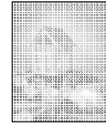




CALIFORNIA'S
COALITION
for ADEQUATE
SCHOOL HOUSING



**MAXIMIZING DEVELOPER FEES:
WHO, WHAT, HOW, WHEN, AND HOW MUCH?**



**Friday, August 25, 2006
Ontario Airport Marriott
Ontario, CA**



DEVELOPER FEE DO'S AND DON'TS

- **Lauri LaFoe**
Lozano Smith



DO

- Be familiar and comply with developer fee accounting requirements.
 - All school impact fees must be deposited in a separate account or fund. (Gov. Code § 66006.)
 - Annual Accounting. The annual accounting report should include:
 - A brief description of the type of fee in the account.
 - The amount of the fee.
 - The beginning and ending balance of the account.
 - The amount of the fees collected and the interest earned.
 - (Gov. Code § 66006, subd. (b).)



DO

- An identification of each public improvement on which fees were expended and the amount expended (including the percentage of the improvement cost funded by developer fees).
- The approximate date when construction of an improvement will begin (if sufficient funds have been collected to complete financing).
- A description of each inter-fund transfer or loan, including the improvement on which the transferred fees will be expended, the date the loan will be repaid, and the loan's interest rate.
- The amount of refunds made for fees unexpended and uncommitted after five years, and any allocations made where the administrative costs of refunding exceed the amount to be refunded.
- (Gov. Code § 66006, subd. (b).)



DO

- Five-Year Accounting. Note that the penalty for noncompliance with the five-year accounting requirements can be a mandatory refund of all unexpended developer fees. (Gov. Code § 66001, subd. (d).)



DO

- Five-Year Accounting. The information required for the five-year accounting includes:
 - The information required for the annual accounting.
 - The District must make the following findings:
 - Identify the purpose to which the fee is to be put.
 - Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.
 - Identify all sources and amounts of funding anticipated to complete financing of incomplete improvements.
 - Designate the approximate dates on which the funding is expected to be deposited in to the appropriate account or fund.
 - (Gov. Code § 66001.)



DO

- Be certain to update the district's fee justification studies and, if applicable, school facilities needs analyses.



DO

- Consider consequences of voluntarily foregoing maximum fees.
 - If a district forgoes the adoption of Level 2 developer fees, it could lose State hardship funding. (Ed. Code § 17075.10; 2 C.C.R. § 1859.81.)



DO

- Conversion and replacement housing.
 - Proceed cautiously when determining the amount of developer fees to be charged for the conversion of commercial property to residential property.
 - Proceed cautiously when determining the amount of developer fees to be charged for replacement housing.
 - Nexus.
 - Replacements for natural disaster. (Ed. Code § 17626.)
 - Redevelopment. (Warmington Old Town Associate, L.P. v. Tustin Unified School District (2002) 101 Cal. App. 4th 840.)



DO

- When a planned use of fees may be controversial, consider talking to developers regarding the district's planned use of developer fees.



DO

- If the City collects developer fees on behalf of the district, monitor the fee collection.



DO

- Have the district's fee-splitting agreement on hand and be aware of its contents.



DO

- Make the final school facility needs analysis (“SFNA”) available for public review and comment at least 30 days, and possibly 45 days, before the public meeting at which the SFNA is adopted.
 - However, failure to give the “proposed school facilities needs analysis” to local planning authorities 45 days before the “completion” of the SFNA could impact the district’s ability to override local zoning ordinances under Government Code section 53094. (Gov. Code § 65352.2.)
 - The district must make the final SFNA available for public review and comment at least 30 days before the public meeting. (Gov. Code § 65995.6.)



DO

- Consider recirculating the SFNA if any changes are made to it during the public comment period or at the public hearing at which it is considered.



CHARTER SCHOOL IMPLICATIONS

- Consider whether charter school building capacity should be included in the District's capacity calculations.
 - The district's capacity calculation should include "all classrooms owned or leased in the district." (2 C.C.R. § 1859.31; see also Ed. Code § 17071.31.)
 - Take developer fees efforts into account when planning charter facilities.



DON'T

- Allow the SFNA and the Level 2 fee to lapse.
 - Unlike Level 1 fees, Level 2 fees expire one year from adoption, requiring annual updates to the SFNA and renewed adoption of fees. (Gov. Code § 65995.6, subd. (f).)



DON'T

- Use developer fees (or interest from the developer fees) for impermissible purposes.
 - Developer fees can be used for:
 - construction or reconstruction of school facilities,
 - costs associated with conducting any study, finding, needs analysis or determination required as part of the process to adopt the developer fee, or
 - costs for administering the fee, costs associated with conducting the meeting(s) required for levying a fee.
 - (Ed. Code § 17620; Gov Code § 65995.5, subd. (f); Gov. Code § 66016, subd. (c).)



DON'T

- Developer fees generally cannot be used for the regular maintenance or routine repair of school buildings or facilities, asbestos work other than that incidental to regular construction or reconstruction, or deferred maintenance. (Ed. Code 17620, subd. (a)(3).)



DON'T

- Use unreasonable numbers or numbers that do not reflect *district* costs, trends, and practices.
- Accept developer built schools without careful analysis and a protective agreement



RECENT CASES



RECENT CASES

Warmington Old Town Associate, L.P. v. Tustin Unified School District (2002) 101 Cal. App. 4th 840.

- Fees may be imposed upon new housing regardless of whether it is built on a vacant lot or is replacing existing housing.
- However, in order to impose such fees, there must be a reasonable relationship, or “nexus,” between the fee and the use to which it will be put, and the fee justification study must demonstrate this reasonable relationship.
- The impact of redevelopment need not be considered on a project-by-project basis; rather all redevelopment districtwide can be considered collectively.



RECENT CASES

Harrod Brothers v. Salinas Union High School District (August 8, 2002) Monterey County Superior Court, No. M56566.

- The law “authorizes a single residential fee only, and not separate fees for single family and multi-family residential development.”
- Because the District had calculated different fees for the different types of residential housing, the District’s Level 2 fee was declared invalid.



RECENT CASES

Ellis v. Clovis Unified School District (May 17, 2002)
CA 5th District Court of Appeal, No. F037403.

- The Court concluded that school districts are not required to assess separate fees for single- and multi-family housing, but may assess a single fee for both types of housing.



RECENT CASES

Coalition for Affordable Housing in Los Angeles v. Board of Education of the City of Los Angeles (July 1, 2003) CA 2nd District Court of Appeal, Division 2, No. B159777

- The District was permitted to use sampling, rather than counting every single residential unit, when determining the student generation rate.
- It was reasonable for the District to base the student generation rate on building permits obtained during 1993-1996 because at the time the survey was conducted, the latest available student enrollment data was from 1999, and there is generally a two-year delay between when permits are taken out and when occupancy occurs.



RECENT CASES

- The District was not required to use a particular source of raw data, and the law does not “require disclosure of each step in converting raw planning data to an expert opinion.”



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