



Contents

Preface	v		
1 Introduction	1		
It's Getting Harder to Finance Public Works	1		
Forces and Results	2		
Government's Roles	2		
The Fiscalization of Land Use	3		
Disengagement of the Federal and State Governments	3		
Limitations on the Actions of Local Government	4		
Proposition 13 • Proposition 4 • Proposition 218			
The Search for a Politically Acceptable Strategy	5		
Earmarking Revenue • State Bonds Find Favor			
The Results of These Forces	6		
Competition for Revenue • Continued Demand • Summary			
Local Funding Techniques	8		
General Obligation Bonds	8		
Revenue Bonds	8		
Assessment Bonds	8		
Redevelopment Tax Allocation Bonds	9		
Mello-Roos Act Bonds	10		
Exactions and Dedications	10		
The Exotics	11		
Certificates of Participation • Marks-Roos Act Bonds • Limited Obligation Bonds • Integrated Financing Districts • Infrastructure Financing Districts • Securitized Limited Obligation Notes			
Some Conclusions	12		
Balancing Projects and Funding Sources	12		
Balancing Demand and Supply	13		
Balancing Public Opinions and Public Needs	13		
2 Defining the Terms	15		
Introduction	15		
Exactions	15		
Land Dedication and Fees in Lieu of Dedication	16		
Subdivision Reservations	17		
Project Design and Improvement	17		
Fees	18		
Fees for Benefits and Services • Regulatory Fees • Development Fees • in-lieu fees • Impact fees • Statutory basis • Methodology • Procedures • Scope of facilities funded • Exemptions • San Marcos legislation • Linkage fees • Mitigation fees			
Taxes	27		
Property Taxes	28		
Parcel Taxes	28		
Excise Taxes and Business License Taxes	28		
Special Taxes and Special Districts	31		
The Debate Created by Propositions 13 and 62			
Assessments	38		
Comparing Impact Fees, Taxes, and Assessments	41		
Impact Fees Compared to Taxes	41		
Impact Fees Compared to Assessments	42		
Taxes Compared to Assessments	42		
Property Related Fees and Charges	44		
3 Constitutional Authority for and Limitations on Exactions	47		
Constitutional Authority for Exactions	47		
The California Constitution Delegates the Police Power to Cities and Counties	48		
The Police Power and Land Use Regulation	48		
The Police Power and Exactions	49		
Constitutional Limitations on Exactions	50		
Limitation: Police Power Actions Must Be Reasonably Related to the Public Welfare	50		
Limitation: Preemption by State Law	50		
Limitation: Territorial Limits	51		
Limitation: Conflicts with the U.S. Constitution	52		
Challenges Based on the "Takings Clause"	52		
The Takings Clause • Tests for When a Taking Has Occurred • The Takings Clause and Exactions			
The "Essential Nexus" Requirement	54		
The "Rough Proportionality" Requirement	55		
Individualized Determination: <i>Surfside Colony, Ltd. v. California Coastal Commission</i> • Misplaced Reliance on the General Plan: <i>Rohn v. City of Visalia</i>			
Nollan/Dolan "Heightened Scrutiny"—When Does It Apply? Does Nollan/Dolan Heightened Scrutiny Apply to Development Fees?	57		
<i>Ehrlich v. City of Culver City</i> • Does Nollan/Dolan Heightened Scrutiny Apply to Development Conditions Requiring Improvements? • Does Nollan/Dolan Heightened Scrutiny Apply to Regulations That Restrict Development? • Does Nollan/Dolan Heightened Scrutiny Apply to Facial, Non-Adjudicative			





Contents

Decisions? • The Importance of Adequate Fee Studies and Other Justification • Limitations on Requiring New Development to Remedy Existing Infrastructure Deficiencies: *Bixel Associates v. City of Los Angeles* • Access to Federal Courts for Takings Challenges to Exactions: *San Remo Hotel v. City and County of San Francisco*

Challenges Based on the “Equal Protection” Clause 68

4 Exactions—Statutory Authority and Limitations 71

The General Plan 71

 Authority 71

 Limitations 72

Zoning 73

 Authority 73

 “Contract” or “conditional” zoning • Imposing conditions on use permits and variances

 Limitations 73

Subdivision 74

 Subdivision Exactions Based on Specific Authorization 75

 Dedications • Dedications for streets, drainage, and utilities • Dedications for bicycle paths • Dedications for transit facilities • Dedications for solar access easements • Procedures for dedications and offers to dedicate • Accepting or rejecting offers to dedicate • Rejected dedication offers remain open; later termination • Effective date of acceptance • Effect on dedications of reversion to acreage and resubdivision of lands • Reconveyance of dedicated land to the subdivider if purpose no longer exists • Dedications/in-lieu fees • Parkland dedication and in-lieu fee requirements (the “Quimby Act”) • Interim school facilities • Reservations • Reservations for school facilities • Reservations for other public facilities • Impact Fees • Storm drainage and sanitary sewer off-site improvements • Fees for constructing bridges and major thoroughfares • Fees for constructing bridges and major thoroughfares—special provisions for Orange County • Fees for ground water recharge facilities

 Subdivision Exactions Based on Consistency of Subdivision “Design and Improvement” with General Plan 84

 Subdivision Exactions Based on Environmental Impact Analysis 85

 Subdivision Exactions Requiring Oversizing Infrastructure; Reimbursement Agreements 85

 Exactions Imposed on Parcel Maps 86

 Exactions Imposed on Lot Line Adjustments 86

 Provisions for Judicial Partitions of Williamson Act Lands 86

 Conditions Imposed on Certificates of Compliance 87

 Subdivision Exactions Requiring Access to Public Resources 87

General Limitations 88

 Limitations Related to Development Standards 88

 Limitations Related to Housing and Housing Affordability 88

Building Permits 88

 Authority 88

 Limitations 89

 “Bargained For” Exactions 90

 Redevelopment 91

 Development Agreements 91

Vested Rights as

Limitations on Exactions 91

 Common Law Vesting as a

 Limitation on Imposing Exactions 92

 Statutory Vesting as a

 Limitation on Imposing Exactions 92

 The “Map Filing Freeze.” • Vesting Tentative Subdivision Maps • The “One Bite of the Apple Rule.” • Development Agreements

General Limitations

on Imposing Exactions 94

 Limitations on Exactions

 Based on State Housing Policy 94

 Exactions and Housing Affordability: Housing Element Requirements • Very Low-, Low-, and Moderate-Income Housing Projects, Emergency Shelters

When Development Fee

Payment Can Be Required 97

Limitations on Fees for

Operation and Maintenance

of Public Facilities 97

Relationship of the Exactions

Process to the California

Environmental Quality Act 98

5 Overview of the Fee Adoption Process—AB 1600 Nexus Legislation 99

Fees for Development Projects 99

 Definitions 99

 Local Agencies Affected by AB 1600—Section 66000(c) • Development Project and Public Facilities—Section 66000(a) Fees—Section 66000(b)

 Nexus Requirements

 Sections 66001(a) and (b) 101

 Findings Section 66001(d) 104

 Refunds Sections 66001(e) and (f) 105





Contents

When Are Fees Established and Imposed for the Purposes of Section 66001? 105

Capital Improvement Plans
Section 66002 106

Reimbursement Agreements
Section 66003 106

Accounting Section 66006 106

Timing Section 66007 107

Expenditure of Fees Solely for Purpose for Which the Exaction Was Imposed
Section 66008 109

Procedures for Adopting Various Fees 109

Special Rules for Development Projects
Section 66017 110

 Public Hearing and Effective Date—Section 6017(a) • Urgency Measure as Interim Authorization—Section 66017(b)

Public Hearings Section 66018 110

 Applicability—Sections 66018–66018(c) • Public Hearing—Section 66018(a) • Costs—Section 66018(b)

General Procedures for New Fees and Increases in Existing Fees 110

 Applicability—Section 66016, 66019 • Public Meeting and Notice—Section 66016(a), 66019 • Public Report—Section 66016(a) • Cannot Exceed Estimated Amount Required to Provide Service—Section 66016(a) • Ordinance or Resolution Necessary—Section 66016(b) • CEQA Review • Recovery of Costs—Section 66016(c) • Remedy for fees with both valid and invalid purposes

Fees for Specific Purposes 113

Fees for Projects Damaged by Declared Natural Disasters Section 66011 113

Water or Sewer Connection Fees
Section 66013 113

 Reasonable Cost or Two-Thirds Vote Required—Section 66013(a) • Definitions—Section 66013(b) • Payments of Charges—Section 66013(c) • Accounting of Capital Facility Funds—Section 66013(d) • Annual Report—Section 66013(e) • Exceptions to Sections 66013(c) and (d) Requirements • Judicial Challenges—Section 66013(e) • Special Rules—Section 66013(h) • Road Usage Fees

Local Agency Zoning and Permit Fees Section 66014 116

 Applicable Processing Fees—Section 66014(a) • Reasonable Fee or Two-Thirds Vote Required—Section 66014(a) • Costs of Preparation and Revision of Plans • Judicial Challenge—Section 66014(b)

Fees for Aerial Tramways
Section 66012 117

6 School Facilities 119

The Police Power Exactions in Conjunction with Legislative Approvals 120

Stirling Fees 120

 The Continuing but Limited Role for *Murrieta, Hart, and Mira* 120

 Stirling Analysis / Post-SB 50 121

 Triggering Events for Increasing Fee Level 122

 Pre-SB 50 Analysis 122

The Stirling Legislation Examined 123

 Purpose 124

 Scope of the Act 124

 Applicable to legislative and adjudicative acts • CEQA and mitigation in general • Exceptions • Commercial, Industrial, and Residential Construction

 General Procedures 128

 Collecting the fee • The resolution • Notification to cities and counties • Effective date

 The Nexus 129

 AB 1600 • Section 65995.6 • Commercial and industrial development • Administrative appeals • Special findings for agricultural uses • Statutory school facilities needs analysis • Fee Calculations • Residential • Commercial, industrial, and senior citizen housing • Exceptions to Fee Limitations • Eligibility • Increased fee calculation • Limitation on fee increases • Eligibility fee calculations • Exemptions

Manufactured and Mobile Homes 136

 Initial installation on new pads • Exemptions • Credit for previously paid fees • Levies by Non-Unified Districts • Refunds • Legal Protests

School Facilities Act 137

 Findings 137

 Notice of Findings 137

 Schedule of Fees 137

 Concurrence of Local Government 137

 Agreements Between Districts with Same Attendance Area 138

 Authorized Facilities 138

 Residential Project Approvals by Local Agencies 138

 Ordinance Provisions 138

 Additional Limitations 138

 Relationship to Other School Funding Statutes 139

 Legal Challenges 139





Contents

7	Challenging Exactions— Protests, Legal Actions, and Audits 141	
	Judicial Review	141
	Legislative Acts	141
	Adjudicatory Acts	143
	Multi-Entitlement Approvals	144
	The Blurring of Distinctions —Do They Matter Anymore?	145
	Judicial Review—Burden of Proof	145
	Uniform Protest Provisions for Fees, Taxes, Assessments, Dedications, Reservations, or Other Exactions	146
	Applicability	147
	Challenging Development Fees under Sections 66020 and 66021	148
	Relationship of Parties after Initiation of Litigation	150
	Refund or Return of Payment	150
	Challenges to Fees Under Section 66022	151
	Challenges to Exactions Under Other State Law Provisions	152
	Mediation	154
	Audits	155
	Special Subdivision Map Act Procedures	155
	Bridges and Major Thoroughfares Fees	155
	Groundwater Recharge Facilities Fees	156
	Statute of Limitations	156
	Integrating Exaction Challenges with Other Legal Theories— Statutes of Limitations	157
	Fees and Exactions	157
	CEQA	157
	Takings Claims; The Need for Ripeness	158
	Attorney Fee Awards	160
8	Meeting Local Needs Through Exactions and Other Techniques 163	
	Housing Trust Funds	163
	City of Sacramento	163
	Local Funding for Schools Beyond Fees	164
	Equestrian Trails	165
	Art in Public Places	165
	Innovations	166
	Supercharging the Repayment Schedule	166
	City of Oxnard’s Financing Plan for Street Repairs	166
	County Fees within Cities	167
	Stanislaus County	167
	Yolo County	168
	City of Ripon	168
	Open Space	168
	Placer County	168
	San Francisco	169
	Open Space Districts	169
	Transportation	170
	Coachella Valley	170
	Habitat Conservation Plan Mitigation Fees	170
	Tracy	170
	Natomas Basin	171
	Placer County	171
9	Funding Neighborhood- Specific Infrastructure and Amenities 173	
	Examples of Special Taxes	174
	Mello-Roos Special Taxes	174
	Police/Fire Special Taxes	175
	Public Library Special Tax	176
	Retail Transactions and Use Tax	176
	General Authorization for Special Taxes	177
	Special Benefit Assessments	177
	Proposition 218 Considerations	177
	Procedures for Adoption of Special Assessments Under Proposition 218	178
	Substantive Requirements for Special Assessments Under Proposition 218	179
	Repeal of Assessment by Initiative	181



Contents

Impact of Proposition 218 on Maintenance Assessments	181	Requiring New Development to Pay for Existing Infrastructure Deficiencies.	62
Utility Rates After Proposition 218	181	Relying on “Everyone Else Does It”.	62
Other Service or User Fees under Propositions 13 and 218.	182	Selecting the Wrong Condition for a Project’s Impact: the “Failure of Fit”	63
Propositions 26	182	Inappropriate Reliance on CEQA.	63
Description of Selected Assessment Laws	183	Which Standard of Review for “Legislatively-Enacted” Dedication Requirements?	65
Improvement Act of 1911	183	Do Vesting Tentative Maps “Freeze” Development Fees?	95
Municipal Improvement Act of 1913	184	Answer.	96
County Service Areas	184	Addressing Impact Fees through a Development Agreement—To Freeze or Not to Freeze?	97
Landscape and Lighting Act of 1972	185	Five Rules for Local Governments to Follow When Setting Development Standards and Fees.	100
Geologic Hazard Abatement District	185	Reasonable Relationship Requirement	101
Benefit Assessment Act of 1982	185	Measuring a Level of Service	102
Other Mechanisms	186	Transportation Impact Fee Breaks for Mixed-Use Projects	103
Homeowners’ Association.	186	Putting the Applicant on Notice	103
Community Services Districts	186	The Use of Existing Facilities as the Benchmark	104
Development Agreements	187	Existing vs. Future Facilities	104
Maintenance Endowment Funds	188	Which Agency Is Responsible for Accounting?	106
Public/Private Partnerships	188	Interfund Borrowing	107
Privatization of Utilities	189	Declaration of Urgency	109
Short Articles		Recovering the Cost of Planning and Fee Studies	112
Building a Basic Bookshelf	13	Impact Fees as CEQA Mitigation: A Primer	113
Impact Fees Compared to Linkage Fees	26	Section 65995(c)	121
Impact Fees Compared to in-Lieu Fees	26	Proposition 1D	122
Impact Fees Compared to Connection or User Fee.	26	What’s in a Name?	123
The Reluctant Electorate.	29	CEQA Charity and Voluntary Mitigation	126
Implementing Proposition 218.	40	The Role of Administrative Findings	142
The Police Power: Broad, Elastic Source of Land Use Authority.	49	Notice to Applicant of Fees and Exaction Appeal Period	146
U.S. Supreme Court Clarifies Basis for Takings-Based Challenges to Exactions	58	The Interplay Between CEQA and Challenges Under the Mitigation Fee Act.	150
Challenges to Inclusionary Housing Requirements	61	California Housing Trust Funds	164
Avoiding Common Errors in Imposing Exactions.	62	Green Initiatives	176
Misplaced Reliance on the General Plan	62		



Contents

Various Assessment Laws
 Providing for Maintenance 177
 Special Assessment District
 Formation: The Engineer’s Report 179
 1913 Act—A Separate Fund
 for Maintenance 184
 Assessments for Flood Protection 185
 LAFCO Requirements for a General Tax
 for Incorporation of a New City 186
 Natural Resource Mitigation and Preservation 187
 When Public/Private Cooperation
 Projects May Be Subject to Prevailing Wages 188
 The Importance of Planning Ahead 189
 The Development Agreement 189

Tables

1. Statewide Bond Measures Passed in November 2004 6
 2. California’s Population
 Continues to Grow 7
 3. Public Capital Formation: How Local
 Officials Use Debt to Accumulate Capital 9

Appendices

A. North Natomas Nexus Study and
 Financing Plan 2008 Update 193
 B. Plumas Lake Specific Plan/North
 Arboga Study Area
 Road Fee Nexus Plan 205
 C. City of Davis Development
 Impact Fee Study 209
 D. New Housing Trust Fund Nexus Study
 Nexus Study Methodology 227
 Executive Summary 227
 E. Sacramento County Code 231
 F. Sacramento County
 Zoning Agreement 233
 Introduction to Appendices G and H 237
 G. Disposition and
 Development Agreement 239
 H. Owner Participation Agreement 249
 Introduction to Appendices I and J 253
 I. Development Agreement—Public 255

J. Development Agreement—Private 273
 K. Sample Impact Fee Ordinance 285
 L. Sample Timeline for
 AB 1600 Fee Ordinance 293
 M. Sample Petition for
 Writ of Mandate 295
 N. California Codes
 Government Code
 Section 66000 – 66008 299
 O. Stirling Fee Conversion Chart 309

 Notes 311
 Glossary 317
 Suggested Reading 323
 Table of Authorities 325
 Index 339

