located within one-half mile of the housing development.

(3) The housing development provides either the minimum number of parking spaces required by the local ordinance, or no more than one onsite parking space for zero to two bedroom units, and two onsite parking spaces for three or more bedroom units, whichever is less.

(b) If a housing development does not satisfy the characteristics in subdivision (a), the local agency may charge a fee that is proportional to the estimated rate of automobile trip generation associated with the housing development.

(c) As used in this section, "housing development" means a development project with common ownership and financing consisting of residential use or mixed use where not less than 50 percent of the floorspace is for residential use.

(d) For the purposes of this section, "transit station" has the meaning set forth in paragraph (4) of subdivision (b) of Section 65460.1. "Transit station" includes planned transit stations otherwise meeting this definition whose construction is programmed to be completed prior to the scheduled completion and occupancy of the housing development.

(e) This section shall become operative on January 1, 2011.

66006. (a) If a local agency requires the payment of a fee specified in subdivision (c) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected.

(b) (1) For each separate account or fund established pursuant to subdivision (a), the local agency shall, within 180 days after the last day of each fiscal year, make available to the public the following information for the fiscal year:

(A) A brief description of the type of fee in the account or fund.

(B) The amount of the fee.

(C) The beginning and ending balance of the account or fund.

(D) The amount of the fees collected and the interest earned.

(E) An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.

(F) An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Section 66001, and the public improvement remains incomplete.

(G) A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.

(H) The amount of refunds made pursuant to subdivision (e) of Section 66001 and any allocations pursuant to subdivision (f) of Section 66001.

(2) The local agency shall review the information made available to the public pursuant to paragraph (1) at the next regularly scheduled public meeting not less than 15 days after this information is made available to the public, as required by this subdivision. Notice of the time and place of the meeting, including the address where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a written request with the local agency for mailed notice of the meeting. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(c) For purposes of this section, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee for public improvements within the meaning of subdivision (b) of Section 66000, and that is imposed by the local agency as a condition of approving the development project.

(d) Any person may request an audit of any local agency fee or charge that is subject to Section 66023, including fees or charges of school districts, in accordance with that section.

(e) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this section shall supersede all conflicting local laws and shall apply in charter cities.

(f) At the time the local agency imposes a fee for public improvements on a specific development project, it shall identify the public improvement that the fee will be used to finance.

66006.5. (a) A city or county which imposes an assessment, fee, or charge, other than a tax, for transportation purposes may, by ordinance, prescribe conditions and procedures allowing real property which is needed by the city or county for local transportation purposes, or by the state for transportation projects which will not receive any federal funds, to be donated by the obligor in satisfaction or partial satisfaction of the assessment, fee, or charge.

(b) To facilitate the implementation of subdivision (a), the Department of Transportation shall do all of the following:

(1) Give priority to the refinement, modification, and enhancement of procedures and policies dealing with right-of-way donations in order to encourage and facilitate those donations.

(2) Reduce or simplify paperwork requirements involving right-of-way procurement.

(3) Increase communication and education efforts as a means to solicit and encourage voluntary right-of-way donations.

(4) Enhance communication and coordination with local public entities through agreements of understanding that address state acceptance of right-of-way donations.

66007. (a) Except as otherwise provided in subdivisions (b) and (g), any local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) (1) Notwithstanding subdivision (a), the local agency may

require the payment of those fees or charges at an earlier time if (A) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (B) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(2) (A) Paragraph (1) does not apply to units reserved for occupancy by lower income households included in a residential development proposed by a nonprofit housing developer in which at least 49 percent of the total units are reserved for occupancy by lower income households, as defined in Section 50079.5 of the Health and Safety Code, at an affordable rent, as defined in Section 50053 of the Health and Safety Code. In addition to the contract that may be required under subdivision (c), a city, county, or city and county may require the posting of a performance bond or a letter of credit from a federally insured, recognized depository institution to guarantee payment of any fees or charges that are subject to this paragraph. Fees and charges exempted from paragraph (1) under this paragraph shall become immediately due and payable when the residential development no longer meets the requirements of this paragraph.

(B) The exception provided in subparagraph (A) does not apply to fees and charges levied pursuant to Chapter 6 (commencing with Section 17620) of Part 10.5 of Division 1 of Title 1 of the Education Code.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. The local agency shall record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated pursuant to subdivision (a).

(3) The contract may require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 edition.

(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted, include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17017.5 of the Education Code.

(g) A local agency may defer the collection of one or more fees up to the close of escrow. This subdivision shall not apply to fees and charges levied pursuant to Chapter 6 (commencing with Section 17620) of Part 10.5 of Division 1 of Title 1 of the Education Code.

66008. A local agency shall expend a fee for public improvements, as accounted for pursuant to Section 66006, solely and exclusively for the purpose or purposes, as identified in subdivision (f) of Section 66006, for which the fee was collected. The fee shall not be levied, collected, or imposed for general revenue purposes.

Government Code Section 66020

66020. (a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a development project, as defined in Section 66000, by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information:

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

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan,

permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development project. This section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d) (1) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a development project. Each local agency shall provide to the project applicant a notice in writing at the time of the approval of the project or at the time of the imposition of the fees, dedications, reservations, or other exactions, a statement of the amount of the fees or a description of the dedications, reservations, or other exactions, and notification that the 90-day approval period in which the applicant may protest has begun.

(2) Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a development project by a local agency within 180 days after the delivery of the notice. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f) (1) If the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction, the court shall direct the local agency to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed.

(2) If an action is filed within 120 days of the date at which an ordinance or resolution to establish or modify a fee, dedication,

reservation, or other exactions to be imposed on a development project takes effect, the portion of the payment or exaction invalidated shall also be returned to any other person who, under protest pursuant to this section and under that invalid portion of that same ordinance or resolution as enacted, tendered the payment or provided for or satisfied the exaction during the period from 90 days prior to the date of the filing of the action which invalidates the payment or exaction to the date of the entry of the judgment referenced in paragraph (1).

(g) Approval or conditional approval of a development occurs, for the purposes of this section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(h) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this section, when they are imposed or levied on a specific development.

Education Code Section 17620 - 17621

17620. (a) (1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of commercial or industrial construction shall not be deemed to include the square footage of any structure existing on the site of that construction as of the date the first building permit is issued for any portion of that construction.

(B) To new residential construction.

(C) (i) Except as otherwise provided in clause (ii), to other residential construction, only if the resulting increase in assessable space exceeds 500 square feet. The calculation of the "resulting increase in assessable space" for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total resulting increase in assessable space.

(ii) This subparagraph does not authorize the imposition of a levy, charge, dedication, or other requirement against residential construction, regardless of the resulting increase in assessable space, if that construction qualifies for the exclusion set forth in subdivision (a) of Section 74.3 of the Revenue and Taxation Code.

(D) To location, installation, or occupancy of manufactured homes and mobilehomes, as defined in Section 17625.

(2) For purposes of this section, "construction" and "assessable space" have the same meanings as defined in Section 65995 of the Government Code.

(3) For purposes of this section and Section 65995 of the Government Code, "construction or reconstruction of school facilities" does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 17582.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential construction within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that residential construction.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code, or in preparing the school facilities needs analysis described in Section 65995.6 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district. For purposes of this paragraph, "fees collected in that fiscal year pursuant to this section" does not include any amount in addition to the amounts specified in paragraphs (1) and (2) of subdivision (b) of Section 65995 of the Government Code.

(b) A city or county, whether general law or chartered, or the Office of Statewide Health Planning and Development shall not issue a building permit for any construction absent certification by the appropriate school district that any fee, charge, dedication, or other requirement levied by the governing board of that school district has been complied with, or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the construction. The school district shall issue the certification immediately upon compliance with the fee, charge, dedication, or other requirement.

(c) If, pursuant to subdivision (c) of Section 17621, the governing board specifies that the fee, charge, dedication, or other requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007 of the

Government Code, the restriction set forth in subdivision (b) of this section does not apply. In that event, however, a city or county, whether general law or chartered, shall not conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential construction absent certification by the appropriate school district of compliance by that residential construction with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city, county, or the Office of Statewide Health Planning and Development as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city, county, or the Office of Statewide Health Planning and Development of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 17621.

17621. (a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 17620, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7 of the Government Code. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 17620 shall not be subject to the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board shall specify,

pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 17620 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66020 of the Government Code, except that the procedures set forth in Section 66021 of the Government Code are deemed to apply, for this purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001 of the Government Code, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are calculated on either an individual project or categorical basis, in accordance with subparagraph (A). Those employee generation estimates shall be based upon commercial and industrial factors within the district or upon, in whole or in part, the applicable employee generation estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments.

(C) The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge, dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper.



CAPITOL ADVISORS
GROUP, LLC

East Side Union High School District

Developer Fee Justification Study

June 19, 2014

Authorizing Legislation

Original Authorization

- ❖ Mitigation Fee Act of 1986
 - Government Code 66000 et seq.

Updated in 1998

- ❖ Leroy F. Green School Facilities Act of 1998
 - Ed Code 17620
 - Established Developer Fee Caps

Developer Fees

- ❖ Allows School Districts to Collect Fees, Commonly Called a “Developer Fee”, when there is New Building Area
 - Added to a Residential or Commercial Property
 - The Creation of a New Home or Commercial Building
- ❖ It is Assumed that the Impact of New Construction is the Generation of New Students who will need Classroom Facilities
- ❖ Developer Fee Revenues can be Used to Address Facility Needs of the Students Generated

Developer Fee Caps

Level 1 Fee (Statutory)

- ❖ Determined by SAB Biannually Since 2000
 - For K through 12 Districts as of January 2014
 - ✓ Residential - \$3.36
 - ✓ Commercial - \$0.54

Level 2 Fee (ESUHSD does not qualify)

- ❖ Requires District Eligibility to Build New Classrooms in School Facilities Program

Level 3 Fee (ESUHSD does not qualify)

- ❖ Must Qualify to Collect Level 2 Fees
- ❖ State Must Declare they are out of New Construction Money

ESUHSD Current Developer Fee

State Established Level 1 Developer Fee

- ❖ January 2008 & January 2010
- ❖ Residential \$2.97 per SF
- ❖ Commercial/Industrial \$0.47 per SF

Shared Fee

- ❖ 1987 Agreement Between ESUHSD and Feeder Schools
- ❖ 66.67% (K-8)
- ❖ 33.33% (9-12) ESUHSD

ESUHSD Developer Fee

Currently Collecting

- ❖ Residential Fee \$0.99 per SF
- ❖ Commercial/Industrial Fee \$0.16 per SF

Options

- ❖ Continue to Collect at the Same Level
- ❖ Increase Fee as Permitted by Ed Code
 - Requires Developer Fee Study Justification

Developer Fee Justification Study June 2014

Factors Considered, Analyzed, and Calculated

- ❖ Facilities Inventory
- ❖ Student Capacity of Classrooms
- ❖ Projected Enrollment
- ❖ Average Size of a High School
- ❖ Average Construction Costs
- ❖ Average Size of New Home

Developer Fee Justification Study Findings

Residential

- ❖ District's Cost to House a Student = \$3.77 per SF
- ❖ State Maximum Level 1 Fee = \$3.36 per SF
- ❖ Maximum that can be Collected = \$1.12 per SF

Commercial/Industrial

- ❖ Cost per SF = \$0.66
- ❖ State Maximum Level 1 Fee = \$0.54 per SF
- ❖ Maximum that can be Collected = \$0.18 per SF



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Questions?

Richard Gonzalez
Capital Advisors Group, LLC.