

# **High Court Makes New Rule on Mitigation of Public Recreation Impacts**

Scott M. Missall, Co-Chair  
Environment, Land Use & Natural Resources Section

---

**SHORT CRESSMAN  
& BURGESS PLLC**

## High Court Makes New Rule on Mitigation of Public Recreation Impacts

by Scott M. Missall, Co-Chair, Environment, Land Use & Natural Resources Section

The Washington Court of Appeals has upheld the right of municipalities to fix and determine impact fees for residential developments in *United Development Corporation v. City of Mill Creek* (Div. 1; April 16, 2001). In doing so, the Court made three important decisions. First, it announced a new rule that municipalities are *not required* to consider the availability of *private* recreational facilities when determining the impact of a new development on *public* park facilities. Second, it approved the use and implementation of *formula-based* mitigation fees for development exactions. And third, it resolved some significant ambiguities concerning a prior case that dealt with these same topics (*Vintage Construction v. Bothell*, 83 Wn. App. 605, 922 P.2d 828 (1996), *aff'd* 135 Wn.2d 833 (1998)).

Appellate court authority in Washington has not previously analyzed the effect of private recreational facilities on decisions assessing mitigation fees for public park impacts. The Court's rule, that a "city is not required to quantify and account for the effect of private recreational facilities in determining public park impacts", is important new guidance for public and private entities alike. From the public side, it clearly establishes that private recreational facilities (like tennis clubs, private parks, nature preserves, or golf courses) that may be available to certain homeowners *cannot* qualify as a set off against the need to provide for adequate *public* recreational facilities. From the private side, it means that developers should expect that they will be required to contribute to public facilities regardless of whether their development incorporates private recreational opportunities.

The Court's approval of formula-based development exactions, and its lengthy explanation and interpretation of the *Vintage Construction* case, adds significant certainty to the legal framework defining proper mitigation in the context of land use decisions. This will help land use attorneys better advise their private clients about these issues in advance, reducing the risk inherent in the public entitlement process. It will also help municipalities (and attorneys with public clients) to avoid litigation by designing an effective mitigation fee program.

Scott Missall, the Chair of our Land Use and Development Group, argued the case at each administrative and judicial stage. United Development Corporation has recently asked the Washington Supreme Court to review this decision. The Supreme Court's acceptance of this case is discretionary, however, and a decision to accept review will not be made until next fall. In the meantime, the decision stands as a published appellate determination.

If you have questions, or would like additional information, contact Scott Missall at (206) 682-3333, e-mail him at [smissall@scblaw.com](mailto:smissall@scblaw.com), or, for more information about him, click here: [Scott Missall](#)