

ALL ABOUT EXACTIONS:

Making Rough Proportionality Smooth



OBJECTIVES

What Are Exactions

- What Constitutes an Exaction
- Who May Impose an Exaction
- Statutes and Cases on Exactions

Rough Proportionality

- The “*Nollan/Dolan*” Test
- Essential Link to a Public Interest
- Proportional in Nature
- Proportional in Extent

Other Issues

- Exactions from Other Entities
- Water Exactions
- Returning Exactions
- Remedies
- Impact Fees as Exactions



WHAT IS AN EXACTION?

Exaction — a contribution of property required as a condition of development approval.

Land

Construction of Improvements

Money

Impact Fees



EXACTIONS ARE TAKINGS

Exaction authority is governed by the **Takings Clause** of the Constitution



WHO GETS TO EXACT?



Local government bodies
(cities, counties, & local
districts)
may impose exactions

Only on NEW
development

Only at time of
approval

‘NOLLAN/DOLAN’ TEST

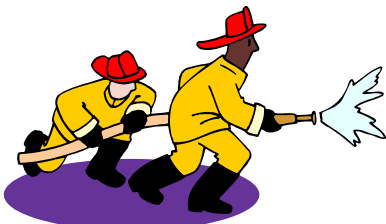
Each exaction must meet the “**Rough Proportionality**” test.

Compare the **Exaction** against the **Impact** created by the development.



Developed by the *Nollan & Dolan* decisions

WHAT IS THE IMPACT?



A development's **IMPACT** is the increased need for public services caused by development.



ROUGH PROPORTIONALITY

A local government may impose an exaction or exactions on development if:

- (a) an **Essential Link** exists between a legitimate governmental interest and each exaction; and
- (b) each exaction is **Roughly Proportionate**, both in nature and extent, to the impact of the proposed development.



ESSENTIAL LINK

There must be an “**Essential Link**” between each exaction and a legitimate government objective.

OBJECTIVE:

Preserve view of the beach from front of lot

EXACTION:

Public Easement across rear of lot



Nollan v. California Coastal Comm'n

ROUGHLY PROPORTIONAL

Each exaction must be “**Roughly Proportional**” in both **Nature and Extent** to the impact caused by the new development.

Dolan v. City of Tigard

1. Flood control easement along creek
2. Property for a bike path

The exaction must be proportional to the impact caused by the development



PROPORTIONATE IN NATURE

An exaction is **Roughly Proportionate in Nature** if it “solves a problem” created by the impact

Utah Supreme Court: B.A.M. Development Cases

PROBLEM:



More Water Needed Because of New Development

SOLUTION:



Developer Contributes New Water Rights

PROPORTIONAL IN EXTENT

The exaction is “**Roughly Proportional in Extent**” if the **cost** of the exaction is roughly equal to the public **expense** to address the impact



EXACTIONS BY OTHER ENTITIES

A Local District may impose exactions



Local Districts involved in land use approval must comply with LUDMA



WATER EXACTIONS

Exactions of water interests must be based on projected requirements



No exaction if there is already enough water to provide service



RETURNING EXACTIONS

If an exaction is no longer used, it must be offered back to the original owner

- Only applies to land

- Only if the land becomes surplus within 15 years

Impact fees must be used within six years, or returned

REMEDIES

Return Exaction

Modify Exaction

Pay for Excess

STATUTES AND CASES

Utah Code:

§ 10-9a-508 (cities) § 17-27a-507 (counties) § 17B-1-120 (districts)
Title 11, Chapter 36a (Impact Fees Act)

Nollan v. California Coastal Commission, 483 U.S. 825 (1987)

Dolan v. City of Tigard, 512 U.S. 374 (1994)

Koontz v. St. Johns River Water Conservancy District, 131 S.Ct. 2586 (2013)

B.A.M. Development, LLC v. Salt Lake County, 2006 UT 2

B.A.M. Development, LLC v. Salt Lake County, 2008 UT 74

B.A.M. Development, LLC v. Salt Lake County, 2012 UT 26

IMPACT FEES

Impact Fees are Exactions

Compliance with Impact Fees Act meets Rough Proportionality

Impact Fees Act:

Utah Code Title 11, Chapter 36a

THANK YOU

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