

# CLIENT NEWS ALERT

## Appellate Court Reopens Door for Level 3 Fees

A California court decision has cleared the way for eligible school districts to begin charging Level 3 developer fees to fund new school construction.

The Third District Court of Appeal had previously issued a “stay,” or a legal hold, on a decision from the Sacramento County Superior Court that would allow eligible districts to collect Level 3 fees. On November 1, 2016, the court denied a request from the California Building Industry (CBI) to continue the stay. Immediately following the court’s action, the State Allocation Board (SAB) fulfilled its statutory ministerial obligation to inform the Legislature of its earlier finding that state funds for new construction are no longer “available.” As a result, CBI’s lawsuit will continue, but the latest legal roadblock preventing school districts from collecting Level 3 fees has been lifted.

By way of background, on May 25, 2016, the SAB made the certification that state funds are no longer available for new school construction, opening the door for school districts collecting Level 2 fees to increase to Level 3. ([See 2016 Client News Brief No. 33.](#)) The following day, CBI filed a lawsuit in the Sacramento court, which issued a temporary restraining order preventing the SAB from implementing or taking further action authorizing imposition of Level 3 fees. ([See May 27, 2016 Client News Alert.](#))

On August 22, 2016, the trial court judge denied CBI’s request for an injunction. However, CBI appealed the decision before a final order was issued. ([See September 15, 2016 Client News Alert.](#)) The Court of Appeal issued a stay of the trial court proceedings, which prohibited the SAB from notifying the Legislature that state bond funding is no longer available.

With the Court of Appeal’s action vacating the stay, eligible school districts may now collect Level 3 fees if all statutory criteria are met. However, the case is still pending in the Court of Appeal, so districts may wish to consult with their legal counsel regarding the ongoing litigation before collecting the fees. Also, districts must ensure that their resolutions imposing Level 2 fees also authorize collection of Level 3 fees, and that no additional steps are required.

The availability of Level 3 fees may also be impacted by the passage or failure of Proposition 51, a statewide school facilities bond measure that is included on the ballot for the November 8, 2016 election. If Proposition 51 passes, state funding will again become available, which will impact a school district’s ability to collect Level 3 fees. Questions remain regarding the specific timing of state funding availability following the passage of Proposition 51 and when Level 3 fees may no longer be imposed. Lozano Smith will continue to keep you informed regarding the fate of Level 3 developer fees.

If you have any questions about the court’s latest ruling or about developer fees in general, please contact the authors of this Client News Alert or an attorney at one of our [10 offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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