

CLIENT NEWS ALERT

Fate of Level 3 Developer Fees Remains Clouded

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The State Allocation Board's (SAB) effort to authorize eligible school districts to levy Level 3 developer fees has hit another legal roadblock. On September 1, California's Third District Court of Appeal stayed the proceedings in the trial court case pending in Sacramento County Superior Court. This appears to keep a temporary restraining order in place that prohibited the SAB from notifying the Legislature that state bond funding is no longer available.

In May, the SAB took the unprecedented step of determining that state funding is no longer available for apportionment for school facilities, triggering eligible districts' ability to collect the higher Level 3 fees. ([See 2016 Client News Brief No. 33.](#)) The California Building Industry Association (CBIA) promptly sued, obtaining a temporary restraining order (TRO) stopping the SAB from taking further action. ([See May 27, 2016 Client News Alert.](#))

On August 22, 2016, the trial court judge denied CBIA's request to further enjoin the SAB from completing the steps needed to authorize the fees and concluded that the TRO would be lifted. However, CBIA appealed before a final order was issued. The appellate court issued a stay order that is vague, but Court of Appeal staff confirmed to Lozano Smith the court's intent to halt anything in the trial court case that wasn't finalized, including the judge's order to lift the TRO. (For more on the trial court's decision, [see 2016 Client News Brief No. 55.](#)) As a result, it appears that SAB remains restrained from notifying the Legislature that state funding is not available. SAB filed opposition papers with the appellate court on September 12, 2016.

Given the uncertainty about when or how the appellate court will rule on CBIA's appeal – and the upcoming November 8 statewide vote on a \$9 billion school bond that could soon provide fresh funding for facilities – it remains prudent to contact legal counsel before seeking to collect Level 3 fees.

Lozano Smith will continue to keep you informed of the latest twists and turns in the CBIA case and what they mean for school districts who are considering imposing Level 3 fees. For more information about the case or developer fees in general, please contact 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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