



## Legislation Text

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**File #:** 17-0829, **Version:** 2

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County Counsel recommending the Board order the Auditor-Controller to process a journal entry transferring the amount of \$1,738,070.04 from the El Dorado Hills Community Services District Development Impact Mitigation Fee Account (8963117) to the operating account designated by the District.

**FUNDING:** El Dorado Hills Community Services District Development Impact Mitigation Fees.

**DEPARTMENT RECOMMENDATION**

County Counsel recommending the Board order the Auditor-Controller to process a journal entry transferring the amount of \$1,738,070.04 from the El Dorado Hills Community Services District Development Impact Mitigation Fee Account (8963117) to the operating account designated by the District.

**DISCUSSION / BACKGROUND**

At the request of the El Dorado Hills CSD, the Board of Supervisors established a development impact mitigation fee on June 3, 1997, pursuant to Resolution No. 112-97. The County collects the fee on behalf of the CSD. The funds are maintained in a separate account, and when the CSD expends funds on eligible projects, the County transfers the funding from the CSD's Development Impact Mitigation Fee account to the CSD's operating account.

In December, 2015, Thomas Austin, *et al.*, filed suit against the County and EDH/CSD, which, among other things, demands a refund of all moneys collected under the Mitigation Fee Act on behalf of the District. This case is still pending in El Dorado County Superior Court.

On May 4, 2017 the EDH/CSD made a request for disbursement of funds in the amount of One million three hundred six thousand eighty-six dollars and sixty-four cents (\$1,306,086.64) for prepayment of the Promontory Park Capital Facilities lease payments; and

On May 8, 2017 the EDH/CSD made a request for disbursement of funds in the amount of Four hundred thirty-one thousand nine hundred eighty-three dollars and forty cents (\$431,983.40) for the November 1, 2016 and May 1, 2017 Promontory Park Capital Facilities lease payments (\$344,800) and February 2016 to March 2017, 2% Project Administration fee (\$87,183.40).

The Promontory Park Capital Facilities lease payments were made pursuant to a Capital Facilities Lease which has long been a part of the District's Parks Master Plan. The use of the funds for the "Construction of sports fields, playground areas and maintenance buildings at Promontory Park" falls squarely within the purpose for which the fees were collected. Reimbursement of such expenditures is provided for by El Dorado County Ordinance Code 13.30.040. In fact, the County has previously allowed the use of the development impact mitigation fees for this very purpose.

The documents supporting the expenditure of the funds including the Invoice from the lending institution, City National Bank, and the cancelled checks issued by the District were submitted as part

of the request for the transfer by the District.

On August 18, 2016 the District executed a Settlement, Indemnity, and Hold Harmless Agreement whereby the District agreed to hold the County harmless from any claims arising from the transfer of funds from the District's Development Impact Mitigation Fee Account (8963117) to the District's operating account. The District has submitted a request for transfer of \$1.7 million, as discussed above, pursuant to the Mitigation Fee Act. The existing Settlement, Indemnity, and Hold Harmless Agreement applies to this and future requests.

Due to concern that the August 18, 2016 Settlement, Indemnity, and Hold Harmless Agreement was not robust enough to extend to the requested transfer of the \$1.7 million requested by the District, the County and the District entered into negotiations regarding an additional Defense, Indemnity, and Hold Harmless Agreement which specifically applied to the requested \$1.7 million transfer and all future requests of the District for transfer of development impact mitigation fees from the County to the District. The District has approved this additional Defense, Indemnity, and Hold Harmless Agreement.

The transfer of the requested funds is compliant with state law and meets the purpose for which the fee was collected (i.e., to provide park and recreation services) and allows the District to better serve the constituents within its geographic boundaries.

#### **ALTERNATIVES**

The Board could choose not to order the Auditor-Controller to process the journal entry.

#### **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

N/A

#### **CAO RECOMMENDATION**

The Chief Administrative Office agrees that the request is an appropriate use of the fee funds. It is recommended that the Board approve this item and the requested fees be transferred to the District.

#### **FINANCIAL IMPACT**

There is no fiscal impact to the County. These projects are funded through Development Impact Mitigation Fees that have been collected from developers.

#### **CLERK OF THE BOARD FOLLOW UP ACTIONS**

N/A

#### **STRATEGIC PLAN COMPONENT**

Good Governance./Infrastructure.

#### **CONTACT:**

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