

# CLIENT NEWS BRIEF

## Developer Fees for School Facilities May Not Be Imposed on Replacement Housing Absent Specific Study and Findings

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We are often asked whether a development project that replaces existing housing must pay school impact fees. In the recent case of *Cresta Bella, LP v. Poway Unified School District* (July 31, 2013) \_\_ Cal.App.4th \_\_ 2013 WL 3942961, a California Court of Appeal concluded, based on the specific facts before it, that other than increased square footage beyond the original square footage, a school district may not impose fees on replacement housing unless a study expressly demonstrates that the replacement housing will generate new students.

The issue of fees for replacement housing was previously considered in *Warmington Old Town Assocs. v. Tustin Unified School Dist.* (2002) 101 Cal.App.4th 840. There, a court of appeal concluded that there is a statutory basis to require replacement development to pay statutory developer fees when the demolition of the existing buildings was voluntary. However, *Warmington* also concluded that the school district's fee justification study must specifically have considered the "type" of development in question (voluntary demolition and replacement) and established a "nexus" between the new development and the impact on school districts.

In response to *Warmington*, some school districts have attempted to address the impact of replacement housing as a "type" of development in their developer fee justification studies (for "Level 1" fees) or school facilities needs analyses (for "Level 2" fees). Poway Unified School District did so as well, including language in its school facilities needs analysis that expressly took replacement housing in the district into account. The district's analysis addressed "residential redevelopment," consisting of the demolition and replacement of existing dwelling units with new units. The study estimated how many of the new units anticipated would be replacement units, how many students would be generated, and how many students from the existing units would be reduced. The analysis then concluded that fees for the replacement units were justified because the Level 2 fee was capped at an amount based on the statutory formula that would not fully mitigate impacts, meaning that fees from replacement square footage were needed. The district also later argued in court that the original apartment units had never originally paid school impact fees, as they were built prior to the fee legislation.

In *Cresta Bella*, the developer demolished existing apartment units, replacing them with a greater number of units and square footage. Based on its needs analysis, the school district imposed fees on the entirety of the new apartment units, not just the increased amount of square footage.

The court of appeal rejected the district's approach. Relying on *Warmington*, the court concluded that the district failed to establish that there is a connection between the new construction and an increase in student population. The court was unpersuaded by the fact that the district would not have adequate mitigation, noting that this was a result of the statutory formula, and not the result of new students generated by the replacement housing above and beyond the students who were already there. Similarly, the court did not find the fact



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that the original units never paid fees to be relevant, because that did not demonstrate that the replacement units were what was causing the need for new school facilities. The court did, however, uphold the imposition of fees on any increased square footage beyond what was previously in place. We have consulted with the district's attorneys, and the district has not yet decided whether to appeal the decision.

Based on *Cresta Bella*, the key for justification studies and school facilities needs analyses moving forward will be establishing the nexus or relationship between the development of replacement housing and the generation of new students. As noted by the court, the study must "show that reconstruction of preexisting units was projected to be a contributing *cause* of the need for new school facilities." Importantly, the court recognized that "(t)here may be circumstances in a particular school district's housing reconstruction trends that could support a correlation between reconstruction of preexisting residential units and the generation of new students. . . ."

Questions regarding the application of fees to replacement development should be carefully considered at the time justification studies or needs analyses are prepared. Please feel free to contact one of our [eight offices](#) located statewide for assistance with reviewing draft justification studies and needs analyses, or with questions concerning the imposition of fees on replacement or other development. For a copy of Lozano Smith's Developer Fee Handbook for School Facilities, which is a point by point guide for imposing and collecting school impact fees, please visit our [online order form](#). You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).