

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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