

# 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**, developers 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) should pay a lower fee than non age restricted developments because ARHDs generate fewer trips; and

**WHEREAS**, the Board of Supervisors has directed staff to review the TIM fee program and analyze whether ARHD should pay a different fee than other housing developments; and

**WHEREAS**, the Board of Supervisors recognizes that amendment of the TIM fee program may take a significant work effort and a significant amount of time; and

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

**NOW THEREFORE, BE IT RESOLVED:**

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

B. Prior to the issuance of the building permits, the developer of an ARHD may submit a written request to the Department of Transportation, requesting that the Board of Supervisors enter into a Repayment Agreement. The Agreement will provide that the developer may be entitled to a partial repayment of their fees, if, at the conclusion of the TIM fee update, it is determined that some or all Age Restricted Housing Developments should be in a separate fee category.

C. The Board of Supervisors will review the request to determine whether the ARHD conforms with the criteria set forth in Exhibit A.

D. If the Board of Supervisors finds that the ARHD conforms with the criteria, it shall enter into a Repayment Agreement that conforms with the provisions set forth in Exhibit B.

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

### Exhibit A

- A. To be eligible for a Repayment Agreement, the Developer 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.
  2. The ARHD is (1) 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, and (2) that the trip reduction is likely to reduce the road infrastructure currently identified in the Capital Improvement Program (CIP) 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 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.
- B. If the Developer demonstrates the above, the Department of Transportation (DOT) will submit the request to the County Board of Supervisors (Board) along with information showing:
1. Whether Conditions of Approval for the project include the requirement to construct and operate the above items or otherwise ensure an ongoing reduction in the trip generation.
  2. Whether the conditions of approval ensure that the development shall remain age restricted over the long term. Compliance with this requirement could be demonstrated through a condition of approval requiring that the 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, 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.
  3. Whether, in DOT's professional judgment, the infrastructure requirements in the area are likely to change due to the development being built as an ARHD. Factors in this decision include whether the roads in the area have already been designed and constructed by DOT or other developers before the project was approved as an ARHD.

- C. If after reviewing the request and the information submitted by DOT, the Board finds that the ARHD is likely to reduce the infrastructure needs identified in the CIP, the Board may enter into a Repayment Agreement that includes the provisions set forth in Exhibit B, and any other provisions the Board deems necessary.

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**Exhibit B: Draft Repayment Agreement Provisions**

1. The Developer agrees that to receive any repayment, he must submit a written request for that repayment to Department of Transportation (DOT) within 6 months of the effective date of the new ARHD fee category.
2. Developer agrees that the full fees paid are available for use by DOT for any eligible road project, or to pay eligible Reimbursement Agreements.
3. Developer agrees that any repayment shall be paid only from the funds collected in that TIM Fee Fund. (i.e., Zones 1-7 or Zone 8) Developer agrees that in no event will County general fund moneys be used to make any repayment.
4. Developer agrees that any repayment shall only be paid after all other preexisting reimbursement agreements.
5. Developer agrees that any repayment shall not be made if the proposed repayment, along with expenditures for projects programmed in the Capital Improvement Program (CIP) for the subsequent three years, would result in a fund balance of less than \$1,000,000.00 in the applicable TIM Fee Fund.
6. Developer shall agree to modify his CC&R's as necessary to comply with Exhibit A, section B.2, of this Resolution.