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Exactions and Impact Fees

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Exactions are conditions or financial obligations imposed on developers to aid the local government in providing public services. Exactions can take several forms: impact fees levied on developers, financing of infrastructure improvements, and land donations. Typically, exactions provide funds for water and sewer lines, road construction, new schools and parks. The power to exact concessions from developers is part of local government's police power. If legitimate, exactions further a public interest.

The concept of exacting concessions from developers in exchange for permission to build is generations old. But the practice greatly accelerated after the passage of California's Proposition 13 in 1978. Prop. 13 dramatically reduced local government property tax revenue and virtually eliminated the ability of cities and counties to issue infrastructure bonds. This funding shortfall caused local governments to look for other ways to generate revenue for local infrastructure, and developers were an easy target.

Through exactions, local governments have held developers responsible for providing public services that new growth demands. Local governments have become more creative in exacting developers' fees that may or may not be related to the project in question. In response, developers have struck back by promoting a property rights movement that requires local government to be accountable in exacting fees. Property rights advocates maintain that some exactions constitute a "taking" of private property by the government. Two U.S. Supreme Court cases forced the issue to the forefront:

In 1987, [Nollan v. California Coastal Commission](#) (483 U.S. 825 (1987)) dealt with a dispute between the California Coastal Commission and the Nollan family, who owned a small beachfront property near Ventura, California. The Nollans wanted to demolish their small house and replace it with a two-story structure having the same "footprint" as the original building. The Coastal Commission agreed to the new building, but with the condition that the Nollans granted an easement permitting public access along the beach in front of their house. The Nollans, citing no reasonable relationship between the construction and the easement, sued the Coastal Commission. In the landmark 5-4 ruling, Justice Antonin Scalia called the Coastal Commission's policy "an out-and-out plan of extortion." The court did not outlaw exactions, but the U.S. Supreme Court did hold that there must be a "nexus" between development permit conditions and the "legitimate state interests" the government is trying to advance. That nexus was missing in the Coastal Commission's requirement for a public access easement, the court held.

In [Dolan v. City of Tigard](#) (512 U.S. 319, 114 S.Ct. 2309 (1994)),

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the court went even further, concluding that there must be "rough proportionality" between the project's impact and the exactions. The case involved a hardware store owner in Tigard, Oregon, who wanted to expand her shop. As a condition for approving the project, the city required her to dedicate part of her property for a storm drain system and another part for a bicycle path. The court held that such dedications did advance "legitimate state interests" but that the conditions went beyond the project's impacts. The upshot of the "rough proportionality" rule is this: A city cannot require a developer to solve existing concerns or problems created by other projects.

In summary, exactions are a contribution or payment required as an authorized precondition for receiving a development permit. It usually refers to a mandatory dedication or fee in lieu of dedication requirements found in many subdivision regulations and may apply to land for parks or other public facilities.

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