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LEGAL UPDATE

October 20, 2005

To: Superintendents, Member School Districts (K-12)

**From: Susanne K. Reed, Senior Associate General Counsel
Stephen L. Hartsell, Associate General Counsel**

**Subject: Annual Accounting For School Facilities Fees
Memo No. 9-2005**

Government Code sections 66001 and 66006 impose detailed requirements on public agencies which levy development fees. These sections require school districts collecting statutory school facilities fees to take certain actions prior to December 27, 2005. The purpose of this letter is to remind you of these statutory requirements and provide information and documents to assist you in complying with them.

Stated briefly, section 66006 requires each district collecting development fees to make an annual accounting of those fees available to the public by December 27, 2005. This annual accounting must then be reviewed by the governing board at its next regularly scheduled meeting at least 15 days after the accounting was made available to the public. Section 66001 requires each district collecting development fees to make additional findings every five years about any fund in which those fees remained unexpended at the end of a fiscal year.

I. Annual Accounting

A Government Code section 66006(b) requires local agencies, including school districts, which are collecting development fees (including statutory school facilities fees and other impact mitigation payments) to provide an annual accounting of such fees or payments. A separate accounting should be provided

for each type of fee or payment, which is to say, for each separate account or fund into which those fees or payments were deposited. Each accounting must include:

1. A brief description of the type of fee in the account or fund.
 2. The amount of the fee.
 3. The beginning and ending balance of the account or fund.
 4. The amount of the fees collected and the interest earned.
 5. 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.
 6. 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), subdivision (a), of section 66001, and the public improvement remains incomplete.
 7. 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.
 8. The amount of refunds made pursuant to subdivision (e) of section 66001 and any allocations pursuant to subdivision (f) of section 66001. (Government Code section 66001(e) requires districts to refund developer fees that are not appropriated within a five-year period from date of collection. Government Code section 66001(f) provides a method for allocating such non-appropriated fees if the administrative costs of refunding exceed the amount to be refunded.)
- B. Within 180 days of the end of the fiscal year, each fee-collecting district must make the accounting available to the public. In addition, the governing board must review the information at its next regularly scheduled board meeting held no earlier than 15 days after the information becomes available to the public. Notice of the time and place of this meeting, including the address at which the information may be reviewed, must be mailed at least 15 days prior to the meeting to anyone who has requested such notice.

II. Every Fifth Fiscal Year

- A. In addition, Government Code section 66001(d) requires that for the fifth fiscal year following the first deposit into each account or fund, and every five years thereafter, the District must make certain findings. Although (and because) it is not entirely clear in the statute when these findings must be made, we recommend that they be made in conjunction with the annual accounting for each fund or account, especially since the sanction for failing to comply with the statute is a refund of the fees in question.
- B. Under subdivision (d), a district must make all of the following findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted, in each fund or account:
 - 1. Identify the purpose to which the fee is to be put.
 - 2. Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.
 - 3. Identify all sources and amounts of funding anticipated to complete financing and incomplete improvements identified in paragraph (2) of subdivision (a) (improvements identified by reference to a capital improvement plan as specified in sections 65403 or 66002 or in other public documents that identify the public facilities for which the fee is charged).
 - 4. Designate the approximate dates on which the funding referred to in paragraph (3) is expected to be deposited into the appropriate account or fund.
- C. 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. As noted above, if the findings are not made as required by this subdivision, the local agency must refund the moneys in the account or fund as provided in subdivision (e) of Government Code section 66001.

III. Additional Information and Suggestions

- A. Enclosed with this letter are three forms which will assist in complying with Government Code sections 66001 and 66006, as follows:
 - 1. A resolution related to statutory fees collected under Education Code section 17620 (formerly Government Code section 53080.) (For districts which still have fees collected under “SB 201”—Government Code

section 65970, et seq.—a separate resolution can be made available upon request.)

2. An Exhibit A which would be completed and attached to the resolution, and covers the information required by Government Code section 66006.
3. An Exhibit B which would also be completed and attached to the resolution and covers the information required by Government Code section 66001.

In drafting these documents, we assumed that there were funds remaining in the account or fund in question for which a report under Government Code section 66001 was necessary. If this is not the case, contact us so that we can provide a modified form of resolution.

Even if funds remaining at the end of the fiscal year have been spent prior to the date of the accounting, it remains necessary to comply with Government Code section 66001, although the fact that the funds remaining have been spent should be reflected on both Exhibit A (reference (F)) and Exhibit B (references (3) and (4).)

- B. With respect to section (A) of Exhibit A, the fees could be described as follows:

Statutory school facilities fees.

- C. With respect to section (B) of Exhibit A, the amount of the fee could be generally described as follows:

1. For unified districts (or districts not sharing the fee with another district):

\$2.24 per square foot of assessable space of residential construction; and \$0.36 per square foot of covered and enclosed space of commercial/industrial construction; but subject to the district's determination that a particular project is exempt from all or part of these fees. :

2. For elementary or high school districts (sharing the fee with another district):

\$2.44 per square foot of assessable space of residential construction; and \$0.36 per square foot of covered and enclosed space of commercial/industrial construction; but subject to the district's determination that a particular project is exempt from all or part of these fees. Pursuant to Education Code section 17623 and an agreement with the district(s) sharing territory with the district, generally only _____ % of the maximum fee specified above is distributed to this district.

- D. With respect to section (E) of Exhibit A, identification of each public improvement on which fees were expended must be as specific as possible. This can be done by referring to the project's name if it has one (e.g., "construction of comprehensive high school #4, Bali High School), or a description of the project which identifies the nature and scope of the improvement (e.g., "construction of one new classroom of approximately 1000 square feet at Dr. Watson Elementary School".) This section should also indicate those amounts spent for administration costs associated with adopting, collecting, and reporting the fees, and any refunds made (other than those reported in section "(H)" of Exhibit A.)
- E. With respect to section "(F)" of Exhibit A, if the district has not made the determination identified, the following may be inserted:
- N/A. The District has not made this determination.**
- F. With respect to section "(G)" of Exhibit A, if the district has not made any transfers or loans, the following may be inserted:
- N/A. The District has not made any such interfund transfers or loans.**
- G. With respect to section "(H)" of Exhibit A, we have assumed that no refunds or allocations under the specified statutes have been made. The refunds referred to are not refunds made under the district's exemption procedures, but refunds made if the district fails to identify an approximate starting date for a project once it has determined that there are sufficient funds to complete it.
- H. With respect to Exhibit B, remember that this report only applies to any money remaining unexpended in the fund or account at the end of the fiscal year.
- I. With respect to section "(1)" of Exhibit B, information as to how any money remaining unexpended in the fund or account at the end of the fiscal year will be spent must be inserted. This information must be as specific as possible, referring to the particular project or projects on which the money will be spent. (See paragraph D above for additional guidance.)
- J. With respect to sections (3) and (4) of Exhibit B, the information to be provided relates to the project or projects identified in section (1) of Exhibit B.

If you have any questions regarding the information or materials provided in and with this letter, or need any assistance in complying with Government Code sections 66001 and 66006, please feel free to contact our office. Also, please contact this office if you would like to have any of the documents e-mailed to you in Word format.

**RESOLUTION OF THE GOVERNING BOARD OF THE
SCHOOL DISTRICT
REGARDING ACCOUNTING OF DEVELOPMENT FEES
FOR 2004-2005 FISCAL YEAR
IN THE FOLLOWING FUND OR ACCOUNT:**

(Government Code sections 66001(d) & 66006(b))

1. Authority and Reasons for Adopting this Resolution.

- A. This District has levied school facilities fees pursuant to various resolutions, the most recent of which is dated _____, and is referred to herein as the "School Facilities Fee Resolution" and is hereby incorporated by reference into this Resolution. These resolutions were adopted under the authority of Education Code section 17620 (formerly Government Code section 53080). These fees have been deposited in the following fund or account:

(the "Fund");

- B. Government Code sections 66001(d) and 66006(b) require this District to make an annual accounting of the Fund and to make additional findings every five years if there are any funds remaining in the Fund at the end of the prior fiscal year;
- C. Government Code sections 66001(d) and 66006(b) further require that the annual accounting of the Fund and those findings be made available to the public no later than December 27, 2005, that this information be reviewed by this Board at its next regularly scheduled board meeting held no earlier than 15 days after they become available to the public, and that notice of the time and place of this meeting (as well as the address at which this information may be reviewed) be mailed at least 15 days prior to this meeting to anyone who has requested it.
- D. The Superintendent has informed this Board that a draft copy of this Resolution (along with Exhibits A and B which are hereby incorporated by reference into this Resolution) was made available to the public on _____, 2005. The Superintendent has further informed this Board that notice of the time and place of this meeting (as well as the address at which this information may be reviewed) was mailed at least 15 days prior to this meeting to anyone who had requested it.
- E. The Superintendent has also informed this Board that there is no new information which would adversely affect the validity of any of the findings made by this Board in its School Facilities Fee Resolution.

2. What This Resolution Does.

This Resolution makes various findings and takes various actions regarding the Fund as required by and in accordance with Government Code sections 66001(d) and 66006(b).

3. Findings Regarding the Fund.

Based on all findings and evidence contained in, referred to, or incorporated into this Resolution, as well as the evidence presented to this Board at this meeting, the Board finds each of the following with respect to the Fund for the 2004-2005 Fiscal Year:

- A. In reference to Government Code section 66006(b)(2), the information identified in section 1 above is correct;
- B. In further reference to Government Code section 66006(b)(2), this Board has reviewed the annual accounting for the Fund as contained in Exhibit A and determined that it meets the requirements set forth in Government Code section 66006(b)(1);
- C. In reference to Government Code section 66001(d)(1), and with respect only to that portion of the Fund remaining unexpended at the end of the 2004-2005 Fiscal Year, the purpose of the fees is to finance the construction or reconstruction of school facilities necessary to reduce overcrowding caused by the development on which the fees were levied, which facilities are more specifically identified in Exhibit B;
- D. In reference to Government Code section 66001(d)(2), and with respect only to that portion of the Fund remaining unexpended at the end of the 2004-2005 Fiscal Year, the findings and evidence referenced above demonstrate that there is a reasonable relationship between the fees and the purpose for which it is charged;
- E. In reference to Government Code section 66001(d)(3), and with respect only to that portion of the Fund remaining unexpended at the end of the 2004-2005 Fiscal Year, all of the sources and amounts of funding anticipated to complete financing in any incomplete improvements identified as the use to which the fees are to be put is identified in Exhibit B;
- F. In reference to Government Code section 66001(d)(4), and with respect only to that portion of the Fund remaining unexpended at the end of the 2004-2005 Fiscal Year, the approximate dates on which the funding referred to in paragraph e above is expected to be deposited into the appropriate account or fund is designated in Exhibit B; and
- G. In reference to the last sentence of Government Code section 66006(d), because all of the findings required by that subdivision have been made in the fees that were levied in paragraphs c-f above, the District is not required to refund any moneys in the Fund as provided in Government Code section 66001(e).

4. **Superintendent Authorized to Take Necessary and Appropriate Action.**

The Board further directs and authorizes the Superintendent to take on its behalf such further action as may be necessary and appropriate to effectuate this Resolution.

5. **Certificate of Resolution.**

I, _____, _____ of the Governing Board of the _____ District of _____ County, State of California, certify that this Resolution proposed by _____, seconded by _____, was duly passed and adopted by the Board, at an official and public meeting this _____ day of _____, 2005, by the following vote:

AYES:

NOES:

ABSENT:

_____ of the Board
of the _____
District of _____ County, California

GOVERNMENT CODES

§ 66001. Fee as condition of approval; agency requirements

(a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, 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 on or after January 1, 1989, 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) 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:

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

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

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

(4) Designate the approximate dates on which the funding referred to in paragraph (3) is expected to be deposited into the appropriate account or fund.

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.

§ 66006. Local agency improvement fees; public availability of account or fund information

(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.