REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, August 20, 2014

SCHOOL DISTRICT DATA	
School District: .....Dinuba Unified	County:..... Tulare
Application Number(s): 57/75531-00-003	School Name:.....Roosevelt Elementary
Total District Enrollment:..... 6,450	Project Grade Level:.....K-6
Financial Hardship:……YES	Date of Financial Hardship Status……...……May 3, 2012

Last Approved Local Bond Measure……November 7, 2006

Qualifying Financial Hardship Criteria: SFP Regulation Section 1859.81(c)(1)

PURPOSE OF REPORT

To present the District's appeal request to exclude developer fees from its available matching share contribution to the Roosevelt Elementary modernization project.

DESCRIPTION

The District is requesting the project maintain its Financial Hardship (FH) unfunded approval in the amount of $918,114, stating that the developer fees can only be used for contribution to new construction projects and should not be considered for this modernization project. The Education Code (EC) requires all developer fees on development to be considered as available contribution. However, the Government Code (GC) states that Level II fees are to be only used on school facilities, identified in the District's Needs Analysis, due to projected enrollment growth.

AUTHORITY

See Attachment A

BACKGROUND

In the initial FH review for Dinuba Unified completed in 2012, a Summary of Findings letter dated May 3, 2012 was issued reflecting $54,662 in funds available that the district must contribute to its SFP modernization projects and $99,144 available as contribution due to expenditures. The project received its unfunded grant approval from the State Allocation Board (Board) on October 12, 2012. Projects on an unfunded list more than 180 days must have a FH re-review completed prior to receiving an apportionment.

During a required subsequent FH re-review in June 2013, staff identified $1,369,676 in available funding ($1,267,653 from developer fees, and $102,023 from other sources). Upon further analysis, staff adjusted the amount of available funding to $696,769 ($594,746 from developer fees, and $102,023 from other sources).

Revised Project Funding: Roosevelt Elementary 57/75531-00-003

FH Unfunded approval	$ 918,114
Less Available District Contribution	$ 696,769
FH Grant	$ 221,345

(Continued on Page Two)

BACKGROUND (cont.)

On June 13, 2013, OPSC sent the District a letter (Attachment C) explaining the additional funds available for the project. The District disagreed with the OPSC finding in a letter (Attachment C-1) dated June 27, 2013, stating that the developer fees have to be used on new student housing and are not available to contribute to the District's unfunded FH modernization projects.

On October 3, 2013, OPSC responded in a letter (Attachment C-2) to the District's disagreement with the FH finding by explaining that the Board has regulatory authority to define sources of funds applicable to SFP projects, when determining FH need. The regulation applicable to FH is SFP Regulation 1859.81(a) and it does not differentiate between developer fees that are available for funding on new construction or modernization projects. It was further stated by staff that Government Code (GC) 66001(a)(4) did not limit the Board's authority to define which District funds are available for the District's matching contribution requirements. Additional follow up correspondence did not resolve the funding issue between OPSC and the District.

On October 14, 2013 a partial apportionment of the State's share ($1,607,880) of the project was provided in an effort to provide funds to the school district as soon as possible. However, the remaining project funding, the FH grant, was pending completion of a re-review of school district funds. The remaining FH grant was not immediately apportioned because additional District capital facility funds were identified during the re-review that reduced the unfunded FH grant approval. Currently, the FH portion of the project is awaiting resolution of the appeal and has not been reduced.

On November 1, 2013, the District filed an appeal disagreeing with staff's findings of applying available developer fees to this modernization project.

STAFF ANALYSIS / STATEMENTS

District's Position

The District's appeal states that the OPSC determination for FH on this project is inconsistent with State statute, SFP regulation and forms.

The District states that a condition required in collecting developer fees is to spend the funds appropriately and as such it has to adhere to GC Section 66001(a)(4) which states that it must, "*…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.*" In complying with this statute, the District contends that the developer fees collected must be used to pay for new student housing at Dinuba High School, and is not available for its unfunded modernization projects.

According to Education Code (EC) Section 17075.15(c)(2), the Board "may exclude funds that it finds is not reasonably available for the project". The District states that just as redevelopment funds must be used on a specific geographic area, this requirement in GC requires developer fees to be spent on projects related to housing pupils from the development that generated the developer fees. In this case, the District asserts that there is a new construction project at Dinuba High School, so these developer funds are not available for the District's unfunded modernization projects.

The District states that OPSC's forms differentiate between new construction and modernization projects with regard to available funds for developer fees. To support its argument, the District referenced the SFP FH Checklist form, in which there is a question asking "Is the district renewing its Financial Hardship for a new construction project?"

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STAFF ANALYSIS / STATEMENTS (cont.)

The District asserts that the OPSC FH form differentiates between new construction and modernization projects with regard to developer fees in its review of whether or not these fees are available as district matching contribution.

The District requests that the Board make the determination that the developer fees identified by OPSC are not reasonably available to its modernization projects.

Staff Position

EC Section 17075.15(b) mandates that the Board adopt regulations for determining the amount of funding that may be provided to a district. EC Section 17075.15(c) mandates that the Board define the sources of financing that the school district could reasonably provide for school facilities to include unencumbered funds available in all facility accounts, "…including but not limited to, fees on development."

Pursuant to EC Section 17075.15, the Board adopted SFP Regulation Section 1859.81, which provides that "after the initial request for financial hardship status is granted, no further encumbrances will be approved by the OPSC and all prospective revenue made available to the district's capital facility accounts shall be deemed available as matching contribution…" Upon review, OPSC identified $696,769 in available funds. These were available funds as these funds remained unused and contractually unencumbered for specific capital outlay purposes. Per SFP Regulation Section 1859.81, unencumbered funds are to be included in the district's matching contribution.

Eligibility for financial hardship requires adherence to the SFP Regulation Section 1859.81 that requires at the outset, the district is financially unable to provide "all necessary matching funds." As such, the district is required to submit to a financial analysis review to determine funds available from all capital outlay accounts, including but not limited to developer fees.

Level II Developer Fees

Developer fees are an assessment levied by a school district within its boundaries, for the purpose of funding the construction or reconstruction of school facilities if specific legal criteria are met as specified in EC Section 17620. There are three levels of fees that can be levied; however, there is no distinction between the fees except for the amount of money assessed for development within a district's boundaries. Level II fees are an alternate to Level I fees and meant to cover 50 percent of a District's cost to build a school.

GC Section 65995.5 describes how a district may impose a Level II fee as an alternative to Level I fees. In order to be eligible to charge Level II fees, a district must do the following:

1. Make a timely application for funding to the Board for new construction funding
2. Conduct and adopt a school facility needs analysis
3. Meet at least two of the four criteria listed in Section 65995.5(b)(3).

The school facilities needs analysis is conducted by the governing board of a school district and is used to determine the need for new school facilities for the unhoused pupils that are attributable to projected enrollment growth of new residential units over the next five years. GC Section 65995.5(f) states that except for the use of the Level II fees as provided for in paragraph (5) of subdivision (a) of Section 17620 of the Education Code, the Level II fees shall be expended "solely" on school facilities identified in the District's needs analysis "…as being attributable to projected

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STAFF ANALYSIS / STATEMENTS (cont.)

enrollment growth from the construction of new residential units." Such needs analysis, however, "…may be revised at any time…" by the school district pursuant to GC 65995.6.

Education Code and SFP Regulations – Developer Fees

EC section 17075.15 subdivision (b) requires that the "board shall adopt regulations for determining the amount of funding that may be provided to a district…" It goes on to state in subdivision (c) that the "regulations shall define the amount, and sources, of financing that the school district could reasonably provide for school facilities…" such as "(1) unencumbered funds available in all facility account in the school district, but not limited to fees on development…"

The Legislature was clear that "fees on development" are a source of financing that a school district could reasonably provide. In compliance with EC section 17075.15 subdivision (b), the board defined the sources of financing and stated that "all funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution." [SFP Regulation Section 1859.81]

Under SFP Regulation Section 1859.81, unencumbered "development fees" are deemed to be "available" as a school district's matching contribution. Since the language in EC Section 17075.15 did not imply different classes of "fees on development," SFP Regulation Section 1859.81 also did not distinguish between the types of development fees (Level I and II) and their differing requirements.

Where the school district opted to impose a fee based on the alternative calculation allowed in GC Section 65995.5, also known as Level II fees, the parameters of the fee's use are limited. Subdivision (f) of section 65995.5 states that such a fee "…shall be expended solely on the school facilities identified in the needs analysis…"
GC Section 65995.6 states that a school facilities needs analysis is to be used to determine "the need for new school facilities for unhoused pupils that are attributable to projected enrollment growth from the development of new residential units…" There is, therefore, a direct correlation between the unhoused pupils due to projected enrollment growth and the use of the development fee for new construction projects.

In compliance with current SFP regulations, staff has consistently interpreted the EC Section and FH regulations to mean all unencumbered development fees, irrespective of how such fees were derived, as being available for contribution. This would include treating unencumbered Level II fees as being available funds for both modernization and new construction projects. Therefore, the OPSC seeks the Board's direction in determining the application of Level II developer fees.

Potential SFP Regulations Amendment

EC Section 17075.15 authorizes the Board to adopt regulations to define the amount and sources of financing that a school district could reasonably provide for school facilities. The Board may consider directing staff to bring forward amended regulations to have unencumbered Level II developer fees as applying only to new construction projects.

If this appeal is not approved by the Board, then the attached item (Attachment D) to reduce the FH unfunded approval on Roosevelt Elementary to $221,345 is attached for approval.

If the Board approves the District's appeal, the funding item with a $816,091 FH apportionment will be approved (Attachment E).

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STAFF ANALYSIS / STATEMENTS (cont.)

Conclusion

Staff is seeking Board direction on this appeal. Additionally, if this appeal is approved, staff recommends amending regulations to have unencumbered Level II developer fees as applying only to new construction projects to clarify this issue for future projects. In addition, staff should include an analysis of all other developer fees, and whether regulations should address these as well.

BOARD OPTION

Pursuant to the *Rules and Procedures of the State Allocation Board,* "Staff is providing the following option for the Board's consideration. A positive vote by six members is required for the Board to take action that is an alternative to Staff's administrative action. Absent a positive vote by six members of the Board, Staff's administrative action will stand and the school district's appeal will be considered closed."

Grant the District's appeal.

BOARD ACTION

In considering this Item, the SAB approved the District's appeal to exclude developer fees from its available matching share contribution to the Roosevelt Elementary modernization project, which includes approval of Attachment E, page 148.

Additionally, the SAB directed staff to conduct an analysis of the regulations addressing the use and application of all the developer fees to ensure that the regulations reflect the statutory requirements. Further, the SAB directed staff to report back at a future meeting its findings with any proposed amendments to the regulations to ensure compliance.

ATTACHMENT A
AUTHORITY

Education Code Section 17075.10 - 17075.15

17075.10. (a) A school district may apply for hardship assistance in cases of extraordinary circumstances. Extraordinary circumstances may include, but are not limited to, the need to repair, reconstruct, or replace the most vulnerable school facilities that are identified as a Category 2 building, as defined in the report submitted pursuant to Section 17317, determined by the department to pose an unacceptable risk of injury to its occupants in the event of a seismic event.

(b) A school district applying for hardship state funding under this article shall comply with either paragraph (1) or (2).

(1) Demonstrate both of the following:

(A) That due to extreme financial, disaster-related, or other hardship the school district has unmet need for pupil housing.

(B) That the school district is not financially capable of providing the matching funds otherwise required for state participation, that the district has made all reasonable efforts to impose all levels of local debt capacity and development fees, and that the school district is, therefore, unable to participate in the program pursuant to this chapter except as set forth in this article.

(2) Demonstrate that due to unusual circumstances that are beyond the control of the district, excessive costs need to be incurred in the construction of school facilities. Funds for the purpose of seismic mitigation work or facility replacement pursuant to this section shall be allocated by the board on a 50-percent state share basis from funds reserved for that purpose in any bond approved by the voters after January 1, 2006. If the board determines that the seismic mitigation work of a school building would require funding that is greater than 50 percent of the funds required to construct a new facility, the school district shall be eligible for funding to construct a new facility under this chapter.

(c) The board shall review the increased costs that may be uniquely associated with urban construction and shall adjust the per-pupil grant for new construction or modernization hardship applications as necessary to accommodate those costs. The board shall adopt regulations setting forth the standards, methodology, and a schedule of allowable adjustments, for the urban adjustment factor established pursuant to this subdivision.

17075.15. (a) From funds available from any bond act for the purpose of funding facilities for school districts with a financial hardship, the board may provide other construction, modernization, or relocation assistance as set forth in this chapter or Chapter 14 (commencing with Section 17085) to the extent that severe circumstances may require, and may adjust or defer the local financial participation, as pupil health and safety considerations require to the extent that bond act funds are provided for this purpose.

(b) The board shall adopt regulations for determining the amount of funding that may be provided to a district, and the eligibility and prioritization of funding, under this article.

(c) The regulations shall define the amount, and sources, of financing that the school district could reasonably provide for school facilities as follows:

(1) Unencumbered funds available in all facility accounts in the school district including, but not limited to, fees on development, redevelopment funds, sale proceeds from surplus property, funds generated by certificates of participation for facility purposes, bond funds, federal grants, and other funds available for school facilities, as the board may determine.

(2) The board may exclude from consideration all funds encumbered for a specific capital outlay purpose, a reasonable amount for interim housing, and other funds that the board may find are not reasonably available for the project.

(d) Further, the regulations shall also specify a method for determining required levels of local effort to obtain matching funds. The regulations shall include consideration of at least all of the following factors:

(1) Whether the school district has passed a bond measure within the two-year period immediately preceding the application for funding under this article, the proceeds of which are substantially available for use in the project to be funded under this chapter, but remains unable to provide the necessary matching share requirement.

Education Code Section 17075.10-17075.15 - Continued

(2) Whether the principal amount of the current outstanding bonded indebtedness issued for the purpose of constructing school facilities for the school district and secured by property within the school district or by revenues of, or available to, the school district, which shall include general obligation bonds, Mello-Roos bonds, school facility improvement district bonds, certificates of participation, and other debt instruments issued for the purpose of constructing school facilities for the school district and for which owners of property within the school district or the school district are paying debt service is at least 60 percent of the school district's total bonding capacity, as determined by the board.

(3) Whether the total bonding capacity, as defined in Section 15102 or 15106, as applicable, is five million dollars ($5,000,000) or less, in which case, the school district shall be deemed eligible for financial hardship.

(4) Whether the application for funding under this article is from a county superintendent of schools.

(5) Whether the school district submits other evidence of substantial local effort acceptable to the board.

(6) The value of any unused local general obligation debt capacity, and developer fees added to the needs analysis to reflect the district's financial hardship, available for the purposes of school facilities financing.

Education Code Section 17620

17620. (a) (1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code.

School Facility Program Regulation Section 1859.81 Financial Hardship:

Except for Joint-Use Projects and Career Technical Education Facilities Projects, a district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating the requirements of (a), (c), and (d) below:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution.

After the initial request for financial hardship status is granted, no further encumbrances will be approved by the OPSC and all prospective revenue made available to the district's capital facility accounts shall be deemed available as matching contribution on the subsequent financial hardship review, with the exception of:

(1) Approved interim housing expenditures.
(2) Funding to pay for previously recognized multi-year encumbrances approved at the initial financial hardship approval.
(3) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Federal Renovation Program when the amount expended out of that fund does not exceed the maximum Federal Renovation Grant amount.
(4) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the School Facilities Needs Assessment Grant Program or Emergency Repair Program when the amount expended out of that fund does not exceed the maximum grant amount apportioned.

School Facility Program Regulation Section 1859.81 - Continued

(5) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Career Technical Education Facilities Program when the amount expended out of that fund does not exceed the applicant's share of the maximum grant amount apportioned.
(6) Funding that is transferred into a Special Reserve Fund and used for the express purpose of the Overcrowding Relief Grant when the amount expended out of that fund does not exceed the amount of the site acquisition and design costs of the project and the district has submitted an approved Form SAB 50-11.
(7) Funding that is used for the express purpose of reimbursing the State a proportionate share of financial hardship received when there has been a transfer of a special education program and title to the facility. In addition, the funding was used within five years of the title transfer.
(8) Funding to pay for obtaining a structural report pursuant to Section 1859.82 for an approvable and funded seismic mitigation project.
(9) All other capital facility funding for a period of three years when no subsequent financial hardship request is made during this period, with the exception of the funding identified in (6). The three-year period begins with the date of the most recent financial hardship new construction or modernization adjusted grant funding apportionment. When Overcrowding Relief Grant funding is set aside pursuant to (6) and the School District has not submitted, or the OPSC has not accepted, a Form SAB 50-04 for an Overcrowding Relief Grant within three years from the date of deposit into the Special Reserve Fund, or the School District has not met the requirements in Sections 1859.90 or 1859.105, remaining funds plus interest accrued at the Pooled Money Investment Board rate at that time period shall be deemed available as matching contribution on a subsequent financial hardship project or be captured through an audit adjustment pursuant to Section 1859.106.

The financial hardship analysis is subject to approval by the Board.

(b) From the funds deemed available as a matching contribution, the district may retain $19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (b)(7) as follows:
(1) Determine the current enrollment of the district by grade level as shown on the latest Form SAB 50-01.
(2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted Form SAB 50-06 indicating that the project is 100 percent complete.
(3) Subtract (b)(2) from (b)(1).
(4) Determine the number of classrooms by grade level reported in Part 1, Line 8 on Form SAB 50-02. (5)Multiply the classrooms determined in (b)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.
(6) Subtract the product determined in (b)(5) from the difference determined in (b)(3) by grade level.
(7) Divide the difference by grade level determined in (b)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain $19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (b)(7) divided by eight rounded up to the nearest whole number.

School Facility Program Regulation Section 1859.81 - Continued

From the funds deemed available as a matching contribution, the district may also retain $19,776 per classroom in each reporting period for the cost to provide necessary interim housing for the currently unhoused pupils displaced as a result of a SAB approved seismic mitigation project pursuant to Section 1859.82. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing shall be the quotient of the displaced pupils by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(c) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district issued for the purpose of constructing school facilities in accordance with Education Code Section 17072.35 or 17074.25 as appropriate, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).

(3) It is a County Superintendent of Schools.

(4) The district's total bonding capacity at the time of the request for financial hardship status is $5 million or less.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district may be deemed eligible for rental payments of $2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are available and the district provides financial documentation that it is unable to afford the full rental amount and any other information satisfactory to the Board that the rental reduction is necessary. The number of classrooms eligible for the $2,000 rental payments shall be the sum of the numbers determined in (c)(5)(B) as follows:

(A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the Form SAB 50-04 that were denied financial hardship status.

(B) Divide the number by grade level determined in (c)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

(d) The district has not signed a contract for acquisition or construction of classrooms that replace existing facility(ies), which were included in the determination of the district's new construction eligibility pursuant to Education Code Section 17071.75, in a locally funded project during the five-year period immediately preceding the district's application for financial hardship assistance. This restriction may be lifted if the Board finds that unforeseen and extenuating circumstances existed that required the district to use local funds to replace the facility(ies).

(e) If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

School Facility Program Regulation Section 1859.81 - Continued

(1) Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file Form SAB 50-04 under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.
(2) If the district does not submit Form SAB 50-04 under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.
(3) If the district submits Form SAB 50-04 within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

(f) If the district submits Form SAB 50-04 within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on the "Unfunded List (Lack of AB 55 Loans)" for more than 180 calendar days as a result of the State of California's inability to provide interim financing from the Pooled Money Investment Account (AB 55 loans), the Board may suspend the unfunded review requirement as defined in Regulation Section 1859.81(e). Projects added to any other unfunded list shall be subject to the review detailed in Regulation Section 1859.81(e). Regulation Section 1859.81(f) shall become inoperative July 1, 2011.
(g) A project added to an unfunded list on or after July 1, 2011 will be subject to the review detailed in section (e)(3). For projects added to an unfunded list between February 25, 2009 and June 30, 2011, only the district's financial records on or after July 1, 2011 will be considered in calculating any adjustment to the district's matching share.

Government Code Section 65995.5

65995.5. (a) The governing board of a school district may impose the amount calculated pursuant to this section as an alternative to the amount that may be imposed on residential construction calculated pursuant to subdivision (b) of Section 65995.

(b) To be eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section, a governing board shall do all of the following:

(1) Make a timely application to the State Allocation Board for new construction funding for which it is eligible and be determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) and Article 3 (commencing with Section 17071.75) of Chapter 12.5 of Part 10 of the Education Code. A governing board that submits an application to determine the district's eligibility for new construction funding shall be deemed eligible if the State Allocation Board fails to notify the district of the district's eligibility within 120 days of receipt of the application.

(2) Conduct and adopt a school facility needs analysis pursuant to Section 65995.6.

(3) Until January 1, 2000, satisfy at least one of the requirements set forth in subparagraphs (A) to (D), inclusive, and, on and after January 1, 2000, satisfy at least two of the requirements set forth in subparagraphs (A) to (D), inclusive:

(A) The district is a unified or elementary school district that has a substantial enrollment of its elementary school pupils on a multitrack year-round schedule. "Substantial enrollment" for purposes of this paragraph means at least 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, in the high school attendance area in which all or some of the new residential units identified in the needs analysis are planned for construction. A high school district shall be deemed to have met the requirements of this paragraph if either of the following apply:

Government Code Section 65995.5 - Continued

(i) At least 30 percent of the high school district's pupils are on a multitrack year-round schedule.

(ii) At least 40 percent of the pupils enrolled in public schools in kindergarten and grades 1 to 12, inclusive, within the boundaries of the high school attendance area for which the school district is applying for new facilities are enrolled in multitrack year-round schools.

(B) The district has placed on the ballot in the previous four years a local general obligation bond to finance school facilities and the measure received at least 50 percent plus one of the votes cast.

(C) The district meets one of the following:

(i) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 15 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners prior to November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(ii) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 30 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners after November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).
Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(D) At least 20 percent of the teaching stations within the district are relocatable classrooms.

(c) The maximum square foot fee, charge, dedication, or other requirement authorized by this section that may be collected in accordance with Chapter 6 (commencing with Section 17620) of Part 10.5 of the Education Code shall be calculated by a governing board of a school district, as follows:

(1) The number of unhoused pupils identified in the school facilities needs analysis shall be multiplied by the appropriate amounts provided in subdivision (a) of Section 17072.10. This sum shall be added to the site acquisition and development cost determined pursuant to subdivision (h).

(2) The full amount of local funds the governing board has dedicated to facilities necessitated by new construction shall be subtracted from the amount determined pursuant to paragraph (1). Local funds include fees, charges, dedications, or other requirements imposed on commercial or industrial construction.

(3) The resulting amount determined pursuant to paragraph (2) shall be divided by the projected total square footage of assessable space of residential units anticipated to be constructed during the next five-year period in the school district or the city and county in which the school district is located. The estimate of the projected total square footage shall be based on information available from the city or county within which the residential units are anticipated to be constructed or a market report prepared by an independent third party.

(d) A school district that has a common territorial jurisdiction with a district that imposes the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7, may not impose a fee, charge, dedication, or other requirement on residential construction that exceeds the limit set forth in subdivision (b) of Section 65995 less the portion of that amount it would be required to share pursuant to Section 17623 of the Education Code, unless that district is eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7.

Government Code Section 65995.5 – Continued

(e) Nothing in this section is intended to limit or discourage the joint use of school facilities or to limit the ability of a school district to construct school facilities that exceed the amount of funds authorized by Section 17620 of the Education Code and provided by the state grant program, if the additional costs are funded solely by local revenue sources other than fees, charges, dedications, or other requirements imposed on new construction.

(f) Except as provided in paragraph (5) of subdivision (a) of Section 17620 of the Education Code, a fee, charge, dedication, or other requirement authorized under this section and Section 65995.7 shall be expended solely on the school facilities identified in the needs analysis as being attributable to projected enrollment growth from the construction of new residential units. This subdivision does not preclude the expenditure of a fee, charge, dedication, or other requirement, authorized pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 17620, on school facilities identified in the needs analysis as necessary due to projected enrollment growth attributable to the new residential units.

(g) "Residential units" and "residences" as used in this section and in Sections 65995.6 and 65995.7 means the development of single-family detached housing units, single-family attached housing units, manufactured homes and mobilehomes, as defined in subdivision (f) of Section 17625 of the Education Code, condominiums, and multifamily housing units, including apartments, residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, and stock cooperatives, as defined in Section 4190 of the Civil Code.

(h) Site acquisition costs shall not exceed half of the amount determined by multiplying the land acreage determined to be necessary under the guidelines of the State Department of Education, as published in the "School Site Analysis and Development Handbook," as that handbook read as of January 1, 1998, by the estimated cost determined pursuant to Section 17072.12 of the Education Code. Site development costs shall not exceed the estimated amount that would be funded by the State Allocation Board pursuant to its regulations governing grants for site development costs.

Government Code Section 65995.6

65995.6. (a) The school facilities needs analysis required by paragraph (2) of subdivision (b) of Section 65995.5 shall be conducted by the governing board of a school district to determine the need for new school facilities for unhoused pupils that are attributable to projected enrollment growth from the development of new residential units over the next five years. The school facilities needs analysis shall project the number of unhoused elementary, middle, and high school pupils generated by new residential units, in each category of pupils enrolled in the district. This projection of unhoused pupils shall be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those anticipated to be constructed either in the school district or the city or county in which the school district is located, and relevant planning agency information, such as multiphased development projects, that may modify the historical figures. For purposes of this paragraph, "type" means a single family detached, single family attached, or multifamily unit. The existing school building capacity shall be calculated pursuant to Article 2 (commencing with Section 17071.10) of Chapter 12.5 of Part 10 of the Education Code. The existing school building capacity shall be recalculated by the school district as part of any revision of the needs analysis pursuant to subdivision (e) of this section. If a district meets the requirements of paragraph (3) of subdivision (b) of Section 65995.5 by having a substantial enrollment on a multitrack year-round schedule, the determination of whether the district has school building capacity area shall reflect the additional capacity created by the multitrack year-round schedule.

(b) When determining the funds necessary to meet its facility needs, the governing board shall do each of the following:

(1) Identify and consider any surplus property owned by the district that can be used as a schoolsite or that is available for sale to finance school facilities.

(2) Identify and consider the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities.

(3) Identify and consider local sources other than fees, charges, dedications, or other requirements imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units.

(c) The governing board shall adopt the school facility needs analysis by resolution at a public hearing. The school

Government Code Section 65995.6 - Continued

facilities needs analysis may not be adopted until the school facilities needs analysis in its final form has been made available to the public for a period of not less than 30 days during which time the school facilities needs analysis shall be provided to the local agency responsible for land use planning for its review and comment. Prior to the adoption of the school facilities needs analysis, the public shall have the opportunity to review and comment on the school facilities needs analysis and the governing board shall respond to written comments it receives regarding the school facilities needs analysis.

(d) Notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed school facilities needs analysis and any proposed revision of the school facilities needs analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the school district that is conducting the hearing no less than 30 days prior to the hearing. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous public places within the jurisdiction of the school district not less than 30 days prior to the hearing. In addition to these notice requirements, the governing board shall mail a copy of the school facilities needs analysis and any proposed revision to the school facilities needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The governing board may charge a fee reasonably related to the cost of providing these materials to those persons who request the school facilities needs analysis or revision.

(e) The school facilities needs analysis may be revised at any time in the same manner, and the revision is subject to the same conditions and requirements, applicable to the adoption of the school facilities needs analysis.

(f) A fee, charge, dedication, or other requirement in an amount authorized by this section or Section 65995.7, shall be adopted by a resolution of the governing board as part of the adoption or revision of the school facilities needs analysis and may not be effective for more than one year. Notwithstanding subdivision (a) of Section 17621 of the Education Code, or any other provision of law, the fee, charge, dedication, or other requirement authorized by the resolution shall take effect immediately after the adoption of the resolution.

(g) Division 13 (commencing with Section 21000) of the Public Resources Code may not apply to the preparation, adoption, or update of the school facilities needs analysis, or adoption of the resolution specified in this section.

(h) Notice and hearing requirements other than those provided in this section may not be applicable to the adoption or revision of a school facilities needs analysis or the resolutions adopted pursuant to this section.

Government Code Section 66001:

66001. (a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency, 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, 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) (1) 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:

Government Code Section 66001 - Continued

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

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

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

(D) Designate the approximate dates on which the funding referred to in subparagraph (C) is expected to be deposited into the appropriate account or fund.

(2) 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.

(g) A fee shall not include the costs attributable to existing deficiencies in public facilities, but may include the costs attributable to the increased demand for public facilities reasonably related to the development project in order to (1) refurbish existing facilities to maintain the existing level of service or (2) achieve an adopted level of service that is consistent with the general plan.

STATE OF CALIFORNIA
SCHOOL DISTRICT APPEAL REQUEST

STATE ALLOCATION BOARD
OFFICE OF PUBLIC SCHOOL CONSTRUCTION

SAB 189 (REV 10/09)

SCHOOL DISTRICT Dinuba Unified School District	APPLICATION NUMBER N/A
SCHOOL NAME	COUNTY Tulare
DISTRICT REPRESENTATIVE Frank Rios	E-MAIL ADDRESS frios@dinuba.k12.ca.us

Purpose of Request:

The Dinuba Unified School District ("District") disagrees with the Office of Public School Construction's ("OPSC") finding that the District's developer fees can be applied as match on the Districts' unfunded Financial Hardship modernization projects.

Basis of Request:

- [x] Law (Statute) Government Code Section 66001(a)(4), Education Code 17075.15
- [x] Regulation School Facility Program Regulation Section 1859.81
- [x] Other (specify) School Facility Program Financial Hardship Checklist – Phase I Form

Description:

Background
The District received Financial Hardship status on May 5, 2012. Subsequently, on October 24, 2012, the Roosevelt Elementary modernization project (57/75531-00-003) received an Unfunded Approval (Lack of AB 55 Loans). On December 12, 2012, the Dinuba High (57/75531-00-004), Washington Intermediate (57/75531-00-005), Grand View Elementary (57/75531-00-006), Wilson Elementary (57/75531-00-007), Jefferson Elementary (57/75531-00-008) and the Lincoln Elementary (57/75531-00-009) modernization projects received an Unfunded Approval (Lack of Bonding Authority).

Anticipating a possible apportionment for the Roosevelt project in spring 2013, OPSC requested to begin a Financial Hardship Re-review on March 15, 2013. At the conclusion of that Re-Review on June 13, 2013, OPSC determined that the District had collected developer fees to cover the match on the modernization project. The District responded to OPSC on June 28, 2013 in disagreement with the findings. On October 3, 2013, OPSC issued a response to the District, again stating that developer fees collected could be used as match for modernization projects. The District provided additional information on October 10, 2013. The modernization project received a funded apportionment on October 14, 2013. The OPSC then issued a final determination regarding the developer fees on October 17, 2013, and plans to apply the developer fees as matching contribution to the District's funded modernization project. Copies of the referenced correspondence are attached.

Analysis
Correspondence from the OPSC indicates that developer fees are applied as match for both new construction and modernization projects. This determination is inconsistent with State statute, SAB regulation and OPSC forms.

As a condition of collecting developer fees, districts must adhere to the Government Codes to spend the funds appropriately. Specifically, pursuant to Government Code Section 66001(a)(4), the District as the local agency must "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."

In complying with the Government Code, the District has determined that the $1,267,653 in developer fees collected must be used to pay for new student housing at Dinuba High School in order to comply with the statute as this is the project currently planned to house the students generated from the new development for which the developer fees were paid.

Per Education Code Section 17075.15(c)(2), the SAB "may exclude funds that it finds is not reasonably available for the project". Similar to redevelopment funds generated and specifically used for particular geographical areas, the Government Code requires that developer fees are spent on projects related to housing pupils from the development that paid the fees, in this case an addition project at Dinuba High School and are therefore not available for the District's unfunded modernization projects.

School Facility Program Financial Hardship Checklist – Phase I form, used by districts when applying for Financial Hardship is in direct conflict with the OPSC assertion that there is no distinction between new construction and modernization projects with regards to developer fees. On the form OPSC asks districts whether or not a project is a new construction project and if so requires the district to provide developer fee information not required on modernization projects. Clearly, OPSC differentiates between new construction and modernization projects in its review of whether or not developer fee funds are available as district matching contribution. In its October 17, 2013 letter to the District, OPSC states "a district only submitting for modernization projects cannot charge Level 2 [developer] fees", but goes on to say "this regulation [SFP Regulation Section 1859.81(a)] does not differentiate between new construction and modernization projects."

Conclusion
The District cannot reasonable apply the $1,267,653 in developer fees to its modernization projects as it does not meet the nexus requirements outlined in the Government Code, Education Code Section 17075.15(c)(2) and the School Facility Program Financial Hardship Checklist – Phase I form acknowledge that by statute, not all capital facility funds are available for all projects. The District's unfunded Financial Hardship modernization projects are not the facilities that will provide housing for the students generated by the new development for which the $1,267,653 in developer fees identified above were paid. The District is committed to using the developer fees for new construction projects at Dinuba High School. Therefore, these funds are not available for the District's unfunded Financial Hardship modernization projects.

We request the SAB make the determination that the identified developer fees are not reasonably available to its modernization projects.

The OPSC has indicated that it plans to agendize an item for the November 12, 2013 State Allocation Board meeting to reduce the Roosevelt modernization project (57/75531-00-003) unfunded approval. We also request that the SAB not take any action to reduce the Roosevelt unfunded approval until the District's appeal is resolved.

SIGNATURE OF AUTHORIZED DISTRICT REPRESENTATIVE Frank Rios	DATE 10/30/13

DGS CALIFORNIA DEPARTMENT OF GENERAL SERVICES

Governor Edmund G. Brown Jr.

June 13, 2013

Dr. Joe Hernandez
District Superintendent
Dinuba Unified School District
1327 East El Monte Way
Dinuba, CA 93618

Dear Dr. Hernandez:

The Office of Public School Construction (OPSC) has completed the Dinuba Unified School District (District) Financial Hardship Unfunded Re-Review. Enclosed is a Summary of Findings. Based on our review of the information submitted by the District, the OPSC has determined that the District has **$1,369,676 in additional funds available** and **$1,885** due to expenditures to contribute to their projects on the unfunded list. This is in addition to the **$54,662** in available funds previously applied (see table below) and **$99,144** available as contribution due to expenditure.

The following application is currently on the unfunded list and competing in the current priority in funding round.

Project Number	Phase	School Name	Unfunded SAB Date	Financial Hardship Unfunded Apportionment	Cash Contribution previously Applied
57/75531-00-003	Full	Roosevelt Elementary	10/24/2012	$918,114	$54,662
		Total		$ 918,114.00	$ 54,662

Please Note: This letter does not approve the District for the Financial Hardship apportionment. The District will not be approved for an apportionment for its projects on the unfunded list until it concurs with the OPSC findings by submitting a signed Summary of Available Funds Worksheet(s). After the OPSC receives the signed worksheet(s), the district's unfunded Financial Hardship projects currently on the unfunded list will be apportioned when funding becomes available.

Please indicate the District's conclusion by checking the applicable box below and submitting the applicable document(s) by June 28, 2013. **If no response is received by that date, the OPSC will not be able to finalize the Financial Hardship Re Review and the District may be delayed in receiving their apportionment(s).**

Check applicable box:

☐ If the District concurs with the OPSC findings:

Sign and date the Financial Hardship Summary of Available Funds and return it to the OPSC.

☒ If the District disagrees with the OPSC findings:

Submit a written statement to the OPSC with applicable supporting documentation.

If you have any questions, please contact me at Jacqueline.Shepherd@dgs.ca.gov or (916) 376-5119.

Sincerely,

Jacqueline Shepherd

Jacqueline Shepherd, Auditor
Office of Public School Construction

cc: Project file – Financial Hardship section – CDS# 75531

Cultivating Excellence

Dinuba Unified School District
Administration Office
1327 East El Monte Way
Dinuba, CA 93618
Tel. (559) 595-7200
Fax (559) 591-3334
http.//www.dinubausd.org

DIVERSITY

INNOVATION

NURTURING

UNITY

BUILDING CHARACTER

ACCOUNTABILITY

Grand View Elementary
Jefferson Elementary
Lincoln Elementary
Roosevelt Elementary
Wilson Elementary
JFK Academy
Washington Intermediate
Sierra Vista High School
Dinuba High School
Ronald Reagan Academy

June 27, 2013

Jacqueline Shepherd
Office of Public School Construction
707 Third Street
West Sacramento, CA 95605

Subject: Dinuba Unified School District – Financial Hardship Findings

Dear Ms. Shepherd:

The Dinuba Unified School District ("District") disagrees with the Office of Public School Construction's ("OPSC") findings on the funds available to contribute to their projects on the unfunded list. The OPSC findings include an additional District contribution of $1,267,653 in Developer Fee funds that are not available to contribute to the Districts' unfunded Financial Hardship modernization projects.

The Dinuba Unified Board of Education ("Board") must comply with the Government Code Section 66001 regarding the use of developer fees. Government Code Section 66001 (a)(4) states that the District shall:

> *"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."*

Based on the above referenced Government Code, all school districts that collect developer fees must allocate these fees only to projects that provide additional student housing for students generated by the new development in the district that paid the fees.

Pursuant to Government Code Section 66001, the $1,267,653 in developer fees collected must be used to pay for new student housing at Dinuba High School in order to comply with the statute as this is the project currently planned to house the students generated from the new development for which the developer fees were paid. Please see the attached information documenting the above referenced high school addition project.

As outlined above, in compliance with the Government Code, the unfunded Financial Hardship modernization projects are not the facilities that will provide housing for the students generated by the new development for which the $1,267,653 in developer fees identified above were paid. Therefore, these funds are not available

for the District's unfunded Financial Hardship modernization projects.

Please let me know if you require any additional documentation regarding this matter.

Sincerely,

Frank Rios

District Representative
Dinuba Unified School District

DGS CALIFORNIA DEPARTMENT OF GENERAL SERVICES

Governor Edmund G. Brown Jr.

October 3, 2013

Mr. Frank Rios
Dinuba Unified School District
1327 East El Monte Way
Dinuba, CA 93618

Dear Mr. Rios:

Thank you for your response to the Office of Public School Construction (OPSC) Letter of Findings for a Financial Hardship Re-Review. The OPSC has reviewed and assessed the information you provided.

The State Allocation Board (SAB) has authority to set regulations that define sources of funds applicable to District School Facility Program (SFP) Projects. Pursuant to SFP Regulation section 1859.81, a district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating that (a) the district is financially unable to provide all necessary matching funds for an eligible project. Section 1859.81 subd. (a) states that "the analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation... All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution."

The regulation used the term "eligible project". As such, the term does not differentiate between new construction and modernization projects. Furthermore, the OPSC has consistently considered funds from developer fees as funds available for District contribution for both new construction and modernization projects. You referred to Government Code section 66001(a)(4) stating that "based on the above referenced Government Code, all school districts that collect developer fees must allocate these fees only to projects that provide additional student housing for students generated by the new development in the district that paid the fees."

Government Code § 66001(a)(4)states as follows:

> "In any action establishing, increasing, or imposing a fee as a condition of approval..., the local agency shall...(4) determine how there is a reasonable relationship between the need for public facility and the type of development project..."

Government Code § 66001(a)(4) requires a local agency to document the nexus between the local agency's need for the public facility and the type of development project being proposed by a developer. This statutory provision does not, as claimed above, impose a limitation on the SAB's authority to define a District's funds as being available for the District's matching contribution requirements.

Therefore, the OPSC has determined that the District has **$1,369,676 in additional funds available** and **$1,885** due to expenditures to contribute to their projects on the unfunded list. This is in addition to the **$54,662** in available funds previously applied (see table below) and **$99,144** available as contribution due to expenditure.

The following application is currently on the unfunded list and competing in the current priority in funding round.

Project Number	Phase	School Name	Unfunded SAB Date	Financial Hardship Unfunded Apportionment	Cash Contribution previously Applied
57/75531-00-003	Full	Roosevelt Elementary	10/24/2012	$918,114	$54,662
Total				$ 918,114.00	$ 54,662

Please Note: This letter does not approve the District for the Financial Hardship apportionment. The District will not be approved for an apportionment for its projects on the unfunded list until it concurs with the OPSC findings by submitting a signed Summary of Available Funds Worksheet(s). After the OPSC receives the signed worksheet(s), the district's unfunded Financial Hardship projects currently on the unfunded list will be apportioned when funding becomes available.

Please indicate the District's conclusion by checking the applicable box below and submitting the applicable document(s) by October 10, 2013. **If no response is received by that date, the OPSC will not be able to finalize the Financial Hardship Re Review and the District may be delayed in receiving their apportionment(s).**

Check applicable box:

☐ If the District concurs with the OPSC findings:

Sign and date the Financial Hardship Summary of Available Funds and return it to the OPSC.

☒ If the District disagrees with the OPSC findings:

Submit a written statement to the OPSC with applicable supporting documentation.

If you have any questions, please contact me at john.leininger@dgs.ca.gov or (916) 375-4610.

Sincerely,

John Leininger

John Leininger, Audit Supervisor
Office of Public School Construction

JL:jl

Enclosures

cc: Project file – Financial Hardship section – CDS# 75531
Timothy Hegedus – Project Manager, OPSC

ATTACHMENT D

SAB Meeting: **August 20, 2014** **Modernization -Amended Adjusted Grant Approval**

SCHOOL DISTRICT DATA

Application No:	57/75531-00-003	**County:**	Tulare
School District:	Dinuba Unified	**School Name:**	Roosevelt Elementary

PROJECT DATA

Type of Project:		Elementary School	**Application Filing Basis:**	Site Specific
Pupils Assigned Under 50 Yrs:	**K-6:**	319		
	7-8:			
	9-12:			
	Non-Severe:	13		
	Severe:			
Financial Hardship Requested:		Yes	**Recommended Acres:**	10.5
Alternative Education School:		No	**Existing Acres:**	10.2

ADJUSTED GRANT DATA

Modernization Grant - Under 50 Yrs	$	1,248,162.00
Fire Detection Alarm		39,493.00
Prevailing Wage Monitoring		4,010.00
Accessibility/Fire Code Req.		37,445.00
High Performance (2.305%)		278,770.00
Total State Share (60%)		1,607,880.00
District Share (40%)		1,071,920.00
Total Project Cost	$	**2,679,800.00**

PROJECT FINANCING

State Share		
This Project	$	1,607,880.00
District Share		
Cash Contribution		850,575.00
Financial Hardship		221,345.00
Total Project Cost	$	**2,679,800.00**

HISTORY OF PROJECT COST AND APPORTIONMENT

	Fund Code	Proposition	Previously Authorized	Authorized This Action	State Apportionment This Action
State Share					
Modernization/Additional Grant	**057-570**	**1D**	$ 1,329,110.00	$	$
High Performance	**057-700**	**1D**	278,770.00		
District Share					
Cash Contribution			153,806.00	696,769.00	
Financial Hardship	**957-570**	**1D**	918,114.00	(918,114.00)	
Financial Hardship	**057-570**	**1D**		221,345.00	221,345.00
Total			$ **2,679,800.00**	$ **0.00**	$ **221,345.00**

Funding Source: Proposition 1D Bonds/2006-Nov.

Pursuant to the Board's action on August 20, 2014, the District is required to submit a complete Fund Release Authorization (Form SAB 50-05) on or before November 18, 2014; otherwise, the apportionment will be rescinded without further Board action and will receive a new Unfunded Approval date of November 18, 2014.

The Form SAB 50-05 submittal must contain an original signature from a designated District Representative and must be physically received by the Office of Public School Construction at 707 Third Street, West Sacramento, CA 95605 prior to the close of business on November 18, 2014.

Amounts shown for financial hardship assistance has been adjusted as a result of a review of the District's financial records pursuant to Regulation Section 1859.81(a) at the time of apportionment.

Assembly Bill 436 (Solorio), Chapter 378, Statutes of 2011, requires school districts to notify the Department of Industrial Relations (DIR) of School Facility Program projects with a public works contract awarded on or after January 1, 2012. Except for projects exempt pursuant to Labor Code Section 1771.3(b)(3), the DIR is required to provide prevailing wage monitoring services for the projects.

The District shall ensure that it is in compliance with all applicable laws, regulations and certifications it made on the program forms.

The District qualifies for financial hardship pursuant to SFP Regulation Section 1859.81(c)(1). The District has demostrated it is financially unable to provide all or a part of the matching funds and is levying the developer fees or equal alternative revenue source justified by law. The District's outstanding bonded indebtedness at May 3, 2012 is at least 60 percent of its total bonding capacity.

SAB Meeting: **August 20, 2014** **Modernization -Amended Adjusted Grant Approval**

SCHOOL DISTRICT DATA

Application No:	57/75531-00-003	**County:**	Tulare
School District:	Dinuba Unified	**School Name:**	Roosevelt Elementary

PROJECT DATA

Type of Project:		Elementary School	**Application Filing Basis:**	Site Specific
Pupils Assigned Under 50 Yrs:	**K-6:**	319		
	7-8:			
	9-12:			
	Non-Severe:	13		
	Severe:			
Financial Hardship Requested:		Yes	**Recommended Acres:**	10.5
Alternative Education School:		No	**Existing Acres:**	10.2

ADJUSTED GRANT DATA

Modernization Grant - Under 50 Yrs	$	1,248,162.00
Fire Detection Alarm		39,493.00
Prevailing Wage Monitoring		4,010.00
Accessibility/Fire Code Req.		37,445.00
High Performance (2.305%)		278,770.00
Total State Share (60%)		1,607,880.00
District Share (40%)		1,071,920.00
Total Project Cost	$	**2,679,800.00**

PROJECT FINANCING

State Share		
This Project	$	1,607,880.00
District Share		
Cash Contribution		255,829.00
Financial Hardship		816,091.00
Total Project Cost	$	**2,679,800.00**

HISTORY OF PROJECT COST AND APPORTIONMENT

	Fund Code	Proposition	Previously Authorized	Authorized This Action	State Apportionment This Action
State Share					
Modernization/Additional Grant	**057-570**	**1D**	$ 1,329,110.00	$	$
High Performance	**057-700**	**1D**	278,770.00		
District Share					
Cash Contribution			153,806.00	102,023.00	
Financial Hardship	**957-570**	**1D**	918,114.00	(918,114.00)	
Financial Hardship	**057-570**	**1D**		816,091.00	816,091.00
Total			$ **2,679,800.00**	$ **0.00**	$ **816,091.00**

Funding Source: Proposition 1D Bonds/2006-Nov.
Pursuant to the Board's action on August 20, 2014, the District is required to submit a complete Fund Release Authorization (Form SAB 50-05) on or before November 18, 2014; otherwise, the apportionment will be rescinded without further Board action and will receive a new Unfunded Approval date of November 18, 2014.

The Form SAB 50-05 submittal must contain an original signature from a designated District Representative and must be physically received by the Office of Public School Construction at 707 Third Street, West Sacramento, CA 95605 prior to the close of business on November 18, 2014.

Amounts shown for financial hardship assistance has been adjusted as a result of a review of the District's financial records pursuant to Regulation Section 1859.81(a) at the time of apportionment.

Assembly Bill 436 (Solorio), Chapter 378, Statutes of 2011, requires school districts to notify the Department of Industrial Relations (DIR) of School Facility Program projects with a public works contract awarded on or after January 1, 2012. Except for projects exempt pursuant to Labor Code Section 1771.3(b)(3), the DIR is required to provide prevailing wage monitoring services for the projects.

The District shall ensure that it is in compliance with all applicable laws, regulations and certifications it made on the program forms.

The District qualifies for financial hardship pursuant to SFP Regulation Section 1859.81(c)(1). The District has demostrated it is financially unable to provide all or a part of the matching funds and is levying the developer fees or equal alternative revenue source justified by law. The District's outstanding bonded indebtedness at May 3, 2012 is at least 60 percent of its total bonding capacity.

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