

RESOLUTION NO. ____-2011

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO

RESOLUTION

Adopting a Policy for Repayment of Excess Fees Collected Under the 2004 General Plan Traffic Impact Mitigation (TIM) Fee Program for Age Restricted Housing Projects

WHEREAS, the Board of Supervisors has made it a high priority to fund and build adequate road infrastructure to serve the existing and projected development in the County; and

WHEREAS, since 1988, the Board of Supervisors has used traffic impact fees to fund the road improvements necessary to serve new development; and

WHEREAS, pursuant to Government Code Section 66001 et seq., the County adopted the 2004 General Plan Traffic Impact Mitigation (TIM) Fee Program on August 22, 2006, with Resolution 266-2006; and

WHEREAS, on August 22, 2006, with Resolution 265-2006, the County certified the Traffic Impact Mitigation Fee Program Supplement to the 2004 General Plan Environmental Impact Report, issued a Supplemental Statement of Overriding Considerations, and made Supplemental Findings of Fact; and

WHEREAS, the County currently has only two categories of fees for residential projects: single family and multi-family, and does not consider the age of the residents when assessing the fees; and

WHEREAS, Developer/Builders of Age Restricted Housing Developments (defined in the California Civil Code as housing developments of 35 or more units which are sold or rented to "qualifying residents") have suggested that Age Restricted Housing Developments (ARHD's) should pay a lower fee than non age restricted developments because ARHDs generate fewer trips; and

WHEREAS, the current edition of the ITE Trip Generation manual contains two categories for ARHD development that were not reflected in the TIM fee categories in Resolution 205-2008; and

WHEREAS, the County presently charges the standard single-family and multi-family residential TIM fees for ARHD development notwithstanding the trip generation rates identified for such housing in the ITE Trip Generation manual; and

WHEREAS, the TIM fee program is scheduled to be revised in 2013 to update TIM fees and is expected to include separate TIM fee categories for ARHD's as specified in the ITE Trip Generation manual and by trip generation studies prepared by the County; and

1-25-11

W. Mc Donald

WHEREAS, the Board of Supervisors wishes to encourage the current production of Age Restricted Housing Developments by providing a mechanism for current Developer/Builders to receive a partial repayment if the TIM fee update results in a reduced fee for ARHDs.

NOW THEREFORE, BE IT RESOLVED:

A. Developer/Builders of Age Restricted Housing Developments who apply for building permits prior to the completion of the TIM fee update must pay the standard fees in effect at the time of issuance.

B. The County of El Dorado, acting by and through its Board of Supervisors, shall enter into a Repayment Agreement by which Developer/Builders of ARHD may receive repayment (under certain conditions such repayment may be in the form of credits) for TIM fees paid in advance of rates established in the TIM fee program update.

C. The County will review the request to determine whether the ARHD conforms to the criteria set forth in Exhibit A.

D. If the County finds that the ARHD conforms with the criteria as set forth in Exhibit A, it shall enter into a Repayment Agreement in the form as set forth in Exhibit B hereto.

E. Developments that were issued building permits and/or paid TIM fees prior to the effective date of this Resolution shall not be eligible to apply for a Repayment Agreement.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held on the _____ day of _____, 2011, by the following vote of said Board:

Ayes:

Noes:

Absent:

ATTEST
SUZANNE ALLEN DE SANCHEZ
Clerk of the Board of Supervisors

By _____
Deputy Clerk

Chair, Board of Supervisors

I CERTIFY THAT:
THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.

DATE _____
ATTEST: SUZANNE ALLEN DE SANCHEZ, Clerk of the Board of Supervisors of the County of El Dorado, State of California

By _____
Deputy Clerk

DRAFT

EXHIBIT A

- A. To be eligible for a Repayment Agreement, the Developer/Builder of the Age Restricted Housing Development (ARHD) shall demonstrate that:
1. The ARHD meets all of the requirements and definitions included in California Civil Code Sections 51.2 and 51.3. These requirements shall be included in the project's Conditions of Approval, as approved by the County. County staff shall review the project's Conditions of Approval prior to the final map to ensure the project remains as a ARHD Development (as defined above). Compliance with this requirement could be demonstrated through a condition of approval requiring that CC&Rs be submitted to the County for approval. The CC&Rs must contain a provision that the ARHD must remain age restricted and that any decision to remove the age restriction must be approved by the Board of Supervisors, which may refuse to remove the restriction unless the Development first pays the full impact fees for non age restricted housing in effect at the time of the request to remove the restriction
 2. The ARHD is of the type, and in a location, where it is likely to reduce the number and length of trips when compared to other residential developments (by showing one or more of the following:
 - a. Project located near existing commercial and medical facilities,
 - b. Project located near forms of alternative transportation such as mass transit stops or buses, golf cart transportation, bicycle and pedestrian lanes
 - c. Project contains one or more of the following recreational and social amenities such as:
 - i. Clubhouse/Community Center
 - ii. Recreation facilities such as a gym or health club, swimming pools
 - iii. Golf course(s)
 - iv. Open space/walking trails.
- C. Upon demonstration that a project is an ARHD project, the County shall execute the Repayment Agreement as provided in Exhibit B.

EXHIBIT B

**AGE RESTRICTED HOUSING DEVELOPMENT
TIM FEE
REPAYMENT AGREEMENT**

THIS AGREEMENT is made this _____ day of _____, 20__ (the "Effective Date"), by and between the County of El Dorado ("County") and _____ ("Developer/Builder"). County and Developer/Builder are sometimes hereinafter referred to individually as "Party" and, collectively, as "Parties."

RECITALS

WHEREAS, Developer/Builder is currently constructing, or plans to construct, an Age Restricted Housing Development ("ARHD") project (the "Project"), as defined in Civil Code Sections 51.2 and 51.3, in the County; and

WHEREAS, as a condition of the County's approval of the Project, County has required Developer/Builder to pay TIM Fees in accordance with the land use categories specified in Resolution 205-2008 (the "TIM Fees"), and

WHEREAS, the ITE Trip Generation Manual ("ITE Manual") and traffic studies generated by the County specifies vehicle trip generation rates for certain categories of ARHD, which categories are expected to be incorporated into the TIM Fee Program when the TIM Fees are updated in 2013 (the "TIM Fee Update"); and

WHEREAS, the County wishes to encourage the continued construction of ARHDs within the County; and

WHEREAS, the Parties desire to enter into this Agreement to set forth the terms and conditions upon which County shall repay Developer/Builder for its payment of TIM Fees in excess of the rates for ARHD when such categories are included in the TIM Fee Update.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **Incorporation of Recitals.** The foregoing recitals are true and incorporated herein by this reference as though set forth in full.

2. **Repayment of TIM Fees for ARHD Development.** When the County includes land use categories for ARHD projects in the TIM Fee Update, then, following the County's adoption of the TIM Fee Update or two years from the Effective Date of Resolution _____-2011, whichever occurs first, Developer/Builder may submit a written request to the Director of the Department of Transportation for a repayment, in the form of a credit against any building permit not yet issued, of TIM Fees that Developer/Builder has paid after the Effective Date of

Resolution ____-2011 in excess of the TIM Fee rate established in the TIM Fee Update for ARHD or as set forth in Section 3.

3. **Future Rate.** If County has not completed the TIM Fee Update within two years from the Effective Date of Resolution ____-2011, then the TIM Fee rate for ARHD commencing on the first day after said two year period, shall be set by the Board of Supervisors based upon the ITE Manual and trip generation studies prepared by the County. The estimated rate is expected to be approximately thirty-eight percent (38%) of the standard TIM Fee rate for single family and multi-family residential construction. If the TIM Fee program update is not completed within two years from the Effective Date of Resolution ____-2011, but is completed at a later time and the trip generation differs from the thirty-eight percent (38%) of the Standard TIM Fee Rate, then the new rate shall apply and an corresponding adjustment shall be made, upward or downward, in the amount of repayment due to the Developer/Builder.

4. **Source of Repayment.** Developer/Builder agrees that any repayment shall be paid only through the application of the credits described in Section 2 hereof. Developer/Builder agrees that in no event will County general fund moneys be used to make any repayment.

5. **Assignment.** Developer/Builder's right to repayment (credits) under Section 2 and 3 of this Agreement shall be personal to Developer/Builder and shall not run with the land. Developer/Builder may freely assign its rights to such repayment (credits) under this Agreement by providing written notice to the County.

6. **California Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.

7. **No Joint Venture or Partnership.** County and Developer/Builder hereby renounce the existence of any form of joint venture, partnership or other association, and agree that nothing in this Agreement or in any document executed in connection with it shall be construed as establishing any such relationship.

8. **No Third Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

9. **Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

10. **Entire Agreement.** This Agreement contains the entire agreement between County and Developer/Builder and supersedes any prior oral or written statements or agreements between County and Developer/Builder concerning the subject matter of this Agreement.

IN WITNESS WHEREOF, the County of El Dorado has caused this Agreement to be executed by the Director of the Department of Transportation under the authority of Resolution No. ____-2010, adopted by the Board of Supervisors on the ____ day of _____ 2010.

COUNTY OF EL DORADO:

DEVELOPER/DEVELOPER/BUILDER:

By: _____
Jim Ware, Director

By: _____

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Department of Transportation

Name: _____

Its: _____

APPROVED AS TO FORM:

Louis B. Green, County Counsel

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