

## Action for Refund of Developer Fees Was Subject to One-Year Statute of Limitations

The Third District Court of Appeal held that a suit for refund of developer fees based on failure to make findings required under the Mitigation Fee Act was an action for a "penalty or forfeiture" subject to the one-year limitations period under Code of Civil Procedure section 340(a). *County of El Dorado v. Superior Court (Austin)*, No. C088409 (3rd Dist. Oct. 30, 2019). Government Code section 66001 -- part of the Mitigation Fee Act -- requires local agencies that collect development impact fees to make findings every five years justifying the ongoing retention of those fees, including specifying the timing of the planned use of the fees. If the required findings are not timely made, "the local agency *shall refund* the moneys in the account . . . to the then current record owner ... of the [property]" for which it was collected. Gov't Code § 66001 (e), emphasis added.



Plaintiffs sued the County alleging that, as current property owners, they were entitled to a refund of eight development fees assessed by the County and its special districts because the County had not made the findings required under Section 66001 within the prescribed five-year period. The issue on appeal involved the applicable statute of limitations. Section 66001 does not specify a limitations period. The appellate court concluded that the action was effectively one for a statutory penalty or forfeiture and was therefore subject to a one-year deadline under Code of Civil Procedure section 340(a). The court relied on established law under which statutory damages recoverable regardless of actual fault or actual injury are considered a penalty or forfeiture. It reasoned that a refund of fees under Section 66001 met both criteria: the refund was mandated regardless of whether the local agency could in fact have made the nexus findings at the time they were due and was payable to the current property owner regardless of whether that owner had actually paid any fees. Because Section 66001 thereby

imposed liability regardless of substantive fault by the local agency and regardless of actual injury to the plaintiff, it amounted to a penalty or forfeiture subject to the one-year statute of limitations.

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