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June 27, 2008

Board of Supervisors
County of El Dorado
330 Fair Lane
Placerville, CA 95667

**Re: Adoption of Implementation Agreement for Collection of Prepaid
TIM Fees in Blackstone Development**

Honorable Supervisors:

Recommendation:

County Counsel recommends that the Board of Supervisors approve the Implementation Agreement subject to County Counsel approval of the indemnity language and other minor changes as may be approved by County Counsel.

Reason for Recommendation:

West Valley LLC prepaid a portion of the El Dorado Hills TIM Fees due on the Blackstone development. They have then sold off portions of the property to individual developers. According to the purchase agreements with the builders, the purchase price did not include payment for those prepaid fees. They are to make payment to West Valley LLC for these prepaid fees on a schedule, but in any event at the time they pull building permits for units for which the fees have been prepaid. The purchase agreements specify that West Valley LLC and the County will adopt procedures for validating that the prepaid fees have been paid to West Valley LLC and the builders agree to abide by those procedures.

The County is not a party to the purchase agreements. The County's Reimbursement Agreement references the prepaid fees, but is, at best, ambiguous on any role the County has in ensuring their payment to West Valley LLC by the builders. But, taken as a whole,

particularly with the purchase agreements specifically referencing procedures adopted by West Valley LLC and the County, we believe it is reasonable to enter into this agreement. Because the agreements do not specify the precise procedures to be implemented, and because the County is not a party to the purchase agreements, we will require a defense and indemnity agreement from West Valley LLC against any claims of the builders. The indemnity would be guaranteed by various related parties such as Lennar Housing, AKT Development and Angelo Tsakopoulos. At the time this staff report was prepared, the precise wording of the indemnity had not yet been drafted. We are asking for Board approval of the contract subject to County Counsel approval of the indemnity language and such other minor changes to the agreement as may be warranted.

Under the agreement, at the time a builder comes in for building permits, we would ask him for a form assignment of the prepaid fees. This is a form given the builder by West Valley LLC at the time the builder reimburses them for the fees they prepaid. If the builder presents such an assignment, he or she would receive a credit for the prepaid fees, and would be required to pay the balance of the fees due. This is the preferred method. But, if a builder insists on a building permit being issued without having an assignment, then the permit would be issued but the builder would be required to pay the full fee. We would then reimburse West Valley LLC for the portion they prepaid. In the latter case, if the builder relinquished the building permit, and received a refund of the fees paid, West Valley LLC would refund the prepaid portion to the County.

Fiscal Impact:

None.

Actions to Be Taken After Approval:

Staff will implement the terms of the agreement.

We would be pleased to respond to any questions the Board might have.

Respectfully submitted,



LOUIS B. GREEN
County Counsel

LBG/stl
Att.

cc: Chief Administrative Officer
Dir. of Transportation
Diana Buckley, Dep. Dir. of Transportation

s:/Transportation/Agreements/Implementation Agreement for Blackstone