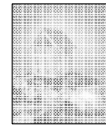




CALIFORNIA'S
COALITION
for ADEQUATE
SCHOOL HOUSING



**MAXIMIZING DEVELOPER FEES:
WHO, WHAT, HOW, WHEN, AND HOW MUCH?**



**Friday, August 25, 2006
Ontario Airport Marriott
Ontario, CA**



**WHAT IMPACT FEES MUST A SCHOOL DISTRICT PAY?
CITY OF MARINA V. CALIFORNIA STATE UNIVERSITY**

- **Lauri LaFoe**
Lozano Smith



BACKGROUND: LOCAL GOVERNMENTAL FEES AND ASSESSMENTS

- Background: Local Governmental Fees and Assessments
 - In 1986, the California Supreme Court held in San Marcos Water District v. San Marcos Unified School District ((1986) 42 Cal.3d 154) that there is an exemption from special assessments for public property absent legislation authorizing such assessment.



BACKGROUND: LOCAL GOVERNMENTAL FEES AND ASSESSMENTS

- In 1998, the Legislature adopted Government Code sections 54999-54999.6 which delineate the specific areas in which capital facilities assessments can be charged. The assessments are limited to “public utility facilities,” which are defined as facilities that provide:
 - water,
 - light, heat, power,
 - communications,
 - garbage service,
 - flood control,
 - drainage or sanitary purposes,
 - sewer collection, treatment or disposal.
 - (Gov. Code § 54999.1(d).)



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).)



BACKGROUND: LOCAL GOVERNMENTAL FEES AND ASSESSMENTS

- 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 mitigating the off-campus effects would equate to an unpermitted assessment.
 - The EIR adopted “statement of overriding considerations” which stated that mitigating the off-campus effects was legally infeasible.



BACKGROUND: LOCAL GOVERNMENTAL FEES AND ASSESSMENTS

- The Court ruled that mitigating the off-campus effects was not an assessment, but rather a “voluntary contribution.”
- CSU must make an effort to mitigate the impact (e.g., applying for state funding).



BACKGROUND: LOCAL GOVERNMENTAL FEES AND ASSESSMENTS

- Note: The Court also stated that FORA “has no power to dictate the manner” in which CSU mitigates the off-campus effects.



BACKGROUND: LOCAL GOVERNMENTAL FEES AND ASSESSMENTS

- The Court was very concerned by the fact that CSU contended that it would be financially infeasible to mitigate off-site impacts but did not demonstrate that it lacked the funds or had sought the funding.



BACKGROUND: LOCAL GOVERNMENTAL FEES AND ASSESSMENTS

- “Catch 22”: A district 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.