

# Court Refunds Developer Fee Due to Inadequate Fee Study

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The California Court of Appeal recently addressed the adequacy of a developer fee justification study that a school district must prepare before imposing Level 1 developer fees. (*Summerhill Winchester LLC v. Campbell Union School District* (2018) 30 Cal.App.5th 545.) The court held that the district's developer fee justification study failed to properly calculate the fee or show a reasonable relationship between the amount of the fee and the burden imposed by new development. As a result, the court affirmed an order requiring the district to refund the fees to a developer.

## Background

School districts may impose Level 1, 2, or 3 developer fees (also referred to as "school impact fees") on new development within district boundaries to fund the construction or reconstruction of school facilities necessitated by new development.

A residential developer, Summerhill Winchester, LLC ("Summerhill"), filed an action against Campbell Union School District ("District") challenging the validity of Level 1 developer fees imposed by the District. In particular, Summerhill challenged the legal sufficiency of the District's fee study ("Study").

## Decision

Existing law requires a district to prepare a Level 1 fee justification study that shows a reasonable relationship between the amount of Level 1 developer fees and the burden placed on the district by development. Previous cases have identified three necessary elements of a fee justification study: (1) a projection of the total amount of new housing; (2) a determination of how many new students that new housing will generate; and (3) the cost to provide necessary facilities to those new students.

The *Summerhill* court held that the District's Study did not satisfy these three elements. First, the Study projected that "in excess of 133 residential units" could be built within District boundaries within the next five years; however, data from only one of three municipalities within District boundaries was presented in the Study, rendering the data vague. Second, the Study conclusion that "at least" 67 new students would enroll in the District as a result of the expected



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development” was not precise enough to decide how to accommodate projected enrollment increases.

## **Impact**

Fee Studies must contain realistic, quantifiable data to support the imposition of Level 1 developer fees. Because the process necessarily involves projections and predictions regarding development and building costs, data need not be exact but must present a reasoned analysis of each of the required elements in order to connect the burden imposed by new development and the District’s fee. Even for overcrowded districts, a fee justification study needs to show the anticipated number of new residential units, the projected enrollment increase from those new units, and the cost of facilities, new or existing, actually needed to house students generated by new development.

If you have questions about developer fee studies or any other issues involving developer fees, please contact your legal counsel or a DWK attorney in our Business, Property, and Construction group.

## **PRACTICE AREAS**

- Business and Property
- Construction