REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, May 30, 2012

SCHOOL DISTRICT DATA	
School District: ..... AROMAS – SAN JUAN UNIFIED	County:.....SAN BENITO
Application Number:..... TBD	School Name:..... SAN JUAN SCHOOL
Total District Enrollment:.....1,277	Project Grade Level: K-8
Financial Hardship: ..... NO	
Last Approved Local Bond Measure……..……November 2, 2010 ($9.7 million)	

PURPOSE OF REPORT

To present advance apportionment options for a potential Seismic Mitigation Program (SMP) project for the District.

DESCRIPTION

At the March 28, 2012 State Allocation Board (Board) meeting, Staff presented the District's request for Financial Hardship status based upon "other evidence" of reasonable effort as approved by the Board. On May 14, 2012, the District submitted a letter to the Office of Public School Construction (OPSC) rescinding that appeal request; however, the District indicates that it still has need for "pre-construction funding." The District's immediate need for funding is to complete the evaluation of the geologic conditions at the San Juan School site, which will determine whether or not the District can rehabilitate, replace, or replace and relocate the affected buildings on the site under the SMP. As an alternative to the District's request, the Board directed Staff to explore other advance apportionment options for the District's proposed project. This item presents the results of Staff's review of alternative advance apportionment options.

AUTHORITY

SFP Regulation Section 1859.82 states the following:

A district is eligible for facility hardship funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the Division of the State Architect (DSA) to be repaired, seismic mitigation of the Most Vulnerable Category 2 Buildings as verified by the DSA, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk. The total available funding for seismic mitigation related and ancillary costs for the Most Vulnerable Category 2 Buildings is $199.5 million.

(A) If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for a Modernization Excessive Cost Hardship Grant for rehabilitation costs pursuant to Section 1859.83 (e) or a grant not to exceed 50 percent of the cost estimate that has been reviewed and approved by the OPSC and approved by the board for seismic rehabilitation.

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AUTHORITY (cont.)

(B) If the request is for replacement facilities that included structural and/or seismic deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA. For seismic deficiencies of the Most Vulnerable Category 2 Buildings, the report and the cost estimate for the minimum work necessary must be reviewed by the DSA.
(C) The seismic mitigation projects must meet all of the following requirements:
1. The construction contract was executed on or after May 20, 2006;
2. The project funding provided shall be for the minimum work necessary to obtain DSA approval;
3. The building is designed for occupancy by students and staff; and
4. The DSA concurs with a report by a structural engineer, which identifies structural deficiencies that pose an unacceptable risk of injury to its occupants in a seismic event. If the unacceptable risk of injury is due to the presence of faulting, liquefaction or landslide, these hazards must be documented by a geologic hazards report prepared by an engineering geologist in accordance with California Building Code, Part 2, Chapter 18, section 1803A and with the concurrence of the California Geological Survey.
The structural engineer's report shall conform to the guidelines prepared by the DSA, in accordance with Education Code Section 17310.

SFP Regulation Section 1859.83(e) states the following:
Excessive Cost for rehabilitation of facilities the Board has determined are a health and safety risk to the pupils pursuant to Section 1859.82(a)(1) and the cost/benefit analysis to mitigate the problem and remain in the facility is less than 50 percent of the Current Replacement Cost of the facility. If the district qualifies, the district is eligible for funding of rehabilitation costs as a modernization project. If the Approved Application is received on or before April 29, 2002, the grant amount provided is 80 percent of the amount of the cost estimate required in Section 1859.82(a)(1) that has been reviewed by the OPSC and approved by the Board. If the Approved Application is received after April 29, 2002, the grant amount provided is 60 percent of the amount of the cost estimate required in Section 1859.82(a) (1) that has been reviewed by the OPSC and approved by the Board. For any project funded in whole or in part from Proposition 47 or Proposition 55 for which the construction contract is awarded prior to January 1, 2012, the district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.78.1(a). For any project for which the construction contract is awarded on or after January 1, 2012, the grant may be adjusted in the manner prescribed in Section 1859.78.1(b) and subject to the limitations established in Section 1859.78.1(c).

BACKGROUND

On December 12, 2011, the District submitted two appeals. The first appeal was for a finding of Financial Hardship based on "other evidence of reasonable effort as approved by the SAB." The second appeal is for "conceptual approval with special request for immediate funding for seismic testing and trenching" of a potential facility hardship project.

Seven of the buildings at the site meet the eligibility requirements for the SMP program as the Most Vulnerable Category 2 Buildings and the area's ground shaking potential. However, the school is located very close to the San Andreas Fault, and therefore it is possible there are active trace faults on the campus. If the site does have trace faults, the rehabilitation option may not be allowed since existing law and regulations place restrictions on the scope of work permitted for a school building within 50 feet of a known active fault or fault trace. The only way to determine if the site has these conditions is to conduct a geological hazard study, including trenching. The estimated cost for the trenching work is $203,900. The District must conduct the Geological Hazard Study to appropriately assess the scope (rehabilitation versus replacement) of the project.

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BACKGROUND (cont.)

At the March 28, 2012 meeting, Staff presented the District's request for Financial Hardship approval. Based on the information presented, the Board did not take action on the District's request. In consideration of the District's circumstances, the Board directed Staff to explore the possibility providing funding solely for the Geological Hazard Study as an alternative method of meeting the District's current need.

The Board also directed Staff to contact the Seismic Safety Commission (SSC) to request approval to use any remaining grant funds for purposes of funding seismic testing such as this one. The funds in question were interest earned from a $200,000 grant the SSC provided to the OPSC in November 2009 to contract for structural engineering services to conduct seismic evaluations for potentially eligible sites (it was this grant that helped to identify the District's buildings as Most Vulnerable Category 2 buildings). In addition to this specific direction, Staff was directed to explore other available funding solutions for the District.

On May 14, 2012 the District withdrew the previously submitted *School District Appeal Request* (Form SAB 189) for Financial Hardship consideration.

STAFF ANALYSIS/STATEMENTS

As directed, Staff has completed a thorough analysis of current School Facility Program (SFP) Regulations that could provide advance apportionment options for a potential SMP project for the District. Staff also sought out other funding options outside the SFP by examining other State, Federal, and university level programs in addition to the SSC grant funding previously provided. Based on Staff's review, the only option available to the Board to provide an advance apportionment in this situation is to amend the current regulations to create a new funding process.

Current SFP Regulations

The SFP Regulations allow for funding in advance of California Department of Education (CDE) and Division of the State Architect (DSA) plan approval only for specific types of projects, which includes the following:

- Financial Hardship Status
- Charter School Facilities Program (CSFP) Preliminary Apportionment
- Career Technical Education Facilities Program (CTEFP) Full Loan.

All opportunities to access advance funding through the SFP (CSFP, CTEFP, and Financial Hardship) are specifically prescribed in SFP Regulations and/or the Education Code. The District's request does not meet the requirements in statute and regulation to provide an advance fund release or apportionment under these programs.

Under the current SMP Regulations, the Board is not able to provide funding to the District *to identify* the minimum work required to mitigate the structural deficiencies or geologic hazards. SFP Regulation Section 1859.82 defines the requirements for obtaining funding for Facility Hardship and SMP projects. It provides a broad range of circumstances under which a project may be eligible, direction on what supporting documentation is needed and the formula for how to determine the level of funding that may be provided to a qualifying project.

The Facility Hardship and SMP Regulations are designed to *mitigate* a health and safety hazard. The District is aware that it has buildings on the site eligible for a structural Facility Hardship due to their Most Vulnerable Category 2 classification and the area's ground shaking potential, but is still in the process of identifying whether the problem is also geological. A geological threat would change the scope of the project dramatically, potentially leading to a relocation of buildings or the entire school. The District must identify the problem through pre-planning work such as trenching before the minimum work required to mitigate the threat can be established. The final mitigation plan would be designed specific to the identified hazard(s). Only after the District develops a mitigation plan could the District seek a conceptual approval for Facility Hardship. The District would then need to obtain DSA and CDE plan approval before it could submit an *Application for Funding* (Form SAB 50-04).

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STAFF ANALYSIS/STATEMENTS (cont.)

Geological Hazard Studies are considered a planning cost under the SFP program and would be an eligible expenditure under the SFP, but is not eligible to be funded in advance because it does not fall under the advance funding opportunities described above (CSFP, CTEFP, and Financial Hardship). It also does not conform to the Facility Hardship or SMP Regulations as an eligible, stand-alone project. Staff has consulted with legal counsel, who concurs with Staff's interpretation of statute and regulation in these cases.

Absent an amendment to these regulations, there is no allowance to provide an advance apportionment.

Other Considerations

Staff explored potential avenues for funding outside of the SFP for the District to consider. When contacted, the SSC advised Staff that the grant funds could not to be used for any other purpose than their original intent and that the unused funds must be returned.

Staff also contacted other entities, such as the California School Finance Authority, the CDE, the Federal Emergency Management Agency (FEMA), and some California universities to identify potential funding sources. FEMA does have a multi-step federal grant program that the District may wish to consider. This program provides funding for pre-disaster mitigation. Additionally, some universities have stated that geology departments sometimes trench sites as part of course work and many universities have California Geological Survey (CGS) branches on their campuses. Such projects would actually be funded through a grant from either United States Geological Survey (USGS) or the National Science Foundation (NSF). The District could also consider applying directly to the USGS or NSF for a grant. If the university were able to secure such a grant, the District would likely still need to contract with a heavy equipment company and find a State-level registered geologist to oversee the project. The District may wish to consider these opportunities, although Staff recognizes that they would not provide immediate funding for the District.

Potential SFP Regulation Amendment

In order to provide advance funding for the District, the Board could consider amending the current SFP Regulations to provide SMP projects the opportunity to access advance funding for testing, design, etc. outside of a finding of Financial Hardship. The parameters and requirements of how to qualify for this type of advance fund release would be established in regulation and would need to go through the regulatory process.

Staff would need direction from the Board as to the scope, intent, and limitations of a potential regulatory change. Potential parameters the Board may wish to consider include the following:

- Minimum eligibility criteria for qualification, such as a SMP eligibility approval from DSA
- Time limit for submittal of a full funding application
- Offset the full grant by the advance apportionment

It is important to note that Financial Hardship and CTEFP applicants are required to demonstrate financial need to receive an advance apportionment. Charter schools typically do not have access to the resources (local bonds, developer fees) of a traditional school district and need advance fund releases to get qualifying projects started. Trenching, structural evaluations, soil testing and other similar costs are often necessary start-up costs to determine the course of mitigation work. They are similar to design and other pre-construction costs, and are typically eligible project expenditures. For a non-Financial Hardship project, the district would cover these costs up front and they would qualify as part of the district's matching share. The SFP only provides advance funding for these costs to applicants with a demonstrated financial need. Therefore, allowing an advance apportionment for a district without a demonstrated financial need would be a substantial change to the SFP. Such a change could set a precedent for potential future regulatory changes to create advance apportionments for pre-construction costs in other SFP programs, as well.

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STAFF ANALYSIS/STATEMENTS (cont.)

Another potential result of such a regulatory change is a reduction in SMP funds available to mitigate seismic hazards. A regulation change could allow more applicants to access the limited SMP funds, by qualifying for advance apportionment for pre-construction work. If the applicants do not move forward with construction projects, more SMP funding could be directed to the assessment of hazards and less on mitigating hazard. Therefore, allowing an advance apportionment for a district without a demonstrated financial need is a substantial change to the SFP.

As directed, Staff explored all potential options to provide funding for the District's appeal request. Staff has determined that amending the regulations is the only method available. Unless the Board directs Staff to develop regulatory changes, the District's request cannot be accommodated under the SFP.

RECOMMENDATION

Seek Board direction on whether to develop SFP Regulation changes and the scope, intent, and limitations of such a change.

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