

Level I Developer Fee Study  
for  
Berryessa Union School District

June 10, 2020

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## EXECUTIVE SUMMARY

- Education Code Section 17620 authorizes school districts to levy a fee, charge, dedication or other form of requirement against any development project for the construction or modernization of school facilities provided the District can show justification for levying of fees.
- In January 2020, the State Allocation Board's biennial inflation adjustment changed the fee to \$4.08 per square foot for residential construction and \$0.66 per square foot for commercial/industrial construction.
- Berryessa Union School District currently has a Level 1 Fee Sharing Agreement with the East Side Union High School District. The Elementary School District collects 65 percent of the Level 1 Fee and the High School District collects 35 percent of the Level 1 Fee.
- Berryessa Union School District is justified in collecting \$2.65 (65 percent of \$4.08) per square foot for residential construction and \$0.43 (65 percent of \$0.66) per square foot of commercial/industrial construction with the exception of mini storage. The mini storage category of construction should be collected at a rate of \$0.07 per square foot.
- In general, it is fiscally more prudent to extend the useful life of an existing facility than to construct new facilities when possible. The cost to modernize facilities is approximately 41.1 percent of the cost to construct new facilities.
- The residential justification is based on the Berryessa Union School District's projected modernization need of \$24,261,489 for students generated from residential development over the next 20 years and the projected residential square footage of 6,881,149.
- Based on the modernization need for students generated from projected residential development and the projected residential square footage, each square foot of residential construction will create a school facilities cost of \$3.53 ( $\$24,261,489 / 6,881,149$ ).

- The commercial/industrial justification is based on the Berryessa Union School District projected modernization need of \$817,803 for students generated from commercial/industrial development over the next 20 years and the projected commercial/industrial square footage of 344,057.
- Based on the modernization need for students generated from projected commercial/industrial development and the projected commercial/industrial square footage, each square foot of commercial/industrial construction will create a school facilities cost of \$2.38 ( $\$817,803/344,057$ ) with the exception of mini storage. The mini storage category of construction will create a school facilities cost of \$0.07 per square foot.

## INTRODUCTION

In September, 1986, the Governor signed into law Assembly Bill 2926 (Chapter 887/Statutes 1986) which granted school district governing boards the authority to impose developer fees. This authority is codified in Education Code Section 17620 which states in part "...the governing board of any school district is authorized to levy a fee, charge, dedication or other form of requirement against any development project for the construction or modernization of school facilities."

The Level I fee that can be levied is adjusted every two years according to the inflation rate, as listed by the state-wide index for Class B construction set by the State Allocation Board. In January of 1992, the State Allocation Board increased the Level 1 fee to \$1.65 per square foot for residential construction and \$0.27 per square foot for commercial and industrial construction.

Senate Bill 1287 (Chapter 1354/Statutes of 1992) effective January 1, 1993, affected the facility mitigation requirements a school district could impose on developers. Senate Bill 1287 allowed school districts to levy an additional \$1.00 per square foot of residential construction (Government Code Section 65995.3). The authority to levy the additional \$1.00 was rescinded by the failure of Proposition 170 on the November 1993 ballot.

In January 1994, the State Allocation Board's biennial inflation adjustment changed the fee to \$1.72 per square foot for residential construction and \$0.28 per square foot for commercial/industrial construction.

In January 1996, the State Allocation Board's biennial inflation adjustment changed the fee to \$1.84 per square foot for residential construction and \$0.30 per square foot for commercial/industrial construction.

In January 1998, the State Allocation Board's biennial inflation adjustment changed the fee to \$1.93 per square foot for residential construction and \$0.31 per square foot for commercial/industrial construction.

In January 2000, the State Allocation Board's biennial inflation adjustment changed the fee to \$2.05 per square foot for residential construction and \$0.33 per square foot for commercial/industrial construction.

In January 2002, the State Allocation Board's biennial inflation adjustment changed the fee to \$2.14 per square foot for residential construction and \$0.34 per square foot for commercial/industrial construction.

In January 2004, the State Allocation Board's biennial inflation adjustment changed the fee to \$2.24 per square foot for residential construction and \$0.36 per square foot for commercial/industrial construction.

In January 2006, the State Allocation Board's biennial inflation adjustment changed the fee to \$2.63 per square foot for residential construction and \$0.42 per square foot for commercial/industrial construction.

In January 2008, the State Allocation Board's biennial inflation adjustment changed the fee to \$2.97 per square foot for residential construction and \$0.47 per square foot for commercial/industrial construction.

In January 2010, the State Allocation Board's biennial inflation adjustment maintained the fee at \$2.97 per square foot for residential construction and \$0.47 per square foot for commercial/industrial construction.

In January 2012, the State Allocation Board's biennial inflation adjustment changed the fee to \$3.20 per square foot for residential construction and \$0.51 per square foot for commercial/industrial construction.

In January 2014, the State Allocation Board's biennial inflation adjustment changed the fee to \$3.36 per square foot for residential construction and \$0.54 per square foot for commercial/industrial construction.

In February 2016, the State Allocation Board's biennial inflation adjustment changed the fee to \$3.48 per square foot for residential construction and \$0.56 per square foot for commercial/industrial construction.

In January 2018, the State Allocation Board's biennial inflation adjustment changed the fee to \$3.79 per square foot for residential construction and \$0.61 per square foot for commercial/industrial construction.

In January 2020, the State Allocation Board's biennial inflation adjustment changed the fee to \$4.08 per square foot for residential construction and \$0.66 per square foot for commercial/industrial construction.

The next adjustment to the fee will occur at the January 2022 State Allocation Board meeting.

In order to levy a fee, a district must make a finding that the fee to be paid bears a reasonable relationship and be limited to the needs of the community for elementary or high school facilities and be reasonably related to the need for schools caused by the development. Fees are different from taxes and do not require a vote of the electorate. Fees may be used only for specific purposes and there must be a reasonable relationship between the levying of fees and the impact created by development.

In accordance with the recent decision in the *Cresta Bella LP v. Poway Unified School District* (218 Cal. App. 4<sup>th</sup> 438 (2013)) court Case, school districts are now required to demonstrate that reconstruction projects will generate an increase in the student population thereby creating an impact on the school district's facilities. School districts must establish a reasonable relationship between an increase in student facilities needs and the reconstruction project in order to levy developer fees.

### ***Purpose of Study***

This study will demonstrate the relationship between residential, commercial and industrial growth and the need for the modernization of school facilities in the Berryessa Union School District.



## **SECTION I: DEVELOPER FEE JUSTIFICATION**

Developer fee law requires that before fees can be levied a district must find that justification exists for the fee. Government Code Section 66001 (g) states that a fee shall not include the costs attributable to existing deficiencies in public facilities, but may include the costs attributable to the increased demand for public facilities reasonably related to the development project in order to refurbish existing facilities to maintain the existing level of service or achieve an adopted level of service that is consistent with a general plan. This section of the study will show that justification does exist for levying developer fees in the Berryessa Union School District.

### **Modernization and Reconstruction**

Extending the useful life of a school is a cost effective and prudent way to house students generated from future development. The state of California recognizes the need to extend the life of existing schools and provides modernization funding through the State School Facility Program. For the purpose of this report, modernization and reconstruction are used interchangeably since many of the improvements are common to both programs, i.e. upgrades to restrooms, classrooms, labs, technology connectivity, and improving access to school facilities for students with disabilities. Developer fees may not be used for regular maintenance, routine repair of school buildings and facilities or deferred maintenance. The authorization to justify modernization and modernization of school facilities and extend the useful life of existing schools is contained in Education Code Section 17620 and Government Code Section 66001 (g). School districts are permitted to modernize or replace existing or build new school facilities with developer fees as justified by this Study.

### **Modernization Need**

As new students are generated by new development, the need to increase the useful life of school facilities will be necessary. In order to calculate the District's estimated modernization need generated by students from new development, it is necessary to determine the following factors: the number of units included in proposed

developments, the District student yield factor, and the per pupil cost to modernize facilities.

### Potential Development

The Berryessa Union School District is located within the City of San Jose, City of Milpitas, and Santa Clara County. The Planning Departments were contacted to provide residential development information regarding the potential for residential construction in the District's boundary over the next 20 years. According to the Santa Clara County Planning Department, there are no projected developments in the County's portion of the District's boundary. According to the City of San Jose Planning Forecast, there are 4,080 multi-family units to be constructed over the next twenty years and 1,020 affordable multi-family units projected to be constructed over the next 20 years. Therefore, the total units projected by the City of San Jose is 5,100 units over the next 20 years. According to the City of Milpitas Planning Department, there are 934 Multi-Family units and 379 Single-Family Attached units projected to be constructed over the next 20 years. Therefore, the total units projected by the City of Milpitas Planning Department is 1,313 units over the next 20 years. A total of 6,413 units were used in this study to calculate the Level I fee.

The School Facility Program allows districts to apply for modernization funding for portable classrooms over 20 years old and permanent classrooms over 25 years, meaning that school facilities are presumed to be eligible for, and therefore need, modernization after that time period. It is therefore generally presumed that school facilities have a useful life span of 20 to 25 years, portable and permanent respectively, before modernization is needed in order to maintain the same level of service as previously existed. The same would be true for modernization of portable buildings 20 years and permanent buildings 25 years after their initial modernization. In some cases, these older buildings may need to be closed entirely for the health and safety of students, teachers, staff and other occupants. Aging infrastructure and building problems can profoundly impact a school's ability to safely remain in service and to continue delivering the instructional program to students at existing levels of service. Therefore, the District's modernization needs are considered over a 20-25 year period, and a minimum 20 year projection has been included in the Study when considering the homes that will generate students for

the facilities in question. Developer fees generated from future development may be used to modernize or construct facilities to house students from planned future development.

School facilities have a limited usable lifespan, and school districts must consider the lifespan for each facility when planning and determining student housing needs in the future. Residential developments will be built at different times over the coming years, and it is difficult to predict when construction on these projects will be complete. Additionally, the homes in these developments may be immediately occupied with families with school-aged children, or they may not be occupied by school-aged children for another five, ten or fifteen years as young people who move in begin starting to have families. Thus, the District must be prepared to house students from new developments for the next several decades.

The District's current total capacity will diminish over time if the District does not modernize its facilities. To the extent that the District has buildings older than twenty to twenty-five years old, the point will be reached without reconstruction/modernization that those buildings will no longer be able to provide the existing level of service to students, and may, in some circumstances, need to be closed entirely for health and safety reasons. Thus, without modernization of aging buildings, some facilities will become unavailable for the reasons described above, which will decrease the District's total student capacity. New development in the District necessitates that modernization occur in order to continue having available school housing from newly generated students. If there was no such new development, the District would be able to close school facilities rather than modernize or reconstruct them to balance enrollment and capacity. However, because of new development, reconstruction/modernization must occur in order to have available school housing for the new students from development. As part of its modernization efforts, the District plans to modernize existing schools and to replace some of its existing schools with new buildings on the same site as the existing schools become old, inadequate, and pose health and safety challenges.

### Student Yield

To identify the number of students anticipated to be generated by new residential development, a student generation study was completed by Jack Schreder &

Associates. A total of 915 single-family attached, 351 multi-family, and 150 affordable multi-family units recently constructed within the District were surveyed.

A K-6th student yield factor of .056 and 7-8th student yield factor of .002 has been identified for single-family attached units in the District. A K-6th student yield factor of .048 and 7-8th student yield factor of .003 has been identified for multi-family units in the District. A K-6th student yield factor of 0.360 and a 7-8th student yield factor of 0.153 has been identified for affordable multi-family units in the District. The results of these surveys are outlined in Table 1.

A weighted student yield factor of .0981 for K-6th and .0268 for 7-8th has been calculated for Berryessa Union School District (Table 1).

**Table 1. Student Generation Factors**

	<b>Units</b>	<b>SGR</b>	<b>Students</b>
K-6 Single-Family Attached	379	.056	21
7-8 Single-Family Attached	379	.002	1
K-6 Multi-Family	5,014	.048	241
7-8 Multi-Family	5,014	.003	15
K-6 Affordable Multi-Family	1,020	.360	367
7-8 Affordable Multi-Family	1,020	.153	156
<b>Total</b>	<b>6,413</b>		<b>801</b>
<i>K-6 Weighted Average</i>		<i>0.0981</i>	
<i>7-8 Weighted Average</i>		<i>0.0268</i>	
<b>K-8 Weighted Average</b>		<b>0.1249</b>	

*Source: Jack Schreder & Associates. Berryessa Union School District. City of San Jose Planning Department. City of Milpitas Planning Department.*

### Construction Cost

The construction cost per K-8 pupil is \$73,695. Construction costs were provided specifically for the Berryessa Union School District by Van Pelt Construction Services. Table 2 shows the weighted average to construct facilities per K-8 pupil.

**Table 2. Construction Costs**

Grade Level	Construction Costs
K-5	\$68,768
6-8	\$83,549
Weighted Average $[(\$68,768 \times 6) + (\$83,549 \times 3)] / 9 =$	\$73,695

Source: California Department of Education, Jack Schreder & Associates. Van Pelt Construction Services.

### Modernization Cost

The cost to modernize facilities is 41.1 percent of new construction costs. The percentage is based on the comparison of the State per pupil modernization grant (including 3% for Americans with Disabilities and Fire, Life Safety improvements) and the State per pupil new construction grant. For example, the State provides \$12,451 per K-6 pupil to construct new facilities and \$4,741 to modernize facilities, which is 38.1 percent ( $\$4,741 / \$12,451$ ) of the new construction grant amount. In addition, the State provides a minimum of three percent for ADA/FLS improvements which are required by the Department of State Architect's (DSA) office. Based on the per pupil grant amounts and the ADA/FLS costs, the estimated cost to modernize facilities is 41.1 percent of the cost to construct facilities. The School Facility Program per pupil grant amounts are included in Appendix A.

The construction cost per K-8 pupil is \$73,695 and is outlined in Table 2. Therefore, the per pupil cost to modernize facilities per K-8 pupil is \$30,289 ( $\$73,695 \times .411$ ).

### 20 Year Modernization Need

The District's estimated modernization need generated by students from new residential development is \$24,261,489. The calculation is included in Table 3.

**Table 3. 20 Year Modernization Need**

Proposed Development	6,413
Student Yield	<u>x .1249</u>
Students Generated	801
Per Pupil Modernization Cost	\$30,289
Students Generated	<u>x 801</u>
<b>Modernization Need</b>	<b>\$24,261,489</b>

*Source: Berryessa Union School District, Office of Public School Construction, Jack Schreder & Associates, City of San Jose Planning Department Forecast. City of Milpitas Planning Department.*

**Residential Development and Fee Projections**

To show a reasonable relationship exists between the construction of new housing units and the need for modernized school facilities, it will be shown that residential construction will create a school facility cost impact on the Berryessa Union School District by students generated from new development.

Based on information provided by the City of San Jose Planning Department, an estimated 4,080 multi-family units and 1,020 affordable multi-family units may be constructed within District boundaries in the next 20 years. Based on information from the City of Milpitas Planning Department, an estimated 934 multi-family units, and 379 single family attached units may be constructed within District boundaries over the next 20 years. Based on historical construction and information provided by the city planning departments, residential units will average an estimated 1,073 square feet (Table 4). Approximately 6,413 units totaling 6,881,149 square feet (6,413 x 1,073) may be constructed in the District.

**Table 4. Average Square Footage for New Housing Units**

City of Milpitas	Units		Average Sq Ft		Total
MF	934	x	864	=	806,976
SFA	379	x	1660	=	629,140
<b>City of San Jose</b>					
City of San Jose	Units		Average Sq Ft		Total
MF	4080	x	1068	=	4,357,440
AFF	1020	x	1068	=	1,089,360
<b>Total</b>	<b>6413</b>				<b>6,882,916</b>
<b>Weighted Sq Ft</b>					<b>1,073</b>

Source: Jack Schreder & Associates. Berryessa Union School District. City of San Jose Planning Department. City of Milpitas Planning Department.

Based on the District’s modernization need of \$24,261,489 generated by students from residential construction and the total projected residential square footage of 6,881,149 residential construction will create a facilities cost of \$3.53 per square foot. The calculation is included in Table 5. However, the statutory Level I fee for residential construction is \$4.08 per square foot and the District has a fee sharing arrangement with the high school district. The high school district collects 35 percent of the fee and the Berryessa Union School District collects 65 percent of the fee. Therefore, the District is justified to collect \$2.65 (65 percent of \$4.08) per square foot of residential construction.

**Table 5. Facilities Cost per SF from Proposed Residential Construction**

Modernization Need		Total Square Footage	Facilities Cost
\$24,261,489	/	6,881,149	\$3.53

Source: Berryessa Union School District, Jack Schreder & Associates, Office of Public School Construction.

## **Commercial/Industrial Development and Fee Projections**

In order to levy developer fees on commercial and industrial development, Assembly Bill 181 provides that a district "... must determine the impact of the increased number of employees anticipated to result from commercial and industrial development upon the cost of providing school facilities within the district. For the purposes of making this determination, the developer fee justification study shall utilize employee generation estimates that are based on commercial and industrial factors within the district, as calculated on either an individual project or categorical basis". The passage of Assembly Bill AB 530 (Chapter 633/Statutes 1990) modified the requirements of AB 181 by allowing the use of a set of state-wide employee generation factors. Assembly Bill 530 allows the use of the employee generation factors identified in the San Diego Association of Governments report entitled, San Diego Traffic Generators. This study, which was completed in January of 1990, identifies the number of employees generated for every 1,000 square feet of floor area for several development categories. These generation factors are shown in Table 6.

Table 6 indicates the number of employees generated for every 1,000 square feet of development and the number of district households generated for every employee in 11 categories of commercial and industrial development. The number of district households is calculated by adjusting the number of employees for the percentage of employees that live in the district and are heads of households.



**Table 6. Commercial and Industrial Generation Factors**

Type of Development	Employees Per 1,000 Sq. Ft.*	District Households Per Employee**
Medical Offices	4.27	.2
Corporate Offices	2.68	.2
Commercial Offices	4.78	.2
Lodging	1.55	.3
Scientific R&D	3.04	.2
Industrial Parks	1.68	.2
Industrial/Business Parks	2.21	.2
Neighborhood Shopping Centers	3.62	.3
Community Shopping Centers	1.09	.3
Banks	2.82	.3
Agriculture	.31	.51
Average	2.55	.27

\* Source: San Diego Association of Governments.

\*\* Source: Jack Schreder and Associates.

Based on data available for the purpose of determining the impact of mini-storage construction on the Berryessa Union School District, it has been determined that mini-storage construction has significantly less impact than other commercial/industrial construction. Mini storage construction generates .06 employees per 1,000 square feet of school construction. This information was provided by the San Diego Association of Governments, Traffic Generators, January 1990, and is cited for use in Education Code Section 17621(e)(1)(B).

The generation of .06 employees per 1,000 square feet and the utilization of the student generation rate per household, yields an impact of \$0.07 per square foot of mini-storage construction. This calculation is included as Appendix B. It is recommended that the Berryessa Union Elementary School District levy a fee for mini-storage not to exceed \$0.07 per square foot.

Based on original research conducted by Jack Schreder & Associates, commercial/industrial square footage represents approximately five percent of residential square footage. District residential projections indicate that 6,881,149 (Table

5) square feet of residential space will be constructed in the next 20 years. The five percent ratio represents 344,057 square feet of commercial and industrial development. Table 7 illustrates this calculation.

**Table 7. Projected Commercial/Industrial Fee Square Footage**

<u>Ratio</u>		<u>Residential SF</u>		<u>Commercial SF</u>
.05	x	6,881,149 sf	=	344,057 sf

Source: Berryessa Union School District, Jack Schreder & Associates, original research.

According to the average employee generation factors in Table 6, commercial and industrial development will yield 877 new employees and 237 new district households over the next 20 years. Table 8 illustrates this calculation.

**Table 8. Projected Employees/District Households from Commercial/Industrial Development**

<u>Commercial/ Industrial SF</u>		<u>Average Employees Per 1,000 SF</u>		<u>New Employees</u>		<u>New Households</u>
344,057/1,000	x	2.55	=	877	x	.27 =
Number of Households = 237						

Source : San Diego Association of Governments, Berryessa Union School District, Jack Schreder & Associates.

The addition of 237 new households created by commercial and industrial development will impact Berryessa Union School District with an estimated 30 (237 x .1249) additional students. Based on the per pupil K-8 modernization cost of \$30,289, the estimated cost to house 30 students generated from commercial/industrial construction is \$908,670 (\$30,289 x 30).

Based on the District’s modernization need of \$908,670, generated by students from commercial/industrial construction and the total projected square footage of 344,057, commercial/industrial construction will create a facilities cost of \$2.64 per square foot with the exception of mini storage. However, the statutory Level I fee for commercial/industrial construction is \$0.66 per square foot and the District has a fee sharing arrangement with the high school district. The high school district collects 35 percent of the fee and the Berryessa Union School District collects 65 percent of the fee. Therefore, the District is justified to collect \$0.43 (65 percent of \$0.66) per square foot of commercial/industrial construction with the exception of mini storage. The mini storage category should be collected at a rate of \$0.07 per square foot. The commercial/industrial calculation is included in Table 9.

**Table 9. Facilities Cost per SF from Proposed Commercial/Industrial Construction**

Modernization Need		Total Square Footage		Level I Fee
\$908,670	/	344,057	=	\$2.64

*Source: Berryessa Union School District, Jack Schreder & Associates, Office of Public School Construction.*

**Summary**

Based on the District’s modernization need of \$24,261,489 generated by students from residential construction and the total projected residential square footage of 6,881,149, residential construction will create a facilities’ cost of \$3.53 per square foot. However, the statutory Level I fee for residential construction is \$4.08 per square foot and the District has a fee sharing arrangement with the high school district. The high school district collects 35 percent of the fee and the Berryessa Union School District collects 65 percent of the fee. Therefore, the District is justified to collect \$2.65 (65 percent of \$4.08) per square foot of residential construction.

Based on the District’s modernization need of \$908,670 generated by students from commercial/industrial construction and the total projected square footage of 344,057, commercial/industrial construction will create a facilities cost of \$2.64 per square foot with the exception of mini storage. However, the statutory Level I fee for commercial/industrial construction is \$0.66 per square foot and the District has a fee sharing arrangement with the high school district. The high school district collects 35

percent of the fee and the Berryessa Union School District collects 65 percent of the fee. Therefore, the District is justified to collect \$0.43 (65 percent of \$0.66) per square foot of commercial/industrial construction with the exception of mini storage. The mini storage category should be collected at a rate of \$0.07 per square foot.

## SECTION II: BACKGROUND OF DEVELOPER FEE LEGISLATION

Initially, the allowable developer fee was limited by Government Code Section 65995 to \$1.50 per square foot of covered or enclosed space for residential development and \$0.25 per square foot of covered or enclosed space of commercial or industrial development. The Level 1 fee that can be levied is adjusted every two years, according to the inflation rate as listed by the state-wide index for Class B construction set by the State Allocation Board. In January of 2020, the State Allocation Board changed the Level I fee to \$4.08 per square foot of residential construction and \$0.66 per square foot of commercial and industrial construction.

The fees collected are to be used by the school district for the construction or modernization of school facilities and may be used by the district to pay bonds, notes, loans, leases or other installment agreements for temporary as well as permanent facilities.

Assembly Bill 3228 (Chapter 1602/Statutes of 1990) added Government Code Section 66016 requiring districts adopting or increasing any fee to first hold a public hearing as part of a regularly scheduled meeting and publish notice of this meeting twice, with the first notice published at least ten days prior to the meeting.

Assembly Bill 3980 (Chapter 418/Statutes of 1988) added Government Code Section 66006 to require segregation of school facilities fees into a separate capital facilities account or fund and specifies that those fees and the interest earned on those fees can only be expended for the purposes for which they were collected.

Senate Bill 519 (Chapter 1346/Statutes of 1987) added Section 17625 to the Education Code. It provides that a school district can charge a fee on manufactured or mobile homes only in compliance with all of the following:

1. The fee, charge, dedication, or other form of requirement is applied to the initial location, installation, or occupancy of the manufactured home or mobile home within the school district.

2. The manufactured home or mobile home is to be located, installed, or occupied on a space or site on which no other manufactured home or mobile home was previously located, installed, or occupied.
3. The manufactured home or mobile home is to be located, installed, or occupied on a space in a mobile home park, on which the construction of the pad or foundation system commenced after September 1, 1986.

Senate Bill 1151 (Chapter 1037/Statutes of 1987) concerns agricultural buildings and adds Section 17622 to the Education Code. It provides that no school fee may be imposed and collected on a greenhouse or other space covered or enclosed for agricultural purposes unless the school district has made findings supported by substantial evidence as follows:

1. The amount of the fees bears a reasonable relationship and is limited to the needs for school facilities created by the greenhouse or other space covered or enclosed for agricultural purposes.
2. The amount of the fee does not exceed the estimated reasonable costs of the school facilities necessitated by the structures as to which the fees are to be collected.
3. In determining the amount of the fees, the school district shall consider the relationship between the proposed increase in the number of employees, if any, the size and specific use of the structure, as well as the cost of construction.

In order to levy developer fees, a study is required to assess the impact of new growth and the ability of the local school district to accommodate that growth. The need for new school construction and modernization must be determined along with the costs involved. The sources of revenue need to be evaluated to determine if the district can fund the new construction and modernization. Finally, a relationship between needs and funding raised by the fee must be quantified.

Assembly Bill 181 (Chapter 1109/Statutes of 1989) which became effective October 2, 1989, was enacted to clarify several areas of developer fee law. Assembly Bill 181 provisions include the following:

1. Exempts residential remodels of less than 500 square feet from fees.
2. Prohibits the use of developer fee revenue for routine maintenance and repair, most asbestos work, and deferred maintenance.
3. Allows the fees to be used to pay for the cost of performing developer fee justification studies.
4. States that fees are to be collected at the time of occupancy, unless the district can justify earlier collection. The fees can be collected at the time the building permit is issued if the district has established a developer fee account and funds have been appropriated for which the district has adopted a proposed construction schedule or plan prior to the issuance of the certificate of occupancy.
5. Clarifies that the establishment or increase of fees is not subject to the California Environmental Quality Act.
6. Clarifies that the impact of commercial and industrial development may be analyzed by categories of development as well as an individual project-by-project basis. An appeal process for individual projects would be required if analysis was done by categories.
7. Changes the frequency of the annual inflation adjustment on the Level I fee to every two years.
8. Exempts from fees - development used exclusively for religious purposes, private schools, and government-owned development.

9. Expands the definition of senior housing, which is limited to the commercial/industrial fee and requires the conversion from senior housing to be approved by the city/county after notification of the school district.
10. Extends the commercial/industrial fee to mobile home parks limited to older persons.



### SECTION III: REQUIREMENTS OF AB 1600

Assembly Bill 1600 (Chapter 927/Statutes of 1987) adds Section 66000 through 66003 to the Government Code:

Section 66000 defines various terms used in AB 1600:

"Fee" is defined as monetary exaction (except a tax or a special assessment) which is charged by a local agency to the applicant in connection with the approval of a development project for the purpose of defraying all or a portion of the costs of public facilities related to the development project.

"Development project" is defined broadly to mean any project undertaken for purposes of development. This would include residential, commercial, or industrial projects.

"Public facilities" is defined to include public improvements, public services, and community amenities.

Section 66001 (a) sets forth the requirements for establishing, increasing or imposing fees. Local agencies are required to do the following:

1. Identify the purpose of the fee.
2. Identify the use to which the fee is to be put.
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 a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

Section 66001 (c) requires that any fee subject to AB 1600 be deposited in an account established pursuant to Government Code Section 66006. Section 66006 requires that development fees be deposited in a capital facilities account or fund. To avoid any commingling of the fees with other revenues and funds of the local agency, the fees can only be expended for the purpose for which they were collected. Any income earned on the fees should be deposited in the account and expended only for the purposes for which the fee was collected.

Section 66001 (d) as amended by Senate Bill 1693 (Monteith/Statutes of 1996, Chapter 569), requires that for the fifth year following the first deposit into a developer fee fund, and for every five years thereafter, a school district must make certain findings as to such funds. These findings are required regardless of whether the funds are committed or uncommitted. Formerly only remaining unexpended or uncommitted fees were subject to the mandatory findings and potential refund process. Under this section as amended, relating to unexpended fee revenue, two specific findings must be made as a part of the public information required to be formulated and made available to the public. These findings are:

1. Identification of all sources and amounts of funding anticipated to provide adequate revenue to complete any incomplete improvements identified pursuant to the requirements of Section 66001 (a)(2).
2. A designation of the approximate date upon which the anticipated funding will be received by the school district to complete the identified but as yet, incomplete improvements.

If the two findings are not made, a school district must refund the developer fee revenue on account in the manner provided in Section 66001 (e).

Section 66001 (e) provides that the local agency shall refund to the current record owners of the development project or projects on a prorated basis the unexpended or uncommitted portion of the fees and any accrued interest for which the local agency is unable to make the findings required by Section 66001 (d) that it still needs the fees.

Section 66002 provides that any local agency which levies a development fee subject to Section 66001 may adopt a capital improvement plan which shall be updated annually and which shall indicate the approximate location, size, time of availability and estimates of cost for all facilities or improvements to be financed by the fees.

*Assembly Bill 1600 and the Justification for Levying Developer Fees*

Effective January 1, 1989, Assembly Bill 1600 requires that any school district which establishes, increases or imposes a fee as a condition of approval of development shall make specific findings as follows:

1. A cost nexus must be established. A cost nexus means that the amount of the fee cannot exceed the cost of providing adequate school facilities for students generated by development. Essentially, it prohibits a school district from charging a fee greater than their cost to construct or modernize facilities for use by students generated by development.
2. A benefit nexus must be established. A benefit nexus is established if the fee is used to construct or modernize school facilities benefiting students to be generated from development projects.
3. A burden nexus must be established. A burden nexus is established if a project, by the generation of students, creates a need for additional facilities or a need to modernize existing facilities.

## SECTION IV: REVENUE SOURCES FOR FUNDING FACILITIES

Two general sources exist for funding facility construction and modernization - state sources and local sources. The District has considered the following available sources:

### State Sources

#### *State School Facility Program*

Senate Bill 50 reformed the State School Building Lease-Purchase Program in August of 1998. The new program, entitled the School Facility Program, provides funding under a “grant” program once a school district establishes eligibility. Funding required from districts will be a 50/50 match for construction projects and 60/40 (District/State) match for modernization projects. Districts may levy the current statutory developer fee as long as a district can justify collecting that fee. If a district desires to collect more than the statutory fee (Level 2 or Level 3), that district must meet certain requirements outlined in the law, as well as conduct a needs assessment to enable a higher fee to be calculated.

### Local Sources

#### *Mello-Roos Community Facilities Act*

The Mello-Roos Community Facilities Act of 1982 allows school districts to establish a community facilities district in order to impose a special tax to raise funds to finance the construction of school facilities.

1. The voter approved tax levy requires a two-thirds vote by the voters of the proposed Mello-Roos district.
2. If a Mello-Roos district is established in an area in which fewer than twelve registered voters reside, the property owners may elect to establish a Mello-Roos district.

## ***General Obligation Bonds***

General Obligation (GO) bonds may be issued by any school district for the purposes of purchasing real property or constructing or purchasing buildings or equipment "of a permanent nature." Because GO bonds are secured by an ad valorem tax levied on all taxable property in the district, their issuance is subject to two-thirds voter approval or 55% majority vote under Proposition 39 in an election. School districts are obligated, in the event of delinquent payments on the part of the property owners, to raise the amount of tax levied against the non-delinquent properties to a level sufficient to pay the principal and interest coming due on the bonds.

The District passed Measure L in November 2014 for \$77 million in bonds to modernize school facilities. In March 2020 the District passed Measure U for \$98 million to increase school safety, keep schools well-maintained, update classroom technology, maximize energy efficiency and renovate, acquire, construct and equip classrooms. Remaining bond funds may be issued in 2020 and are encumbered for current District modernization needs; as is discussed below, the District's modernization needs are greater than those remaining bonds, requiring additional funding sources to allow the District to maintain its existing levels of service and capacity for new students.

## ***Developer Fees***

The District's developer fees are dedicated to the current needs related directly to modernization and replacement of school facilities.

## ***School District General Funds***

The District's general funds are needed by the district to provide for the operation of its instructional program.

## ***Expenditure of Lottery Funds***

Government Code Section 8880.5 states: "It is the intent of this chapter that all funds allocated from the California State Lottery Education Fund shall be used exclusively for the education of pupils and students and no funds shall be spent for

acquisition of real property, construction of facilities, financing research, or any other non-instructional purpose."

## **SECTION V: ESTABLISHING THE COST, BENEFIT AND BURDEN NEXUS**

In accordance with Government Code Section 66001, the District has established a cost nexus and identified the purpose of the fee, established a benefit nexus, and a burden nexus:

### **Establishment of a Cost Nexus & Identify Purpose of the Fee**

The Berryessa Union School District is located in the heart of Silicon Valley and understands that the requirements for academic success are rapidly changing. Providing the ongoing level of service to meet the needs of District students requires providing up-to-date classrooms, labs and learning technology as an essential component of preparing students to succeed in the competitive economy. The District has \$106.7 million remaining available in local funding from the current bond program, but has a projected need for \$352 million for modernization, resulting in a shortfall of \$245.3 million. The Berryessa Union School District chooses to replace and/or modernize facilities for the additional students created by development in the district and the cost to replace and/or modernize facilities exceeds the amount of developer fees to be collected. Without additional funds, the District will be unable to continue undertaking modernization and reconstruction necessary to maintain existing levels of service or to provide capacity for students from new development. It is clear that when educational facilities are provided for students generated by new residential, commercial and industrial development that the cost of replacing and/or modernizing facilities exceeds developer fee generation, thereby establishing a cost nexus.

### **Establishment of a Benefit Nexus**

Students generated by new residential, commercial and industrial development will be attending district schools. Housing District students in replaced and/or

modernized facilities will directly benefit those students from the new development projects upon which the fee is imposed, therefore, a benefit nexus is established.

### **Establishment of a Burden Nexus**

As discussed above, the generation of new students by development will create a need for reconstructed and/or modernized facilities. Without the ability to undertake such reconstruction and/or modernization, school facilities will become unavailable to provide the existing level of service and capacity for students generated by new development. The District must meet the burden of replacing and/or modernizing facilities required by the students generated by future developments and the need for replacing and/or modernizing facilities will, in part, be satisfied by the levying of developer fees. Therefore, a burden nexus is established.

## **SECTION VI: FACILITY FUNDING ALTERNATIVES**

The District does not currently have funds to provide for the shortfall in modernization costs. We suggest the District continue to participate in the State School Facility Program to access State facility funds.

### **STATEMENT TO IDENTIFY PURPOSE OF FEE**

It is a requirement of AB 1600 that the District identify the purpose of the fee. The purpose of fees being levied shall be used for the replacement and/or modernization of school facilities. The District will provide for the replacement and/or modernization of school facilities, in part, with developer fees.

The District completed a Facility Needs Assessment Study in 2013 and an Implementation Plan in 2014 which include a summary of District facility needs for which developer fees will be expended.

## **ESTABLISHMENT OF A SPECIAL ACCOUNT**

Pursuant to Government Code section 66006, the District has established a special account in which fees for capital facilities are deposited. The fees collected in this account will be expended only for the purpose for which they were collected. Any interest income earned on the fees that are deposited in such an account must remain with the principal. The school district must make specific information available to the public within 180 days of the end of each fiscal year pertaining to each developer fee fund. The information required to be made available to the public by Section 66006 (b) (1) was amended by SB 1693 and includes specific information on fees expended and refunds made during the year.

## **RECOMMENDATION**

Based on the fee justification provided in this report, it is recommended that the Berryessa Union School District levy residential development fees and commercial/industrial fees up to the statutory fee for which justification has been determined.



## SOURCES

California Basic Educational Data System. California State Department of Education. October Enrollments, 2015-2018.

Collard, Gary. Lead Housing Analyst for Southern California. California State Department of Housing and Community Development.

Dr. Roxane Fuentes, Superintendent, Berryessa Union School District.

Eastwood, Rob. County of Santa Clara, Planning Manager.

Fossati, Michael. City of Milpitas, Senior Planner.

Gomez, Charla. City of San Jose, City Planner.

Office of Public School Construction. Leroy F. Greene School Facilities Act, 1998.

Sandoval, Margot. Administrative Assistant, Berryessa Union School District.

San Diego Association of Governments. Traffic Generators, January 1990.

Schreder, Jack and Associates. Original research.

**APPENDIX A**  
**PER PUPIL GRANT AMOUNTS**

ATTACHMENT B

**ANNUAL ADJUSTMENT TO SCHOOL FACILITY PROGRAM GRANTS**

State Allocation Board Meeting, January 22, 2020

Grant Amount Adjustments

New Construction	SFP Regulation Section	Adjusted Grant Per Pupil Effective 1-1-19	Adjusted Grant Per Pupil Effective 1-1-20
Elementary	1859.71	\$12,197	\$12,451
Middle	1859.71	\$12,901	\$13,169
High	1859.71	\$16,415	\$16,756
Special Day Class – Severe	1859.71.1	\$34,274	\$34,987
Special Day Class – Non-Severe	1859.71.1	\$22,922	\$23,399
Automatic Fire Detection/Alarm System – Elementary	1859.71.2	\$15	\$15
Automatic Fire Detection/Alarm System – Middle	1859.71.2	\$20	\$20
Automatic Fire Detection/Alarm System – High	1859.71.2	\$33	\$34
Automatic Fire Detection/Alarm System – Special Day Class – Severe	1859.71.2	\$61	\$62
Automatic Fire Detection/Alarm System – Special Day Class – Non-Severe	1859.71.2	\$43	\$44
Automatic Sprinkler System – Elementary	1859.71.2	\$205	\$209
Automatic Sprinkler System – Middle	1859.71.2	\$243	\$248
Automatic Sprinkler System – High	1859.71.2	\$253	\$258
Automatic Sprinkler System – Special Day Class – Severe	1859.71.2	\$646	\$659
Automatic Sprinkler System – Special Day Class – Non-Severe	1859.71.2	\$433	\$442

ATTACHMENT B

**ANNUAL ADJUSTMENT TO SCHOOL FACILITY PROGRAM GRANTS**

State Allocation Board Meeting, January 22, 2020

Grant Amount Adjustments

Modernization	SFP Regulation Section	Adjusted Grant Per Pupil Effective 1-1-19	Adjusted Grant Per Pupil Effective 1-1-20
Elementary	1859.78	\$4,644	\$4,741
Middle	1859.78	\$4,912	\$5,014
High	1859.78	\$6,431	\$6,565
Special Day Class - Severe	1859.78.3	\$14,802	\$15,110
Special Day Class – Non-Severe	1859.78.3	\$9,903	\$10,109
State Special School – Severe	1859.78	\$24,672	\$25,185
Automatic Fire Detection/Alarm System – Elementary	1859.78.4	\$151	\$154
Automatic Fire Detection/Alarm System – Middle	1859.78.4	\$151	\$154
Automatic Fire Detection/Alarm System – High	1859.78.4	\$151	\$154
Automatic Fire Detection/Alarm System – Special Day Class – Severe	1859.78.4	\$415	\$424
Automatic Fire Detection/Alarm System – Special Day Class – Non-Severe	1859.78.4	\$278	\$284
Over 50 Years Old – Elementary	1859.78.6	\$6,452	\$6,586
Over 50 Years Old – Middle	1859.78.6	\$6,824	\$6,966
Over 50 Years Old – High	1859.78.6	\$8,933	\$9,119
Over 50 Years Old – Special Day Class – Severe	1859.78.6	\$20,565	\$20,993
Over 50 Years Old – Special Day Class – Non-Severe	1859.78.6	\$13,752	\$14,038
Over 50 Years Old – State Special Day School – Severe	1859.78.6	\$34,273	\$34,986

**APPENDIX B**

**COMM/IND MINI-STORAGE**

Berryessa Union School District						
Commercial/Industrial Calculation (mini-storage)						
	EMP/ 1000 SQ.FT.	DIST. HH/ EMP.	HH/SF	% EMP IN EXIST HH	ADJUSTED HH/SF	ADJ % DIST HH/EMP
MINI-STORAGE	0.06	0.2	0.000012	0.4	0.0000048	0.08
STUDENT YIELDS			COST PER STUDENT			
K-8	0.1249		K-8	\$30,289		
<b>STUDENTS PER SQUARE FOOT</b>						
(YIELD FACTORS X ADJ HH/SQ.FT IN COLUMN F						
MINI-STORAGE	0.000001					
<b>COST PER STUDENT</b>						
(STUDENTS/SQ.FOOT X STUDENT COSTS/SQ.FT IN EACH CATEGORY						
	K-8					
MINI-STORAGE	\$0.07					