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C.A.S.H. WORKSHOP

“Local Government Fees and Charges--Do You Have to Pay?”

Tuesday, December 4, 2007

9:00 a.m. to 3:00 p.m.

Doubletree Hotel

2001 Point West Way

Sacramento, California

AN UPDATE OF CITY OF MARINA AND OFFSET FEES

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**An Update of City of Marina
And Offset Fees**

C.A.S.H. Workshop

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**AN UPDATE OF CITY OF MARINA
AND OFFSET FEES**

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BACKGROUND: LOCAL GOVERNMENTAL FEES AND ASSESSMENTS

In 1986, the California Supreme Court held that public property is exempt from special assessments absent legislation authorizing such assessment.

(San Marcos Water District v. San Marcos Unified School District (1986) 42 Cal.3d 154)

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BACKGROUND: LOCAL GOVERNMENTAL FEES AND ASSESSMENTS

- ❖ In 1988, the Legislature adopted Government Code sections 54999-54999.6, which identify the specific areas in which capital facilities assessments can be charged.
- ❖ Capital facilities assessments are limited to “public utility facilities.”

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BACKGROUND: LOCAL GOVERNMENTAL FEES AND ASSESSMENTS

“Public Utility Facilities” provide:

- ❖ Water,
- ❖ Light, heat, power,
- ❖ Communications,
- ❖ Garbage service,
- ❖ Flood control,
- ❖ Drainage or sanitary purposes,
- ❖ Sewer collection, treatment or disposal.

(Gov. Code § 54999.1, subd. (d).)

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BACKGROUND: LOCAL GOVERNMENTAL FEES AND ASSESSMENTS

Note:

- ❖ The areas in which fees can be charged are limited and discrete.
- ❖ Only assessments that reflect “the proportionate share of the cost that is related to a school district’s use may be imposed. (Gov. Code § 54999.1, subd. (f).)
- ❖ The amount of the assessment must be agreed upon through negotiations with the school district. (Gov. Code § 54999.3, subd. (b).)

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CITY OF MARINA DECISION

City of Marina v. California State University (2006) 138 P.3d 692, 46 Cal.Rptr.3d 355.

- ❖ FORA (a public agency) challenged an EIR that evaluated CSU's plan to expand the Cal State Monterey Bay campus because the EIR did not mitigate certain off-campus effects of the expansion.
 - ❖ The EIR said that CSU could not pay FORA to mitigate the off-campus effects because such payments would constitute an unpermitted assessment.
 - ❖ The EIR adopted a "statement of overriding considerations" which stated that mitigating the off-campus effects was legally infeasible.

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CITY OF MARINA DECISION

- ❖ The Court ruled against CSU, distinguishing between assessments imposed upon CSU by outside agencies (FORA) and contributions made "voluntarily" by CSU to mitigate an environmental impact.
- ❖ CSU also failed adequately to explain why it would not be financially able to mitigate the impact.

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GROSSMONT DECISION

One month before the City of Marina decision, a Court of Appeal rejected an EIR on the same grounds.

- ❖ The Court held that San Marcos and subsequent legislation was completely unrelated to CEQA, and did not limit public agencies' mitigation obligations.
- ❖ The Court also concluded that the EIR did not include sufficient evidence of the allegedly infeasible cost of mitigation.

(County of San Diego v. Grossmont-Cuyamaca Community College Dist. (2006) 141 Cal.App.4th 86.)

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ASSESSMENTS v. FAIR SHARE

- ❖ Neither City of Marina nor Grossmont require school districts to pay assessments imposed by other agencies.
- ❖ Instead, they require school districts to pay a fair share to mitigate impacts under CEQA.
- ❖ What constitutes a “fair share,” and what input other agencies have in determining the fair share, will likely be the crux of future disputes.

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FALLOUT FROM CITY OF MARINA

- ❖ Some public agencies are seeking to use City of Marina as a basis to impose assessments upon school districts, arguing that CEQA now allows them to do what the Government Code did not.
- ❖ However, City of Marina does not change existing law or authorize new imposition of assessments.

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FALLOUT FROM CITY OF MARINA

- ❖ Instead, as always, school districts must evaluate potential impacts under CEQA, and determine mitigation measures.
- ❖ Offsite effects on the environment must be considered and mitigation measures developed.

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FALLOUT FROM CITY OF MARINA

- ❖ The agency preparing the EIR, not other public agencies, must determine appropriate mitigation measures.
- ❖ Therefore, other public agencies may not use CEQA to impose assessments on a lead agency such as a school district.

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FALLOUT FROM CITY OF MARINA

- ❖ If payment to another public agency is an appropriate mitigation measure, it should be included in the EIR.
- ❖ However, the agency developing the EIR may determine the appropriate amount of payment (subject to judicial review).

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FALLOUT FROM CITY OF MARINA

- ❖ If the agency developing the EIR cannot afford to pay for the improvements, it must demonstrate why.
- ❖ If it can be shown that adequate funding is unavailable, a statement of overriding considerations could potentially still be utilized.

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POTENTIAL TEST CASE

- ❖ On November 15, San Diego State University approved a master plan EIR to add 10,000 students to the university.
- ❖ The project is already in litigation over the amount of SDSU's fair share contribution to mitigate traffic impacts. SDSU is offering to seek \$6.4 million from the State; the City of San Diego wants a firm commitment of up to \$21.8 million.
- ❖ SDSU withdrew a previously-approved EIR after the City of Marina decision. The pending litigation may be a bellwether of the ultimate impact of City of Marina.

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CITY OF MARINA CATCH-22 #1

Districts must demonstrate that there is no State funding available in order to conclude in the EIR that it cannot mitigate off-campus effects, *but* the State won't fund mitigation measures until the CEQA process is completed.

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CITY OF MARINA CATCH-22 #2

Can local bond money be used for offsite infrastructure improvements?

- ❖ Districts will have to consider whether to write bond measures narrowly, to avoid making bond funds available for City or County mitigation measures, or write the bond measure broadly, to enable the district to address contingencies.

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AVOIDING THE CATCH-22s

The best way to avoid the Catch-22s is to engage in early consultation with the City or County before beginning the bond and CEQA processes, in order to identify and possibly resolve potential problems in advance.