



Division of Fiscal Services
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MEMORANDUM

DATE: September 1, 2016

TO: Karen Janney, Superintendent

FROM: Karen Michel, Chief Financial Officer *K. Michel*

RE: **SUPERINTENDENT'S UPDATE – Evaluation of the District's Ability to Levy Alternative School Fees (Level II and III Fees)**

The purpose of this memorandum is to provide information regarding the efforts to evaluate the ability of the District to implement Alternative School Fees. Developer fees (Statutory Fees or Level II and III Alternative School Fees) are restricted and may only fund the construction of school facilities. Developer fees do not support the General Fund.

School Facilities Legislation, in 1986, capped school district developer fees for residential housing and commercial and industrial development. The fees are shared between a high school district and its feeder elementary district(s). The amounts may be biennially increased and are currently \$3.48 and \$0.56, respectively as of February 2016, on a K-12 basis. These fees are known as Statutory Fees or Level I Fees and are justified through the adoption of a Fee Justification Report. The District has completed a 2016 Fee Justification Report which justified the District's share of the current Statutory School Fees and adopted a Resolution. These fees are in place and being levied by the District and are not the subject of this memorandum.

In 1998, the Governor signed into law Senate Bill 50 ("SB50"), the Leroy F. Greene School Facilities Act of 1998. Prior to its passage, cities and counties were able to require mitigation of school facilities impacts as a condition of approving new development. The mitigation amounts collected are used to build school facilities to house the students generated from the new development. Although the Legislature stopped the ability of school districts to require mitigation of impacts on school facilities, SB50 also authorized school districts to levy an alternative developer fee, known as Alternative School Fees or Level II and Level III Fees. Alternative Fees are only applicable to new residential development and do not apply to

commercial or industrial development. A Level III Fee, which maybe as much as double the Level II Fee, may only be imposed if a school district has met the statutory requirements for levying the fees and the State Allocation Board ("SAB") has made certain required findings, including that funding is not available per Government Code Section 65995.7(a). The District first imposed a Level II Fee in 2001 and Level II Fees continued to be justified and imposed through 2011. The Alternative Fees were not continued because the District was no longer eligible.

Recently, the SAB took the appropriate actions and made the required findings that funding for new construction is no longer available. This action would have immediately triggered the ability of school districts with adopted Level III Fees to implement the collection of such fees. The Building Industry Association ("BIA") initiated litigation and filed a request for a temporary restraining order, preliminary injunction and stay of any further action by the SAB. Although the Court initially issued the temporary restraining order and stay, the Court in the BIA vs SAB case has now issued its ruling. The Court followed its tentative decision and denied the preliminary injunction and terminated the temporary restraining order. The SAB has been ordered to prepare the Order for the Court's signature. Absent a change in the Court's ruling, school districts will be able to levy Level III Fees.

School districts must follow a stringent set of statutes in order to levy Alternative School Fees and the District must complete a School Facilities Needs Analysis ("SFNA"). The first step is to verify that the District is able to satisfy at least two of four eligibility requirements per Government Code Section 65995.5(b)(3). At this time the District is eligible.

The purpose of an SFNA is to quantify, for the next five-year period, the impacts of new residential development on the school district's facilities and calculate the permissible Level II and Level III Fees. Once adopted, the authority to levy the Alternative Fees is valid for a one year period. Using a statutorily prescribed methodology, the SFNA requires using a state mandated "per pupil" grant, a limited sampling for determining student generation and does not provide for funding of interim facilities or central administration and support. The elements of residential development projections and the projection of home sizes will be provided to the cities and county for review and comment. In addition, we invite each of the local agencies to meet with staff prior to the SFNA being made public for a 30-day review period. Because of the prescribed methodology, the Level II and Level III Fees do not correspond to the true impact on school facilities. School districts must still calculate and review the true cost of school facilities for planning purposes.

School districts are asked by home builders to keep developer fees low. Currently, the reason cited is the state of the economy and the logic given for this request is that if the developer fee is low, it will encourage the construction of new development and hence boost the local economy with jobs and population. The statement, that imposing a low school developer fee encourages developers to build homes, cannot be statistically supported. The second part of the reasoning is that new construction means jobs for local workers. Although this cannot be dismissed entirely, no direct correlation in development activity and the amount of the developer fee imposed has been found. In addition, the developer fee itself will fund construction which will support the local economy in a similar manner.

The result of lowering school developer fees simply passes the impact of new development to the local level. The local level, or general fund, cannot support even a portion of the impact from

new development. The reason to keep developer fees at the statutorily prescribed maximum is to ask new development to pay for itself.

The intention is to complete the statutorily prescribed steps to quantify the Alternative Fees for the District. Such findings, if supportive, will be presented to the Board within an SFNA. The final steps for adoption of Alternative Fees would be to hold a public hearing and provide a resolution to the Board for review and consideration.

KM: