
New Appellate Court Case Reaffirms that School District's Imposition of Developer Fees is Tied to the General Type of Construction, not the Particular Project

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In a recent ruling, a California appellate court upheld a school district's imposition of developer fees on a residential project oriented towards college students, rejecting the developer's argument that the fees were improper because the project would allegedly generate no district students. (*AMCAL Chico LLC v. Chico Unified School District* (November 5, 2020) __ Cal.App.5th. ____). The Court borrowed heavily from the decision in *Tanimura & Antle Fresh Foods, Inc. v. Salinas* (2019) 34 Cal.App.5th 775, a case in which Lozano Smith served as co-counsel. For more information on *Tanimura*, please see Lozano Smith's [2019 Client News Brief Number 44](#).

Background

AMCAL Chico, a private developer of student and workforce housing, developed a "building intended to house college students" within the boundaries of the Chico Unified School District (District). The project contained over 600 beds intended to be leased to students at the local university, with the requirements that all potential occupants be 18 years old and enrolled in a local degree program. AMCAL asserted that its project would not generate District students and was thereby exempt from school impact mitigation fees. AMCAL asserted that rentals would be made by the bed, locks would be placed on each bedroom and bathroom, units would be furnished, there would be a shuttle service to campus, leases would be twelve months, and residential assistants would work with students.

Following a May 2018 trial, the trial court found that "a facility housing college students, such as this one, is not a separate class of residential development. Rather a residential apartment building, such as this one, is a residential apartment building regardless of its present, or intended occupants." The trial court noted that AMCAL's subjective classification of its project did not change the fact that this was a residential apartment building for mitigation fee assessment purposes. The trial court concluded that the mitigation fee assessed by the District was reasonable and the District met its legal burdens.

Appellate Court Decision

The appellate court upheld the trial court's decision in favor of the District. In reaching its decision, the court quoted *Tanimura* extensively. The Appellate Court cited to

language in *Tanimura* stating that Government Code section 66001, subdivision (a), allows an agency to impose a fee “reasonably related to projected development impacts without tying its analysis to an individual project.” The court rejected the developer’s claim that a school district must make an individualized determination for each particular project, relying on the conclusion of *Tanimura* that a school district must only make its findings based on the general type of construction, such as residential construction. The court also rejected the developer’s argument that the District’s fees were an unlawful special tax or were an unlawful taking.

Takeaways

Tanimura clarified that public agencies, when imposing developer fees, need not consider the specific development project, but only the *general type of project* at issue. The *AMCAL* case, in its extensive citation to *Tanimura*, further strengthens a school district’s ability to resist the claims of developers who assert that they should be relieved of fees because few or no students will allegedly be generated by a specific project. Both *Tanimura*, which addressed agricultural workforce housing, and *AMCAL* acknowledge the reality that the use of residential housing once constructed may change over time, and students may eventually be generated.

If you have any questions about developer fees, please contact an attorney at one of our [eight offices](#) located statewide. Copies of Lozano Smith's Developer Fee Handbook are available for purchase from Lozano Smith’s Client Services Department; you can submit your request to clientservices@lozanosmith.com. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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