

## Court Strikes Down Alameda Impact Fees in Boatworks, LLC v. City of Alameda

The Mitigation Fee Act, Government Code section 66000 *et seq.*, authorizes local agencies to impose fees on development projects in order to cover the cost of public facilities needed to serve the developments. However, the local agencies' power to impose mitigation fees is not unlimited: the fees must be reasonably related to the increased burden on public facilities caused by the new development. (Gov. Code § 66000(b); 66001.)

Pursuant to the authority granted by the Mitigation Fee Act, the City of Alameda established a schedule of fees to be imposed on future developments including, as relevant here, a fee for park facilities. The City conducted a "nexus" study to determine the appropriate park facilities fees. The study first estimated the cost per acre for acquiring and developing park and open space facilities. The study then determined that the existing standard for parkland was 2.4 acres per 1,000 residents. The nexus study calculated that, in order to maintain the existing standard with the addition of an estimated 8,260 residents in new developments, the City would need to spend \$28.5 million to acquire land for parks and \$10.5 million to improve that land. Pursuant to the nexus study, the City set the park impact fees at \$11,528 per single-family home and \$9,148 per multi-family home.

Boatworks, a local developer, brought litigation challenging the park facilities fees on the grounds that the fees lacked a reasonable relationship to the burden created by the future development. Boatworks was successful at the trial court level, and the Court of Appeal largely confirmed the trial courts analysis. The Court of Appeal made four key rulings:

First, the Court of Appeal held that the City could not pass through the purported cost of acquiring land for parks that the City already owned—and, indeed, had acquired in large part at no cost. The court concluded that imposition of a fee that is based, in part, on acquiring new property when the acquisition of new property is not actually required, lacks a reasonable relationship to the burden caused by the new development.

Second, the Court of Appeal held that the City could not include future, unopened parks in the calculation of the baseline for determining the amount of parkland necessary to maintain existing service levels in the City (thereby increasing the baseline

by Christopher A. Rheinheimer &  
Kristina D. Lawson



service level and the cost to maintain that level), when the City expressly intended to use the impact fees to pay for the construction of those parks.

Third, the Court of Appeal held that the City could classify certain areas as parks rather than (less expensive) open space even though the City had previously considered the "parks" to be "Community Open Space" in the General Plan. The court required no explanation from the City as to the apparent change in its classification—instead relying on a very generous interpretation of the difference between open space and parkland. The court held that, because the record indicated that the difference between the two classifications in the nexus study was the cost of constructing improvements on parkland (open space was assumed to have no improvement costs), the City permissibly categorized the previously-denominated "Community Open Space" as parkland because there were minor improvements on the land—such as benches, lighting, and fencing.

Fourth, the Court of Appeal rejected Boatworks' argument on cross-appeal that impact fees can never be used to remedy existing deficiencies. The Court held that new residents will also use existing facilities, and the increased demand on those facilities may require additional funds to maintain existing levels of service. Thus, the court held that there was a reasonable relationship between the fees and the impact of development in this regard.

The Court of Appeal's four key holdings paint a picture that many real estate developers will be familiar with: courts tend to give local agencies significant deference when determining whether there is a reasonable relationship between an impact fee and a proposed development. Here, for example, the court allowed the City to calculate higher impact fees by deferring to the City's factually-dubious determination that areas the City itself called "Community Open Space" could be considered parkland, rather than open space, for the purposes of determining impact fees—even though the City never explained the change.

However, there are limits to the courts' deference. One example of these limits is made apparent here: where a local agency's articulated justification for impact fees is simply untethered from reality—for example, by purporting to calculate fees required for the purchase of land when that land already has been acquired for free—those justifications must be rejected.

For more information, please contact:

**Christopher A. Rheinheimer**, Senior Counsel  
415-995-5082  
CRheinheimer@hansonbridgett.com

**Kristina D. Lawson**, Partner  
925-746-8474  
KLawson@hansonbridgett.com