

Client Alert

An informational newsletter from Goodwin Procter LLP

California Developer School Fees Increase By Almost 13 Percent

Although California land prices have declined over the past 12-18 months, development costs have been steadily rising. In addition to recent spikes in the costs of materials, hourly wages and capital, California developers will now face steep increases in school developer fees imposed on both residential and non-residential construction projects.

In 1998, the California legislature passed Senate Bill 50, which authorizes school districts to levy developer fees in order to finance the construction or reconstruction of school facilities required to meet the educational demands created by new construction within their respective districts. The California Government Code establishes three types of school fees for developers, which are commonly referred to as the Level 1, Level 2 and Level 3 Fees.

Level 1 Fee. The Level 1 Fee is assessed if the school district can establish a reasonable relationship between the new development and the assessment of fees required to pay for facilities needed to accommodate future students (Section 66001).

Level 2 Fee. If state funding is available, the Level 2 Fee is assessed if a school district (i) makes a timely application to the State Allocation Board (“SAB”) for new construction funding, (ii) conducts a School Facility Needs Analysis, and (iii) satisfies at least two of the four requirements set forth in Section 65995.5(b)(3) (*e.g.*, district has “substantial enrollment” or has reached maximum bonding capacity) (Section 65595.5).

Level 3 Fee. If state funding is no longer available, the Level 3 Fee can be assessed, thereby allowing a school district to impose a developer fee up to 100% of the School Facility Program new construction project costs (Section 65995.7).

Every two years, the SAB determines whether to increase school developer fees based on the statewide cost index for Class B construction. Effective as of January 30, 2008, the SAB raised Level 1 Fees from \$2.63 to \$2.97 per assessable square foot of residential construction (an increase of approximately 13%), and from \$0.42 to \$0.47 per square foot of enclosed and covered space in any commercial or industrial development (an increase of approximately 12%).

Additionally, California’s recently enacted statewide budget has reduced funding for public schools by 10.9%. This reduction in funding may cause more school districts to meet the requirements of Level 2 Fees if they present a need for new facilities. As a response to rising costs for new school construction, as of January 1, 2008, the SAB actually increased the State School Facilities Program grants by

3.91% from the prior year for the construction of elementary, middle and high schools. The factors that contribute to the recent increase in state grants for new facilities, namely higher construction costs, are similar to the factors that school districts can use to update their School Facility Needs Analysis. Accordingly, with rising construction costs and an overall decline in state funding for schools, it is possible that developers will be paying higher Level 2 Fees in the near future.

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