

# Municipal Exactions at the Water's Edge



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# Presentation Overview

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- Part I: “Exaction Takings”
- Part II: Proposed Empirical Study

# Part I: “Exaction Takings”



# What is an “exaction?”

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- A condition attached to a discretionary permit
- For example:
  - ✦ Public access easement
  - ✦ Conservation restriction
  - ✦ Fee payment



# More Stringent Takings Standard Applied to Permit Conditions

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Nollan:

qualitative (“essential nexus”)



Dolan:

quantitative (“rough proportionality”)



# Outcomes Under Current Exaction Takings Law

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- 1) Grant → No takings challenge
- 2) Denial → Government likely to prevail upon a takings challenge
- 3) Grant with Conditions → Landowner likely to prevail upon a takings challenge

# Circumvention of the Heightened Standard of Scrutiny

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- 1) Under-regulation:
  - Granting permits without conditions
  
- 2) Over-Regulation:
  - Denying permits outright
  
- 3) Repeat-Player Scenarios:
  - Granting selective conditional permits

# 2005 Clarification in Exaction Takings Law?

- *Lingle*: limiting the application of *Nollan* and *Dolan*'s “heightened scrutiny?”
- Why might a unanimous court have made such a narrowing clarification?
  - ✦ Allocative inefficiencies?
  - ✦ Other institutional controls?
  - ✦ Revelations on the “parcel as a whole” rule?



# Part II: Proposed Empirical Study



# A Prior Empirical Study: Direction and Distinction

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- Pollak & Carlson study (circa 2000)
  - ✦ surveyed California cities and counties
- Differences in the proposed study:
  - ✦ Peaks and valleys
  - ✦ Primary takings forum shift
  - ✦ California's property tax structure
  - ✦ Focus on coastal issues

# Draft Survey Questions

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#2: Applications & propensity for takings objections

#3 – 5: Proposed/imposed exactions

#6 – 7: Specific types of exactions

#8: Exactions requiring a dedication

#9: Changes in regulatory approach

#10: Takings suits in jurisdiction

# Draft Survey Questions (continued)

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#11: Uniqueness of waterfront permits

**#12: “Non-mitigatable” impacts**

#13: Agree/disagree with statements

#14: Factors in takings determinations

#15: Familiarity with takings cases

#16: Ownership of Renourished Beaches

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