



Schools Legal Service
is a joint powers entity
providing legal and
collective bargaining
services to California
public education
agencies since 1976.

Grant Herndon
General Counsel

Stacy L. Inman
Assistant General Counsel

William A. Hornback
Patricia T. Castle
Christopher P. Burger
Alan B. Harris
Carol J. Grogan
Kathleen R. LaMay
Christopher W. Hine
Monica D. Batanero
Counsel

Peter C. Carton
of Counsel

Carl B. A. Lange III
Director of Labor Relations

October 21, 2008

TO: ALL DISTRICTS COLLECTING SCHOOL FACILITIES
FEES OR IMPACT MITIGATION PAYMENTS

FROM: *CP* CHRISTOPHER P. BURGER

RE: ANNUAL ACCOUNTING FOR SCHOOL FACILITIES FEES

As indicated in previous memoranda, Government Code sections 66001 and 66006 impose stringent requirements on public agencies which levy development fees. These sections require school districts collecting statutory school facilities fees (and other mitigation payments) to take certain actions prior to December 28, 2008. 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 all districts collecting development fees to make an annual accounting of those fees available to the public by December 28, 2008, and their governing boards to review that annual accounting at their next regularly scheduled meeting at least 15 days after the accounting was made available to the public. Section 66001 requires districts collecting development fees to make additional findings every five years about any fund in which those fees remain 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 four forms we have drafted to assist you in complying with Government Code sections 66001 and 66006, as follows:

1. A resolution related to statutory fees collected under Education Code section 17620.
2. A resolution related to mitigation payments collected by a few Kern County school districts under the Kern County Plan for Adequate Schools and Affordable Housing. (This form could be modified by other districts receiving mitigation payments under the authority of the Mira/Hart/Murietta decisions.)

3. An Exhibit A which would be completed and attached to each resolution, and covers the information required by Government Code section 66006.
4. An Exhibit B which would also be completed and attached to each 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 (paragraph F) and Exhibit B (paragraphs C and D).

B. With respect to paragraph A of Exhibit A, the fees could be described as follows:

1. For Accounting Resolution 1 (Education Code section 17620 fees):

Statutory school facilities fees.

2. For Accounting Resolution 2 (Mitigation Payments):

Payments to mitigate new development's impacts on school facilities.

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

1. For Accounting Resolution 1 (Education Code section 17620 fees):
 - (A) For unified districts (or districts not sharing the fee with another district).

\$2.97 per square foot of assessable space of residential construction; and \$0.47 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.

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

\$2.97 per square foot of assessable space of residential construction; and \$0.47 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.

2. Accounting Resolution 2 (Mitigation Payments):

(A) For unified districts (or districts not sharing the fee with another district) under the Kern County Plan:

\$4.26 per square foot of assessable space of residential construction; but subject to the district's determination that a particular project is exempt from all or part of this amount.

(B) For elementary or high school districts sharing the fee with another district under the Kern County Plan:

\$4.26 per square foot of assessable space of residential construction but subject to the district's determination that a particular project is exempt from all or part of this amount. Pursuant to an agreement with the district(s) sharing territory with the district, generally only _____ % of this amount is distributed to this district.

If your district is receiving mitigation payments on some basis other than the Kern County Plan, please contact this office for assistance in filling out this section if necessary.

D. With respect to paragraph 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 paragraph H of Exhibit A).

E. With respect to paragraph 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 paragraph 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 paragraph 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 paragraph A 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 paragraphs C and D of Exhibit B, the information to be provided relates to the project or projects identified in paragraph A 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 me.

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:

N/A. No refunds or allocations were made pursuant to subdivision (e) or (f) of section 66001.

EXHIBIT B
TO RESOLUTION REGARDING
ANNUAL ACCOUNTING OF DEVELOPMENT FEES
FOR FISCAL YEAR 2007-2008
FOR THE FOLLOWING FUND OR ACCOUNT:
_____ (the "Fund")

Per Government Code section 66001(d)(1)-(4) as indicated:

- A. With respect to only that portion of the Fund remaining unexpended at the end of the 2007-2008 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 as follows:

- B. See section 3.D of the Resolution.

- C. With respect to only that portion of the Fund remaining unexpended at the end of the 2007-2008 Fiscal Year, the sources and amounts of funding anticipated to complete financing in any incomplete improvements identified in paragraph A above are as follows:

- D. With respect to only that portion of the Fund remaining unexpended at the end of the 2007-2008 Fiscal Year, the following are the approximate dates on which the funding referred to in paragraph C above is expected to be deposited into the appropriate account or fund:

**RESOLUTION OF THE GOVERNING BOARD OF THE
_____ SCHOOL DISTRICT REGARDING
ANNUAL ACCOUNTING OF DEVELOPMENT FEES
FOR 2007-2008 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. 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 28, 2008, 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 _____, 2008. 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 2007-2008 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 2007-2008 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 2007-2008 Fiscal Year, the findings and evidence referenced above demonstrate that there is a reasonable relationship between the fee 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 2007-2008 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 are 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 2007-2008 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 66001(d), because all of the findings required by that subdivision have been made in connection with 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 _____, 2008, by the following vote:

AYES:

NOES:

ABSENT:

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

**RESOLUTION OF THE GOVERNING BOARD OF THE
SCHOOL DISTRICT REGARDING
ANNUAL ACCOUNTING OF DEVELOPMENT FEES
FOR FISCAL YEAR 2007-2008
FOR THE FOLLOWING FUND OR ACCOUNT:**

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

1. Authority and Reasons for Adopting Resolution.

A. This District has levied school facilities fees pursuant to various resolutions, the most recent of which, adopted on _____, is referred to as the "School Facilities Fees Resolution" in this Resolution and is hereby incorporated by reference into this Resolution. These resolutions were adopted under the authority of Education Code section 17620. In adopting these resolutions, this Board found that these school facilities fees would not be sufficient to provide for those school facilities necessary to reduce overcrowding caused by the development on which they were levied;

B. Recognizing that statutorily-authorized fees are insufficient, this Board adopted a Resolution on _____ adopting and implementing the Kern County Plan for Adequate Schools and Affordable Housing (the "Kern County Plan"). The Kern County Plan generally provides that residential projects for which any land use decisions were or will be made on or after January 1, 1993 are required to mitigate their effects on school facilities by payment of an inflation-indexed \$4.26 per square foot. This Board's Resolution adopting and implementing the Kern County Plan is referred to as the "Kern County Plan Resolution" in this Resolution and hereby incorporated by reference into this Resolution. Mitigation payments made to this District pursuant to the Kern County Plan and the Kern County Plan Resolution have been deposited in the following fund or account:

(the "Fund");

C. Although it is not certain that Government Code sections 66000, et seq., actually apply to the mitigation payments deposited into the Fund, this Board has been advised that it is both prudent and reasonable to comply with the provisions of Government Code sections 66001(d) and 66006(b) with respect to the Fund;

D. Government Code sections 66001(d) and 66006(b) require this District to make an annual accounting of covered funds or accounts and to make additional findings every five years if there are any funds remaining in those funds or accounts at the end of the prior fiscal year;

E. Government Code sections 66001(d) and 66006(b) further require that the annual accounting of covered funds or accounts and those findings be made available to the

public no later than December 28, 2008, 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;

F. 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 _____, 2008. 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; and

G. The Superintendent has also informed this Board that there is no new information which would adversely affect the validity of any of the findings or evidence contained in or referred to in its School Facilities Fees Resolution or Kern County Plan 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, and incorporated into this Resolution, as well as the evidence presented to this Board at this meeting, this Board finds each of the following with respect to the Fund for the 2007-2008 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 2007-2008 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 2007-2008 Fiscal Year, the findings and evidence referenced above demonstrate that there is a reasonable relationship between the fee 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 2007-2008 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 2007-2008 Fiscal Year, the approximate date 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 66001(d), because all of the findings required by that subdivision have been made with regard to 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 _____, 2008, by the following vote:

AYES:

NOES:

ABSENT:

of the Board
of the _____ District of
County, California