

SCHOOL DEVELOPER FEES REVISITED: DIFFERING INTERPRETATIONS?

The 2018-2019 Grand Jury received a complaint alleging that persons paying school district developer fees were not being given the notice required by law informing them of their right to protest, and school districts were using developer fees for impermissible uses.

SUMMARY

Anyone wishing to build, remodel to enlarge residential, commercial or industrial buildings in San Luis Obispo County must pay a developer fee to the school district in which the construction is located. These fees are intended to pay for the “construction or reconstruction of school facilities” needed to accommodate the increased enrollment resulting from the new development.

The assessment and collection of these fees have a number of restrictions and requirements. The applicable statutes

- prohibit their use as part of the general fund,
- require that they be maintained in separate accounts,
- require that they be separately reported, and
- require that developers be given a written notice advising them of their right to protest the fee.

In interviewing administrators of several school districts, the Grand Jury found that most districts appear to have adopted a permissive and expansive view of what expenditures are permitted by law. We also found that some developer fee expenditures appear to be outside of those permitted by California statute.

We discovered that the accounting required by the districts for the use of the funds is inadequate and not reasonably accessible to the public. We also discovered that at least one district fails to

record the fees in a separate accounting format as required by law, and to separately account for the use of these fees.

There is no effective oversight of the use of developer fees beyond that exercised by the local school board itself.

PURPOSE

The 2018-2019 Grand Jury investigated whether or not the legally required notice to developers was being provided. The failure to give this notice may create a risk of extending the liability of districts to legal claims.

The purpose of our investigation was also to determine how developer fees are being used by school districts. We also investigated whether or not any entity other than the school districts themselves has an oversight role in the use of developer fees.

These issues are of importance insofar as the public is entitled to know how these funds are spent.

ORIGIN

Acting on the citizen complaint, we investigated whether or not developers paying the fee are given the legally required written notice for the right to protest the assessment, how the fees are being used, and whether any external supervision is being exercised over the collection and use of such fees.

PROCEDURE

The Grand Jury interviewed the complainant and various representatives from a sampling of the County school districts and the County Office of Education.

As part of our extensive internet research, we reviewed a number of sources including:

- The Report of the 2013-2014 Grand Jury, “Developer Fees: A School Lesson In Justification”
- Reports and accountings for San Luis Coastal, Lucia Mar, Paso Robles, and Atascadero Unified districts
- A range of state statutes and various legal interpretations
- School district websites

NARRATIVE

Following the end of WWII, California experienced a great expansion of housing development. The increased population from the developments placed substantial pressure on the schools to accommodate the additional student enrollment.

During the 1970’s local government faced an increasing resistance to rising property taxes, at the time the primary source of school funding, resulting in the passing of Proposition 13. This limited both the amount of property taxes which could be imposed, as well as the ability of government to increase taxes.

With tax revenues limited, and in order to keep pace with increasing enrollments, local government began the practice of assessing fees on new development to cover the costs of the new school facilities. These fees were called “school-impact fees” or “mitigation fees”. The assessment and collection of school impact fees is authorized by Section 17620 of the California Education Code, and governed by the Mitigation Fee Act contained in Section 66000 of the California Government Code.

The Right to Protest Fees.

The law requires that the district assessing a development fee must give a written notice to the developer notifying them of their right to protest the imposition of the fee within a 90-day period. If the required notice is not given, then the time in which to file a lawsuit (the statute of limitations) appears to extend the possible future financial liability of the district.

We sent inquiries to various school districts in San Luis Obispo County asking how and when developers are given the required notice of their right to protest the imposition of fees. Their responses were as follows:

- San Luis Coastal Unified School District had not been giving the required notice and is now rectifying the situation.
- Lucia Mar Unified School District provides the required notice.
- Cayucos Elementary School District, Atascadero Unified School District, and Paso Robles Joint Unified School District responded but failed to indicate whether or not they do in fact provide the required notice to developers.

Use of Developer Fees.

California Education Code section 17620 limits the use of developer fees to funding “the construction and reconstruction of school facilities”, and specifically prohibits their use for “regular maintenance or routine repair” or the “deferred maintenance” of school facilities. California Government Code section 66006 requires that the districts “expend those fees solely for the purpose for which the fee was collected”. The statute does not specifically define “construction and reconstruction,” thus allowing different interpretations. Grand Jury interviews with administrators of districts in the County revealed most of them tended to view the limitations broadly. Some officials indicated that their attorneys had advised them that this approach was permissible.

This Grand Jury finds the interpretation and use of developer fees varies in districts around the County. Our investigation of the reports and accounts of several districts in the County revealed the following examples of developer fee expenditures that have been made by school districts:

- Construction of a multi-purpose room
- Construction of an office expansion
- Purchase of a kindergarten playground structure
- Restroom modernization
- Remodel and upgrade rooms
- Aerial survey
- Electrical work, a walkway, and a canopy

- Materials and supplies
- Services and other operating expenditures
- Purchase and installation of an auto lift
- Girl’s locker room upgrade
- Ceiling fans
- Water filter delivery system
- Structure gravity columns
- Paint 3 classrooms
- Health Services Room alteration
- Facility Master Plan
- Resurface basketball court area asphalt

While California Government Code section 66006 requires that the districts “expend those fees solely for the purpose for which the fee was collected,” we did not discover any legal action against a district alleging the improper use of such fees.

Maintaining Developer Fees in a Separate Account

California Government Code section 66006 requires that districts maintain the developer fees 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.” It is difficult to determine whether all school districts are in compliance.

Developer Fee Reports Difficult to Access

The Grand Jury discovered that few if any of the reports of the districts were reasonably accessible to the public or published in a format which could readily be understood. The searchability of the district websites often fails to adequately identify or reference the reports, and the sites may not contain the reports at all. Much of the data contained in the districts’ reports came from district financial reports which most members of the public may find confusing. We found it difficult to find the annual expenditure reports required by statute.

No Outside Supervision Over the Use of Developer Fees

The county offices of education provide many services to schools. These services include approving school budgets, calling for school elections, providing assistance in curricula, staff development and training, providing assistance with the design of business and personnel systems, and many other services to meet the changing needs of schools. Of primary concern to us as we researched our report was the oversight aspect of school budgeting. The county superintendent of schools is responsible for examining and approving school district budgets and expenditures. With the passage of Assembly Bill 1200 (1991), the county superintendent was given additional powers to enforce sound budgeting in order to ensure the fiscal integrity of the school district.¹ We believe the county superintendent of schools' responsibility to ensure fiscal integrity also extends to developer fees. This includes determining whether:

- developer fee collection and expenditures are appropriate,
- reports are issued in a timely manner, both annually and every 5 years,
- notices are provided that are consistent and accurately reflect regulatory requirements, and
- developer fee studies, reports and expenditures are easily accessed by the general public on each district's website.

Our research determined that the SLO County Office of Education reviews the audits of the school districts, but does not determine whether the developer fees have been used appropriately.

FINDINGS

- F1. The failure of school districts to provide the required written notice to developers of their right to protest may extend the period in which a developer is allowed to file a suit challenging a fee and may expose the districts to potential future liability.
- F2. In the sampled school districts there is inconsistency in reporting developer fee income and expenditures.
- F3. San Luis Coastal Unified School District had been failing to provide the required written notice to developers but has indicated that they are now providing the necessary notice and sent us a copy.

¹ *County Offices of Education*, California Department of Education website:
<https://www.cde.ca.gov/re/sd/co/coes.asp>

- F4. Lucia Mar School District has indicated that they are giving the required written notice and provided us a copy.
- F5. The Paso Robles, Cayucos, and Coast Unified school districts have responded with copies of the receipts given to developers, which do not include the required notice.
- F6. Atascadero Unified School District did not respond to the question of whether they give the required written notice to developers, thus it is unknown whether they are in compliance.
- F7. All of the sampled districts take a permissive view of the restrictions on the sort of expenditures which are allowed for developer fees.
- F8. It is difficult to determine whether developer fees are being maintained in a separate fund as required by law.
- F9. Most of the districts in the County either do not publish the required annual and 5-year reports on their use of developer fees, or provide such information in a difficult to access and understand format on their websites.
- F10. There is no general oversight exercised over the use of developer fees beyond that which may be provided by the district school boards.

RECOMMENDATIONS

- R1. All school districts must immediately begin providing the required written notice to developers of their right to protest the imposition of developer fees.
- R2. The County Office of Education should provide and require the school districts to use a standardized format for the notice of the right to protest the payment of developer fees. This form should be developed by January 1, 2020.
- R3. The Superintendent of Schools for San Luis Obispo County shall verify that every district is providing the required written notice to developers of their right to protest the imposition of developer fees.
- R4. Each school district must maintain its developer fees in a separate account as required by law, and not comingle these with other funds.

- R5. All districts should report their developer fees, including the mandated annual and 5-year reports, on their websites, in a prominently indexed and reasonably clear and accessible manner.
- R6. The School Boards for each district in San Luis Obispo County shall ensure that their district's developer funds have been properly used and sign a certificate of compliance.

REQUIRED RESPONSES

The following people are required to respond to the findings and recommendations within the timeframe shown and in accordance with the California Penal Code Section 933.05:

Lucia Mar Unified School District is required to respond to F1, F7, F8, F9, R4

San Luis Coastal Unified School District is required to respond to F1, F3, F7, F8, F9, F10, R1, R4

Paso Robles Unified School District is required to respond to F1, F5, F7, F8, F9, R1, R4

Atascadero Unified School District is required to respond to F1, F6, F7, F8, F9, R1, R4

San Luis Obispo County Superintendent of Schools is required to respond to F1, F2, F7, F8, F10, R2, R3, R6

The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by August 6, 2019. Please provide a paper copy and electronic version of all responses to the Grand Jury.

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AGENCY RESPONSE REQUIREMENTS

The Penal Code Section 933.05 that specifies the format and methodology for agency responses is listed below. All agency respondents are required to respond to all findings and recommendations in the following manner:

- If the respondent disagrees wholly or partially with an item, the respondent must elaborate on the portion of the item that they disagree with, and provide an explanation.
- If a respondent notes that an item will be implemented in the future, the response must include a timeframe for implementation.

- If a respondent notes that an item requires further analysis, the agency must include in the response an explanation of and the scope of what will be studied and the timeframe needed for the study. The timeframe for follow-up from the agency cannot exceed six months.
- If the item will not be implemented or is not reasonable, the respondent is required to provide a detailed explanation.

933.05. Findings and Recommendations

- (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:
- (1) The respondent agrees with the finding.
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.
- (b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:
- (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

Presiding Judge	Grand Jury
Presiding Judge Ginger Garrett Superior Court of California 1035 Palm Street Room 355 San Luis Obispo, CA 93408	San Luis Obispo County Grand Jury P.O. Box 4910 San Luis Obispo, CA 93403