



May 27, 2016

CS NEWSFLASH: **UPDATE: LEVEL 3 DEVELOPER FEES**

After Level 3 Fees were triggered by the State Allocation Board ("SAB") on Wednesday, May 25, 2016, the California Building Industry Association ("CBIA") filed for, and was granted on Thursday in Sacramento Superior Court, a temporary restraining order ("TRO") against the SAB's actions.

The granting of the TRO makes an already complex situation even murkier for school districts. We have been reviewing the TRO and in contact with many parties on the matter and has been receiving conflicting guidance. For school districts already levying Level 2 Fees who wish to impose Level 3 Fees, we encourage them to consult with legal counsel on the implications of the TRO and how they would like to proceed.

A hearing in Sacramento Superior Court on this matter has been set for July 1, 2016, and we will provide additional information following that hearing.

Since the SAB's decision on Wednesday, we have received a number of questions on Level 3 Fees. This alert summarizes some of the questions we have been fielding.

Q. When can school districts begin charging the new Level 3 rate?

A. School districts that have already completed a School Facilities Needs Analysis ("SFNA") in which their board approved a Level 3 rate, are urged to reach out to their legal counsel to discuss the implications of the TRO. School districts that have not yet completed an SFNA can consider pursuing one if they meet the qualifying factors. Level 2 Fees are not affected by the TRO.

Q. What are the accounting requirements for Level 3 Fees?

A. Level 3 Fees will need to be kept in a separate, designated account. This will facilitate either the reimbursement to developers once State school bond funds are received by a school district or determine any reduction in future State school bonds that will be required.

Q. What are the reimbursement requirements for Level 3 Fees?

A. When/if State funds for new construction become available (i.e. if the \$9 billion school facilities bond is passed in November), school districts will have two (2) options for the reimbursement of Level 3 Fees:

Option 1: Pursuant to [Government Code Section 65995.7](#), a school district can choose to reimburse developers for the difference between the Level 2 and Level 3 Fee from State bond funding for new construction projects.

Option 2: Pursuant to [Education Code Section 17072.20](#), the State Funding the school district is eligible to collect will be reduced by the amount charged to developers that differentiates between the Level 2 and Level 3 Fee.

Q. What are the alternative options other than charging Level 3 Fees?

A. The following alternative options are available to help school districts mitigate the impacts of new development:

Option 1: Level 2 Fees – Given the requirements associated with Level 3 Fees, school districts may choose to not impose them, and can continue charging Level 2 Fees.

Option 2: Mitigation Agreements – School districts can negotiate with developers to come to an agreement that will help to offset the impact of new developments on school district facilities. This can be a rate that is somewhere between the Level 2 Fee and Level 3 Fee.

If you have any additional questions regarding Level 3 Fees, please contact us at 949.250.8320 or info@coopstrategies.com.

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