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May 26, 2016

**To: All CBIA/BIA/HBA Members, Member Companies & Staff**

**From: California Building Industry Association**

**Re: State Allocation Board Action Triggering Level 3 (100%) Builder Financing**

Good afternoon,

To follow up on our industry conference call earlier this morning, this memo will provide you with a quick update of what initial steps you should take to determine which districts within your jurisdictions are eligible to impose Level 3 fees and to provide you with guidance as to when those fees may be charged.

### **Quick Background**

Yesterday over the strong objection of CBIA, the State Allocation Board (SAB) accepted their staff's report that as of May 25, 2016, the conditions in Government Code 65995.7 have occurred which would allow the Board to make a finding that new construction funds are no longer available for new construction apportionments. By a formal vote, six of the ten member Board made that finding and put into motion the statutory notification requirements that, upon completion, will allow districts to charge the Level III fee. Precisely, the Board must notify, in writing, the Chief Clerk of the Assembly and the Secretary of the Senate and that notification must be published in the journals of each respective house. As of today, that has not occurred.

### **Qualifying Districts ... Who Can Charge Level 3?**

In order to charge the alternative, Level 2, fee and the increased alternative, Level 3, fee a district must have eligibility and be participating in the state program and must, among other things, prepare and update annually a school facility needs analysis (SFNA). Typically the SFNA will identify the fees and will be accompanied by a resolution formally adopting the alternative and increased alternative fees. In such circumstances, upon the SAB published notice the authority of the district to levy and collect the fee is immediate. If the SFNA does not identify the increased alternative, Level 3, fee or if the accompanying resolution does not include it the district will have to go through the process of updating the SFNA and accompany that update with a resolution.

Districts that charge Level one fees may not charge Level 3 fees.

### **What To Look Out For**

School district legal counsels have moved quickly following last night's action and are advising their clients that, assuming a district's most recent SFNA provides for Level 3 fees and the district's governing board has adopted a resolution approving the Level 3 fees, that districts may begin collecting fees immediately, as early as today.

Some district legal counsels are also advising their clients that the statutorily-required notice from the SAB to the Senate and Assembly is NOT a prerequisite to levying the 100% fee.

### **Take Steps to Protect Yourself**

The best advice is to follow the *pay under protest* provisions of the Mitigation Fee Act (Government Code Section 66000 et seq.). To assist you in this effort, CBIA will work with its lawyers and provide you with a pay under protest letter specifically tailored to this particular action.

Additionally, pursuant to Government /code section 65995.7 (b) school districts may offer a reimbursement agreement or alternatively may negotiate a separate, mutually agreed upon, reimbursement agreement.

### **To The Court**

As discussed earlier today, CBIA is in Sacramento Superior Court this afternoon requesting a temporary order restraining the SAB from filing the notice and requesting a hearing within the next few weeks on the merits of the matter. It is CBIA's strong belief, as articulated in testimony to the Board last night, that new construction funds remain in the state account and the SAB continues to make apportionments of those funds. STAY TUNED!

For further information on these matters feel free to contact Richard Lyon at [rlyon@cbia.org](mailto:rlyon@cbia.org) or Nick Cammarota at [ncammarota@cbia.org](mailto:ncammarota@cbia.org)