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Title: Chief Administrative Office and County Counsel recommending the Board order payment in the amount of \$79,201.83 to the Cameron Park Community Services District for Engine 288 equipment from the District's fire department development impact mitigation fee account.

FUNDING: Cameron Park CSD Fire Department development impact fee account.

Sponsors:

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Date	Ver.	Action By	Action	Result
6/25/2013	1	Board of Supervisors	Approved	Pass

Chief Administrative Office and County Counsel recommending the Board order payment in the amount of \$79,201.83 to the Cameron Park Community Services District for Engine 288 equipment from the District's fire department development impact mitigation fee account.

FUNDING: Cameron Park CSD Fire Department development impact fee account.

Fiscal Impact/Change to Net County Cost

Payment of this claim reduces the Cameron Park CSD Fire Department impact fee account by \$79,201.83 from \$1,267,625.41 to \$1,188,423.58.

Background

The Auditor-Controller has expressed concern over the administration and expenditure of development mitigation impact fees the County collects at the request of certain special districts. Upon review of the Mitigation Fee Act (Government Code § 66000 et seq.), Title XIII of the County Ordinance Code, various park and fire district capital improvement plans, and adopted nexus studies, it is clear that variations exist in the way impact fees have been developed and administered. **In general, annual required reviews of park impact fees are over due.**

Both the County and the affected districts would benefit from a more consistent approach to impact fee development, required reviews, and accounting. The Chief Administrative Office and County Counsel hope to bring options to the Board toward this goal. In the near term however, the Auditor-Controller has requested clarification with regard to pending claims.

ISSUE

Cameron Park Community Services District (CSD) submitted two claims involving a Type III fire engine. The first claim for \$318,798 for the truck proper has been paid. At issue is the second claim for \$79,263.83 for the equipment to outfit the truck. The CSD has purchased the equipment out of its

general fund and is seeking reimbursement from its development impact fees. It is not clear that all of the purchased equipment is fee-eligible.

ANALYSIS

The Mitigation Fee Act allows fees to be charged on new development to defray all or a portion of the cost of public facilities related to the development project. "Public Facilities" is defined as "...public improvements, public services, and community amenities." The Act requires a local agency to do all of the following when establishing, increasing, or imposing development impact fees:

- 1) Identify the purpose of the fee.
- 2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified by reference to a capital improvement plan or other public documents.
- 3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.
- 4) Determine how there is reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

On March 30, 2005 the CSD adopted the "Fire Department Master Plan and Capital Improvement Plan, 2005 through 2014" (CIP). This CIP was also adopted by the Board of Supervisors on December 13, 2005 in Resolution 357-2005 "Resolution Approving the Cameron Park Community Services District Capital Improvement Plan and Adopting Development Impact Fees." The Resolution states:

...a Capital Improvement Plan (Report) was prepared analyzing the impact of future development on existing fire service and the need for new public facilities, improvements, and equipment as a result of new development within the boundaries of the District and sets forth the relationship between new development, the needed facilities and equipment, and the estimated cost of those improvements...

Part Six of the CIP lists the acquisition of an additional Type III engine for \$240,000 and notes the "The need for this engine is due to increasing demands for service associated with new development." The equipment to outfit the new engine is listed separately in the CIP and is estimated at \$80,000. Furthermore, both the \$240,000 for the Type III engine and the \$80,000 for equipment were included in the calculation of the impact fee.

In short, it appears that CSD and the County have complied with the basic requirements of the Mitigation Fee Act, and have already determined that the equipment is fee-eligible. It remains unclear whether the annual CIP and fee review as required by Title XIII of the County Ordinance Code, or the accounting required by Government Code § 66006 has occurred. However, these obligations fall primarily on the County and not the CSD per se.

Although the CSD and the County have generally determined that the equipment is fee-eligible, specific items on the claim may deserve additional scrutiny. The Mitigation Fee Act is clear that fees are to be used for facilities and equipment, and not ongoing operational expenses. Some items for which the CSD is seeking impact fee reimbursement such as medical supplies, drip pan pads and

certain small tools are expendable, which may suggest that they are not fee-eligible. It is clear that the CSD cannot use impact fees to replace these items once consumed.

However, other items such as tires, motor oil, and spark plugs are similarly expendable, yet clearly included in the initial start-up costs of the engine. CSD fire personnel have made a strong case that each piece of equipment, whether expendable or not, is *critically* and *initially* necessary before the engine can be placed into service. In short, the apparatus is simply a truck, not a *fire truck* absent its equipment.

CSD staff and fire personnel have also indicated that the new engine could have been purchased through a single vendor pre-stocked with all the necessary equipment and supplies necessary to be placed into service. However, equipping the engine for service through multiple vendors results in better pricing. Had the engine and equipment been purchased as a single package, it seems less likely that specific pieces of equipment necessary to place to engine in service would appear questionable.

A recent court decision identified by County Counsel (*Homebuilders Association of Tulare/Kings Counties In., v. City of Lemoore et al.*) supports the inclusion of equipment in the calculation of impact fees. The Homebuilders Association challenged the City of Lemoore's collection of impact fees for police vehicles and equipment. The Court determined that the Homebuilders Association objection was without merit, stating, "The fees are to be used for the initial capital costs of these items, not for the costs of operation and maintenance." Although this case supports inclusion of equipment in the calculation of impact fees, the Board of Supervisors will need to more clearly establish through subsequent policy, what public improvements are fee eligible. In short, just because the Board has the authority to charge fees for equipment, doesn't imply that it should.

Interpreting the Mitigation Fee Act to only allow impact fees to pay for the cost of the truck and not the equipment will have a negligible effect on the overall cost of the development fee. Excluding the entire equipment cost of \$79,263.83 from the impact fee calculation results in a \$60 decrease in the fee, from \$2,678 to \$2,618. The inclusion of the equipment costs has not been challenged by any party to date. Given the minimal impact on the overall cost of the fee, it is doubtful that it will be challenged in the future.

The only item that perhaps does not qualify as fee-eligible equipment on the CSD's claim is a \$62.00 use tax charge from the State Board of Equalization.

Reason for Recommendation

The County should pay the CSD's Engine 288 equipment claim minus the \$62.00 charge from the State Board of Equalization.

Both the County and the CSD had previously determined that the equipment was fee eligible in the district CIP, and included the equipment in the calculation of the current fee. The equipment appears necessary to place the engine in service. Recent court action suggests that equipment is fee-eligible, and the CSD's fees have never been challenged. Even under an extremely conservative interpretation of the Mitigation Fee Act, excluding the equipment costs would have a minimal impact on the overall cost of the fee.

The Auditor-Controller was correct to question and initially reject the claim for equipment. These actions have revealed inconsistencies in the way special districts and the County have undertaken CIP's, nexus studies and the establishment of impact fees. While the CSD's claim appears valid, the

County should clarify through policy what facilities and equipment is fee-eligible, establish a countywide nexus study, and develop protocols to ensure annual review and accounting.

Action(s) to be taken following Board approval

Cameron Park CSD to resubmit revised equipment claim to Auditor-Controller's Office.

Contact

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Concurrences

County Counsel