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SUDDEN IMPACT: THE EFFECT OF DOLAN V. CITY OF TIGARD ON IMPACT FEES IN WASHINGTON

Joseph D. Lee

Abstract: As state and federal funding for public improvements steadily declines and is outstripped by demand, municipalities are turning to impact fees to fund public projects. However, the growth of impact fees has resulted in an increasing number of legal challenges by developers and private land owners. This Comment examines the evolution of impact fees in Washington and explores the legal concerns raised by the fees in light of Dolan v. City of Tigard. The Comment concludes that some impact fee statutes satisfy Dolan's "rough proportionality" test, while others do not adequately meet the U.S. Supreme Court's requirements. Impact fee statutes that do not comply with the "rough proportionality" standard should be invalidated.

Many local governments in Washington and across the country are finding it increasingly difficult to pay for public improvement projects. The demand for new roads, parks, and schools is rising faster than the rate local governments can raise the required revenue. At the same time, the Federal Government has significantly reduced its investment in local public projects. Local governments that traditionally have relied on federal water, highway, and housing grants must now pay for public improvements without this support. The problem is further intensified by taxpayers unwilling to share the cost of providing services through increased property taxes. Taxpayers see little reason to pay the way for newcomers when higher taxes generally result in little or no increase in their own service levels. The situation has led to a growing public sentiment that new residential developments should "pay their own way" by privately financing the construction and improvement of public facilities.

1. Publicly funded federal capital investments fell from 3.4% of the gross national product in 1965 to 1.3% in 1984, as reported by Arthur Nelson from the Georgia Institute of Technology. Department of Community Development, State of Washington, Paying for Growth's Impacts: A Guide to Impact Fees 6 (1992) [hereinafter Paying for Growth's Impacts].

2. For example, community development block grants, a one-time staple of local planning budgets, were cut from $5.7 billion in 1981 to $2.7 billion in 1991. Sewer treatment construction grants under the Clean Water Act were reduced from $5.4 billion to $1.6 billion over the same period. William W. Abbott et al., Public Needs and Private Dollars: A Guide to Dedications and Development Fees 8 (1993) [hereinafter Public Needs].

In light of the current revenue dilemma, local governments are turning increasingly to impact fees as a way of financing new public projects. Impact fees are a type of monetary development exaction imposed on developers by municipalities as a requisite for development approval. Other development exactions include dedication of land or construction of a community facility (e.g., a park or sewer). Fees and other exactions permit local governments to shift the burden of growth to the developers and the residents of new developments by offsetting the cost of roads, parks, schools, recreation facilities, and other public improvements.

Although impact fees can ease the financial burden on municipalities, developers have challenged the legality of the fees. Developers argue that the fees will be used to benefit the entire community instead of their specific projects. In addition, developers believe that the fees will increase the cost of new development and affect their profits. In Washington, exactions have been challenged by developers as unauthorized taxes, a taking of property without just compensation, and a violation of due process.

The U.S. Supreme Court has addressed the validity of development exactions on two occasions. First, in Nollan v. California Coastal Commission, the Court determined that there must be a "nexus" between the exaction and the burden created by the new development for the exaction to be valid. Recently, in Dolan v. City of Tigard, the

4. The terms "impact fee," "in-lieu fee," and "linkage fee" are commonly used to describe different types of development exactions. Because the Washington statute uses the term "impact fee," this Comment will use the term generally to describe the various types of monetary exactions.


6. For example, if a developer wants to construct an apartment complex, the local government may request land for a nearby park or require the payment of a fee as a condition for approving the necessary permits.


10. See, e.g., Guimont, 121 Wash. 2d at 593, 854 P.2d at 5; Robinson v. City of Seattle, 119 Wash. 2d 34, 51, 830 P.2d 318, 329, cert. denied, 113 S. Ct. 676 (1992); Sintra. 119 Wash. 2d at 10, 829 P.2d at 770.


12. Id. at 837.
Impact Fees in Washington

Court re-examined the issue. The Court not only reaffirmed Nollan's "nexus" requirement, but spelled out how the concept should be implemented: the regulating government must show the exaction is roughly proportional to the burden caused by the new development. In essence, the Court's decision in Dolan created a new federal standard for the imposition of impact fees and other development exactions under the Fifth Amendment "takings" clause. As a result, state impact fee statutes must satisfy the "rough proportionality" test.

This Comment examines impact fees in Washington in light of Dolan. Part I provides a brief history of development exactions and discusses the legality of imposing exactions on new developments. Part II describes the history of Washington impact fees and asserts that Washington courts generally have invalidated impact fees. Part II then briefly reviews Nollan's "nexus" requirement and Dolan's "rough proportionality" test and explains recent state court attempts to apply the "rough proportionality" standard. Finally, part III analyzes the effect of Dolan on Washington's four main impact fee statutes: development impact fees, transportation impact fees, voluntary fees or dedications of land, and relocation assistance fees. Although development and transportation impact fees satisfy the Dolan Court's test, voluntary fees or dedications of land and relocation assistance fees do not adequately meet Dolan's requirements.

I. DEVELOPMENT EXACTIONS

A. A Brief History

Development exactions originated in the early 1920s about 25 years after local governments generally began to regulate the use of land.

14. Id. at 2319.
15. The Takings Clause of the Fifth Amendment of the U.S. Constitution, made applicable to the States through the Fourteenth Amendment, provides: "[N]or shall private property be taken for public use, without just compensation." U.S. Const. amend. V.
Land-use regulations were based on the "police power," which grants the government the authority to protect the health, safety, and welfare of the public. In the early 1920s, the Department of Commerce published model land-use acts to guide states in enacting land-use regulations. The Standard Zoning Enabling Act, published in 1922, was widely adopted and was the source of most of the early state zoning enabling acts.

The first exactions were imposed to ensure that developers provided sufficient on-site improvements. The Standard Planning Enabling Act authorized local governments to require developers to build streets, water mains, and sewer lines within the boundaries of their developments. Although the real estate community initially challenged these required dedications, the courts generally upheld them. Developers were not, however, required to provide facilities for the general public such as parks, treatment plants, and arterial roads. These projects were financed out of the general revenue through local taxes.

In the 1970s, a fundamental shift in public attitudes took place as the environmental movement forced the public to reconsider the benefits of uncontrolled growth. Local municipalities began to limit the number of new developments. As cities restricted new development in response to the high cost of public facilities, growth control and management became a priority. Because public facilities still were considered a public responsibility, no effort was made to shift the responsibility for public infrastructure to the developers.

The late 1970s and early 1980s were characterized by a rapid growth of new development. Federal tax cuts and increases in defense spending.

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22. The government's ability to enact land-use regulations under the "police power" is an extension of the governmental power to abate nuisances. See, e.g., Mugler v. Kansas, 123 U.S. 623, 668-69 (1887).


24. By 1923, 208 municipalities with 22 million residents, or 40% of the urban population, were zoned. David L. Callies & Robert H. Freilich, Cases and Materials on Land Use 4-10 (1986).

25. See Altshuler et al., supra note 20, at 18.


28. James E. Frank & Paul B. Downing, Patterns of Impact Fee Use, in Development Impact Fees, supra note 7, at 3.


30. Id.
resulted in a shift in responsibility for infrastructure from the Federal Government to state and local governments.\(^{31}\) The rising costs of construction, coupled with the lack of tax revenues, forced many local governments to consider new ways to finance capital facilities. Cities and municipalities began to shift costs to new developments through the use of impact fees.\(^{32}\) The increased use of impact fees and other exactions during this time raised several legal questions.

**B. The Legality of Development Exactions**

Development exactions generally have been challenged on three grounds: (1) that the fees were unauthorized taxes; (2) that municipalities lacked the authority to impose the fees; and (3) that exactions were not sufficiently related to the new development under various state court tests. When exactions first became widespread, local governments did not have the statutory authority to impose them, and developers challenged them on theories of unauthorized taxation or lack of statutory authority.\(^{33}\) However, many states and local governments passed statutes and ordinances authorizing the use of exactions as a means of subdivision regulation.\(^{34}\)

Developers not only challenged local governments’ authority to impose fees but also questioned whether there was a sufficiently close

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\(^{31}\) *Public Needs, supra* note 2, at 13.

\(^{32}\) Snyder & Stegman, *supra* note 27, at 6.

\(^{33}\) See, e.g., Kelber v. City of Upland, 318 P.2d 561 (Cal. Ct. App. 1957) (holding that municipality did not have statutory authority to require payment into park and school fund as condition for subdivision approval); Hillis Homes, Inc. v. Snohomish County, 97 Wash. 2d 804, 810, 650 P.2d 193, 196 (1982) (holding that development fees constituted taxes and Legislature did not grant authority to impose such taxes).

relationship between the exaction and the development under several state court tests. State courts have defined the necessary relationship in different ways. While some state courts have required a strict or "close" relationship, others have mandated less restrictive tests. In general, three tests have emerged among state courts to describe the required nature of the relationship between the exaction and the development: (1) the "specifically and uniquely attributable" test;35 (2) the "reasonable relationship" test;36 and (3) the rational nexus test.37

The first test imposes the strictest standard by requiring that the needed improvements be "specifically and uniquely attributable" to the impact of the new development to validate an exaction. This test was first expressed in Pioneer Trust & Savings Bank v. Village of Mount Prospect.38 In Pioneer Trust, the Illinois Supreme Court invalidated an exaction requiring the developer to dedicate land for a school. The court determined that the need for the school was created by the community as a whole, thus, the school was not "specifically and uniquely attributable" to the new development.39 The court suggested that an exaction can be justified only if it is necessitated by the development.40

The most permissive of the three tests is the "reasonable relationship" test. In Associated Home Builders v. City of Walnut Creek,41 the California Supreme Court upheld a local ordinance requiring developers to dedicate land or help pay for parks and recreational facilities. The court held that an exaction is valid as long as "the amount and location of land or fees . . . bear[s] a reasonable relationship to the use of facilities by the future inhabitants of the subdivision."42 The court rejected the notion that a strict relationship is necessary between the exaction and the

37. Jordan v. Village of Menomonee Falls, 137 N.W.2d 442, 448 (Wis. 1955), appeal dismissed, 385 U.S. 4 (1966). Most commentators recognize Jordan as the leading rational nexus case even though rational nexus language was never used.
38. 176 N.E.2d at 802.
39. Id.
40. Later Illinois cases interpreted the "specifically and uniquely attributable" language to mean that the exaction must be reasonably proportional to the needs generated by the new development. Therefore, the strict requirement set forth in Pioneer Trust is no longer generally followed in Illinois. See Krughoff v. City of Naperville, 369 N.E.2d 892 (Ill. 1977).
42. Id.
needs created by the new subdivision, indicating that the exaction is valid even though the public may benefit incidentally from it.\textsuperscript{43}

The rational nexus test offers a middle-of-the-road approach. In \textit{Jordan v. Village of Menomonee Falls},\textsuperscript{44} the Wisconsin Supreme Court upheld exactions of land or in-lieu fees\textsuperscript{45} for schools and parks. After balancing the needs of the community against the rights of the developer, the court concluded that the exaction was valid because the evidence "reasonably establishe[d]" that the municipality would need more schools and parks as a result of the new development.\textsuperscript{46}

The rational nexus test lies conceptually between the "specifically and uniquely attributable" test and the "reasonable relationship" test. The rational nexus test is more restrictive on municipalities than the "reasonable relationship" test because it limits the government's ability to impose exactions to those necessitated by the development. The test is less restrictive on local governments than the "specifically and uniquely attributable" test because it makes developers responsible for a part of all new facilities made necessary by their developments and not just those that are specifically related to them.\textsuperscript{47}

II. THE EVOLUTION OF IMPACT FEES IN WASHINGTON

\textbf{A. Washington Courts Historically Invalidated Impact Fees}

Impact fees were met with resistance in Washington by developers and private land owners. Efforts by local governments to impose the fees were unsuccessful. In \textit{Hillis Homes, Inc. v. Snohomish County},\textsuperscript{48} the Washington Supreme Court invalidated impact fees as unauthorized taxes. Snohomish and San Juan counties imposed fees on new residential developments to help pay for parks, schools, roads, and fire stations necessitated by rapid growth.\textsuperscript{49} The court found that if the primary purpose of the fees was to raise revenue rather than regulate land, then the fees must be considered taxes.\textsuperscript{50} Concluding that the fees were

\begin{itemize}
\item \textsuperscript{43} \textit{Id.} at 612 n.5.
\item \textsuperscript{44} 137 N.W.2d 442, 448 (Wis. 1965), \textit{appeal dismissed}, 385 U.S. 4 (1966).
\item \textsuperscript{45} "In-lieu fees" are impact fees that are paid in lieu of dedicating land to the local government.
\item \textsuperscript{46} \textit{Jordan}, 137 N.W.2d at 448.
\item \textsuperscript{47} Snyder & Stegman, \textit{supra} note 27, at 57.
\item \textsuperscript{48} 97 Wash. 2d 804, 810–11, 650 P.2d 193, 196 (1982).
\item \textsuperscript{49} \textit{Id.} at 805–06, 650 P.2d at 193–94.
\item \textsuperscript{50} \textit{Id.} at 809, 650 P.2d at 195.
\end{itemize}
intended to raise revenue, the court held the fees unconstitutional absent express authority by the Legislature to impose taxes through impact fees.\textsuperscript{51}

The Washington Legislature first authorized the use of impact fees to a limited extent in 1982 by enacting section 82.02.020 of the Washington Revised Code. Although this statute prohibits “any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of property,”\textsuperscript{52} it provides for “voluntary agreements . . . that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat.”\textsuperscript{52} Impact fees also have been authorized to pay for new developments,\textsuperscript{53} transportation improvements,\textsuperscript{54} and relocation assistance for low-income tenants.\textsuperscript{55}

Since the Legislature has authorized the use of impact fees, developers have argued that municipalities have exceeded the bounds of the statute. In \textit{San Telmo Associates v. City of Seattle,}\textsuperscript{56} the Washington Supreme Court invalidated a Seattle Housing Preservation Ordinance (HPO) that required developers to construct low-income housing or contribute to a low-income housing fund.\textsuperscript{57} The court concluded that the ordinance constituted a tax and is prohibited under § 82.02.020.\textsuperscript{58} Similarly, in \textit{R/L Associates, Inc. v. City of Seattle,}\textsuperscript{59} the Washington Supreme Court struck down a Seattle ordinance that required the payment of impact fees to fund a tenant assistance program.\textsuperscript{60} The court determined that the ordinance did not meet the requirements of § 82.02.020 and was therefore invalid.\textsuperscript{61}

Washington courts have rejected impact fees on other grounds as well. In \textit{Sintra, Inc. v. City of Seattle,}\textsuperscript{62} the Washington Supreme Court re-examined Seattle’s HPO that required developers to replace low-income

\begin{itemize}
\item \textsuperscript{51} \textit{Id.} at 808, 650 P.2d at 194–95.
\item \textsuperscript{52} Wash. Rev. Code § 82.02.020 (1994).
\item \textsuperscript{53} Wash. Rev. Code §§ 82.02.050–.090 (1994).
\item \textsuperscript{54} Wash. Rev. Code §§ 39.92.010–.040 (1994).
\item \textsuperscript{55} Wash. Rev. Code § 59.18.440 (1994).
\item \textsuperscript{56} 108 Wash. 2d 20, 735 P.2d 673 (1987).
\item \textsuperscript{57} \textit{Id.} at 24, 735 P.2d at 675.
\item \textsuperscript{58} \textit{Id.}
\item \textsuperscript{59} 113 Wash. 2d 402, 780 P.2d 838 (1989).
\item \textsuperscript{60} \textit{Id.} at 409, 780 P.2d at 842.
\item \textsuperscript{61} \textit{Id.}
\item \textsuperscript{62} 119 Wash. 2d 1, 829 P.2d 765, \textit{cert. denied}, 113 S. Ct. 767 (1992).
\end{itemize}
housing uprooted by development or contribute to a housing fund. The court examined the ordinance to determine whether it was a taking of property without just compensation or a violation of due process. In remanding the case to clarify the facts, the court stated that if the developer could show that the economic burden placed on the property was so great that there was no viable use, then a takings claim would be established. Furthermore, under a due process analysis, the court noted that Sintra's property could not be singled out as the main reason for the lack of low-income housing in Seattle. The court held that the "oppressive nature of the regulation" violated due process.

A similar due process argument was raised in Robinson v. City of Seattle. The Robinsons also challenged the validity of Seattle's HPO when they were required to pay fees for low-income housing. The court applied a substantive due process analysis to determine whether the HPO was unduly oppressive. In balancing the City's interests against the Robinsons', the court concluded that the City possessed other, less drastic methods of addressing the problem of homelessness. Thus, the court held that the HPO was unduly oppressive and therefore violated the Robinsons' rights to substantive due process.

Although Washington courts have been reluctant to embrace impact fees, they have upheld the fees in a few limited circumstances. In View Ridge Park Associates v. Mountlake Terrace, the Washington Court of Appeals upheld a local ordinance that required developers to construct or pay for on-site recreational facilities in multiple-unit developments. The court stated that the recreational fees were required to mitigate the direct impacts of the new development. Because the new development would place a greater demand on existing recreational facilities, the court

63. Id. at 10, 829 P.2d at 770.
64. Id. at 18, 829 P.2d at 774.
65. Id. at 22, 829 P.2d at 777.
66. Id., 829 P.2d at 776.
68. Id. at 41, 830 P.2d at 323–24.
69. Id. at 54, 830 P.2d at 330–31.
70. Id. at 55, 830 P.2d at 331.
71. Id.
73. Id. at 598, 839 P.2d at 349.
74. Id.
concluded that the fee was permissible to mitigate the impact of the development.\textsuperscript{75}

\section*{B. A New Standard for Development Exactions}

Although many state courts have addressed the exaction issue, the U.S. Supreme Court has addressed the issue on only two occasions. First, in \textit{Nollan v. California Coastal Commission},\textsuperscript{76} the Court set forth the "nexus" test for development exactions. The Court later re-examined the validity of exactions in \textit{Dolan v. City of Tigard}.\textsuperscript{77} Even though \textit{Nollan} and \textit{Dolan} discuss dedications of land rather than impact fees, the same analysis can be applied to both land exactions and impact fees. While Washington courts have invalidated fees on various grounds, future analysis of impact fee cases also must involve consideration of the effect of \textit{Nollan} and \textit{Dolan}.

\subsection*{1. Nollan v. California Coastal Commission: The "Nexus" Test}

In \textit{Nollan}, the U.S. Supreme Court closely examined the relationship between the exaction and the development. The Nollans owned beachfront property along a public beach.\textsuperscript{78} They wanted to demolish a bungalow that stood on the lot and replace it with a new beachfront home. Although the Nollans requested the required permits from the California Coastal Commission, the Commission would not grant the permits unless the Nollans agreed to set aside a public easement across their property that was adjacent and parallel to the beach.\textsuperscript{79} The Commission argued that the new house would contribute to ""a "wall" of residential structures" that would prevent the public "psychologically... from realizing a stretch of coastline exists nearby that they have every right to visit.""\textsuperscript{80} The Commission concluded that it was necessary to offset this burden to the public by requiring the Nollans to dedicate part of their land for an easement.\textsuperscript{81}

\begin{itemize}
  \item \textsuperscript{75} \textit{Id.}
  \item \textsuperscript{76} 483 U.S. 825 (1987).
  \item \textsuperscript{77} 114 S. Ct. 2309 (1994).
  \item \textsuperscript{78} 483 U.S. at 827.
  \item \textsuperscript{79} \textit{Id.} at 828.
  \item \textsuperscript{80} \textit{Id.} at 828–29 (quoting App. at 58).
  \item \textsuperscript{81} \textit{Id.} at 829.
\end{itemize}
The Nollan Court invalidated the public easement requirement as an uncompensated taking because the exaction of land and the impacts the Commission claimed to be created by the proposed development lacked the required "nexus.\textsuperscript{82} The Court reasoned that the permit condition must somehow help alleviate the problem caused by the new development but found no relationship between a public easement and the "psychological barrier" that prevented the public from viewing the beach.\textsuperscript{83} The Court observed that the demanded easement would be traversed only by persons already on the beach; it would not help anyone perceive the beach from above the Nollans' property.\textsuperscript{84} The Court did, however, suggest that requiring the Nollans to provide a viewing spot on their property might have been permissible to alleviate the Commission's concern about visual access.\textsuperscript{85}

In defining the required "nexus," the Court refused to adopt any of the state-court tests for exactions. The Court, however, did use language similar to the "rational nexus" test in announcing that there must be a close "fit" between the exaction and the problem created by the development.\textsuperscript{86} According to the Court, unless exactions are imposed to alleviate the public burden stated by the municipality, they are invalid as "out-and-out plans of extortion."\textsuperscript{87} Thus, the Court required that exactions be scrutinized to ensure they specifically address problems that are attributable to the new development.\textsuperscript{88}

2. Dolan v. City of Tigard: The "Rough Proportionality" Test

In Dolan, the U.S. Supreme Court re-examined the relationship between exactions and the proposed development.\textsuperscript{89} Dolan also involved an exaction of land as a condition for approval of building permits.\textsuperscript{90} Dolan planned to nearly double the size of her plumbing and electric

\textsuperscript{82} Id. at 837.
\textsuperscript{83} Id. at 838.
\textsuperscript{84} Id.
\textsuperscript{85} Id. at 836.
\textsuperscript{86} Id. at 838–39.
\textsuperscript{89} Dolan v. City of Tigard, 114 S. Ct. 2309 (1994).
\textsuperscript{90} Id. at 2312.
supply store and to pave a parking lot on her property.91 The City was willing to approve the necessary permits on two conditions: (1) that Dolan dedicate roughly 7000 square feet (about 10% overall) of her property along a nearby creek for flood protection,92 and (2) that she dedicate an additional 15-foot strip of land for a pedestrian/bicycle pathway.93 Because the increased impervious surface created by the new parking lot would increase storm water runoff into the creek, the city concluded that the dedication of land near the creek was necessary to protect the 100-year floodplain.94 In addition, the City determined that the pedestrian/bicycle path would offset some of the traffic that would be generated by the new, larger store.95

In evaluating whether the City's requirements constituted a taking, the Dolan Court first addressed whether a "nexus" existed between the land exaction and the "legitimate state interest."96 The Court found that dedicating the land along the creek would help protect the floodplain from the increased stormwater that would result from paving the parking lot.97 Similarly, the Court concluded that a new pedestrian/bicycle path would offset some of the traffic caused by doubling the size of the store.98 Thus, Nollan's required "nexus" was established.

The Dolan Court, however, did not end its analysis with the finding of a "nexus." Nollan requires a certain quality of relationship between the exaction and the impact from the development—it is a qualitative test.99 Dolan goes one step further by attempting to compare the degree of exactions to the burdens created by the new development—it requires a certain quantitative relationship. In describing the necessary relationship, the Court rejected the "specifically and uniquely attributable" test set forth in Pioneer Trust & Savings Bank v. Mount Prospect100 as too "exacting."101 The Court also refused to adopt the rational nexus test of Jordan v. Village of Menomonee Falls102 or the "reasonable relationship"
Instead, the Court developed its own "rough proportionality" test to describe the required quantitative relationship between the exaction and the impact of the proposed development.

The Court's test requires that exactions produce a benefit roughly proportional to the burden created by the new development. In defining "rough proportionality," the Court stated that "[n]o precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." The Court concluded that it was unclear to what extent the floodplain easement would address the increased likelihood of flooding caused by the parking lot. The City also did not make an "individualized determination," nor "quantify its findings" to support its easement for a pedestrian/bicycle pathway. Although the City found that the pathway "could offset some of the traffic demand," the Court determined that this finding was insufficient to support the amount of the exaction. Therefore, the majority rejected the exactions because the City failed to sufficiently establish both the extent of the impacts caused by Dolan's proposed development and the degree of the relief that would be provided by the proposed exactions.

Procedurally, the Court shifted the burden of proof onto municipalities to establish that "rough proportionality" has been satisfied. In traditional land-use disputes, the party challenging the land-use regulation bears the burden of proof. As a result of Dolan, however, municipalities must first demonstrate that a sufficient "nexus" exists between the exaction and the problem created by the development. Moreover, local governments must then evaluate the degree of the "nexus" by demonstrating "rough proportionality" between the harm caused by the new land use and the benefit obtained by the exaction. To
demonstrate "rough proportionality," local governments must make "individualized determinations" and somehow "quantify their findings."

3. Dolan's "Rough Proportionality" Test Applies to Impact Fees

Nollan and Dolan involve dedications of land, not impact fees. While some commentators contend that development exactions include dedications of land as well as payments of fees, others have raised doubts over whether Dolan applies to monetary exactions. Neither Nollan nor Dolan discusses whether its analysis applies to monetary fees. In attempting to define its "rough proportionality" test, the Dolan Court cited a number of exaction cases without distinguishing between those which involved land exactions and those which involved monetary exactions. Thus, Dolan suggests that the same analysis applies to both dedications of land and impact fees.

The Court appeared to address the issue in Ehrlich v. City of Culver City. In Ehrlich, the City imposed a $280,000 impact fee as well as a $33,220 fee in lieu of a requirement that art be placed on the development project. In vacating and remanding the case to the California Court of Appeals, the Court concluded that Ehrlich must be considered in light of Dolan. The Court's decision implies that impact fees must be evaluated under the same analysis as the land dedications in Dolan. Therefore, impact fees also must satisfy the "rough proportionality" test.

C. Post-Dolan Impact Fee Cases and Application of the "Rough Proportionality" Test

Decisions following Dolan advocate a closer relationship between the impact fee and the proposed development by requiring a detailed analysis

113. Frank & Rhodes, supra note 5, at 2-3.
114. Does Dolan apply to monetary—as opposed to land exactions? In both Nollan and Dolan, the government demanded land in exchange for the right to use land. What if [the] government demands instead a high mitigation fee from the landowner? Could it then use that fee to condemn the property interest it could not have obtained outright?


115. 114 S. Ct. at 2318-20.
118. 114 S. Ct. at 2731.
of the impact of the development and how the fee is calculated. In Washington, the supreme court has upheld fees that were based on a detailed study of the impacts of the new development. On the other hand, it has rejected arbitrary fees. Other state courts also require a detailed analysis of whether the fee is related to the development.

Washington impact fee cases after *Dolan* scrutinize the relationship between the fee and the development. In *Trimen Development Co. v. King County*, the Washington Supreme Court upheld a county ordinance authorizing the use of impact fees to help pay for parks and other recreational facilities. The court based its decision on the County’s assessment that the new subdivision would create a need for new park land. The court concluded that the fees imposed on the developer were “reasonably necessary as a direct result of the developer’s proposed development.”

Although *Trimen* appears similar to other Washington cases invalidating impact fees, the case can be distinguished by the fee calculation method used. In *Trimen*, the fees were based on a detailed park study that included factors such as zoning, projected population, and assessed value of the land in the area. The fees were not determined by a flat per-lot charge. The detailed park study demonstrated that the need for more park land was a direct result of the new development. Moreover, the park study appeared to satisfy *Dolan*’s requirement for an “individualized determination” of the relationship between the fee and the impact of the new development. The court therefore indicated that “rough proportionality” was satisfied.

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122. *See, e.g.*, *J.C. Reeves Corp.*, 887 P.2d 360; *Schultz*, 884 P.2d 569.


124. *Id. at 274*, 877 P.2d at 194.

125. *Id.* Based on the County’s park assessment, the court found that the proposed development would create a need for 2.52 acres more of park land.

126. *Id. at 275*, 877 P.2d at 194.


In *Henderson Homes, Inc. v. City of Bothell*, the Washington Supreme Court determined that the City's park impact fee was improperly imposed on the developers. As a condition of subdivision permit approval, the City required that developers pay a predetermined $400-per-lot fee to help pay for city parks. In rejecting the predetermined fee, the court held that the City failed to identify any "direct impacts" of the proposed developments on the park system. In addition, the court concluded that there were "no documents or records" introduced by the City that analyzed the direct impacts of the new development. The court rejected the fee because the City failed to quantify its findings that the new subdivision would have an impact on the park system.

Oregon, the state in which *Dolan* originated, also has attempted to define "rough proportionality." In *J.C. Reeves Corp. v. Clackamas County*, the Oregon Court of Appeals stated that *Dolan* requires a greater degree of specificity between the exaction and the impact caused by the development. In *J.C. Reeves Corp.*, the court concluded that the County’s findings failed to make comparisons between traffic impacts and other effects of the subdivision and the improvements required by the County. The court stated that the County did not support the imposition of the development conditions with the specificity that *Dolan* requires. Similarly, in *Schultz v. City of Grants Pass*, the Oregon Court of Appeals required a greater degree of specificity. In *Schultz*, the court rejected the City’s exactions because they were based on future potential development instead of on the impacts of the current subdivision project.

130. Id. at 241, 877 P.2d at 177.
131. Id. at 243, 877 P.2d at 177.
132. "Finding of fact 13: 'Beyond the conclusionary statements contained in the plat approval conditions for plaintiffs' development, there are no documents or records supporting any analysis by the City of Bothell of the direct impacts of plaintiffs' developments on the park system.'" Id., 877 P.2d at 177-78 (quoting Clerk's Papers at 83).
133. Although the court did not cite *Dolan*, it appears that documentation or quantification of the effects of the new development is the type of "individualized determination" that the Supreme Court required in *Dolan*.
135. Id. at 364–65.
136. Id.
137. Id. at 365.
139. Id. at 573.
III. DOLAN’S EFFECT ON WASHINGTON IMPACT FEE STATUTES

While courts have attempted to define “rough proportionality” in specific cases, Dolan also affects the validity and interpretation of impact fee statutes. Because “rough proportionality” is required to satisfy the takings clause of the Fifth Amendment, the decision applies to all development exactions, including impact fees. In light of Dolan’s “rough proportionality” test, Washington impact fee statutes must be analyzed to determine whether they meet the U.S. Supreme Court’s requirements. Statutes that do not satisfy the “rough proportionality” test should be invalidated.

The Washington Legislature has authorized four main types of impact fees. Governmental bodies required to develop comprehensive plans under the Growth Management Act (GMA) are authorized to impose development impact fees as well as relocation fees for low-income tenants. The Local Transportation Act permits local governments to impose transportation impact fees. In addition, the Legislature authorized voluntary agreements between developers and municipalities for the payment of impact fees or dedications of land. While development and transportation impact fees comply with Dolan’s test, voluntary agreements and relocation assistance fees do not adequately meet the “rough proportionality” standard.

A. Development Impact Fees Under the Growth Management Act: §§ 82.02.050–.090

Under Washington’s GMA, local governments and municipalities that choose to or are required to plan for growth can impose impact fees. Section 82.02.050 imposes several limitations on development

145. One of the main planning goals of the GMA is to “[e]nsure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.” Wash. Rev. Code § 36.70A.020(12) (1994).
146. By authorizing impact fees under the Growth Management Act, the Legislature intended: (a) To ensure that adequate facilities are available to serve new growth and development;
impact fees. The fee must: (1) be "reasonably related to the new development"; (2) "not exceed a proportionate share of the costs of the system improvements"; and (3) be used for system improvements that "reasonably benefit the new development." Moreover, fees must be refunded if not spent within six years on public facilities intended to benefit the development. By imposing these restrictions, the Legislature intended to provide a balance between impact fees and other sources of public funds.

1. Development Impact Fees Meet the "Rough Proportionality" Test

Although the limitations imposed on development impact fees under § 82.02.050 are not described in terms of "rough proportionality," the limitations appear to meet the test. By requiring fees to be "reasonably related" to the development, § 82.02.050 appears to address Nollan's "nexus" requirement that the exaction actually alleviate the burden created by the development. The municipality must establish that a reasonable relationship exists between the fee's eventual use and the burdens attributable to the particular development project. Municipalities should have little difficulty demonstrating this relationship because the statute authorizes fees only for use in building roads, schools, parks, open space, recreation areas, and fire stations. These public facilities are almost always directly affected by a large commercial or residential development.

The statute's limitations also demand the type of "individualized determinations" required by Dolan's "rough proportionality" test. Because fees cannot exceed a "proportionate share" of the costs of the improvements, municipalities must make site-specific determinations

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(b) To promote orderly growth and development by establishing standards by which counties, cities, and towns may require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve new growth and development; and

c) To ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicative fees for the same impact.


149. Wash. Rev. Code § 82.02.050(2).


of the burdens created by a proposed development. In other words, fees must be proportionate to the service demands and needs created by the development. Therefore, the statutory requirements of § 82.02.050 comply with the "rough proportionality" test.

According to Dolan, local governments bear the burden of demonstrating "rough proportionality" between fees exacted and burdens created. Municipalities can satisfy the test by applying an impact fee formula when calculating the actual amount of the exaction. Impact fee formulas incorporate factors such as the cost of the new improvements, standard level of service (LOS), increase in population, and cost of existing public facilities. By applying a fee formula, the final impact fee reflects the additional monetary burden caused by new residential or commercial developments.

152. Level of service (LOS) standards are the acceptable performance levels for specific services in a community. Typically, they are set by municipalities to evaluate the service standards for a particular region or community. For example, LOS for roads is a qualitative measure based on a scale of A to F, where LOS level A indicates free-flowing traffic and F is a road with extreme delays. LOS for parks is a standard based on the number of acres of park land per person or per 1000 persons living near the park. The national parks and recreation standard is 10 acres per 1000 persons. 

153. An example of calculating a park impact fee is the following:

Suppose a new development will create 1500 multiple-family units accommodating 4500 residents. The community's park standard is eight acres per 1000 persons. The last purchase price of available land was $40,000 per acre for undeveloped land and general recreational facilities improvement averaged $30,000 an acre for the last fiscal year. Existing general obligation debt payments (figured on a per-capita basis for persons living in existing multiple-family units) are $30 per year. Present value is based on a life of 25 years and a six percent interest rate. The municipality also expects half of the park costs to come from state grant funds and bonds. Thus, the calculations are:

Population = 1500 x 3 = 4500 People
Adopted Acreage Standards = 8 Acres/1000 People = 0.008 Acres/Person
Per Acre Land Cost = $40,000/Acre
Per Acre Improvement Cost = $30,000/Acre
Cost of Park Acquisition and Improvements = 4500 x 0.008 x ($40,000 + $30,000) = $2,520,000
Present Value Factor = 12.78
Credits = $30 x 12.78 = $383 per Person
Net Cost = $2,520,000 - ($383 x 4500) = $796,500
Total Impact Fee = $796,500 - 0.50($796,500) = $398,250
Impact Fee Per Unit = $398,250/1500 = $266 Per Unit

Id. at 18–19.
2. The "Reasonable Benefit" Requirement Is More Restrictive Than the "Rough Proportionality" Test

Development impact fees under § 82.02.050 also require that fees be spent on facilities that benefit the development, an element not discussed in Nollan or Dolan. However, the improvements do not have to solely benefit the development. As long as there is some benefit to the development, it does not matter if the general public benefits as well. Because it is difficult to measure a benefit to the development, expected use of the facility is the best indicator of whether such a benefit exists. For example, if a local municipality wants to impose an impact fee for parks, the park should be located near the development so that the residents of the subdivision will most likely use the park and benefit from its existence. The fees should not be used for a park across town because there is little chance that the residents of the subdivision would use it. Because impact fees under § 82.02.050 are more restrictive than Dolan's "rough proportionality" test, the statute complies with the Court's standard while requiring an additional element, a reasonable benefit requirement.

B. Transportation Impact Fee: §§ 39.92.010–.040

Washington's Local Transportation Act authorizes transportation impact fees to offset the demands of growth and new development by

154. Neither Nollan nor Dolan discusses a requirement that exactions benefit the development. In Nollan, the Court indicated that a public viewing spot on the Nollans' property would satisfy a "nexus" without any evaluation of whether it would create a benefit for the Nollans. Nollan v. California Coastal Commission, 483 U.S. 825, 836 (1987). However, it is difficult to see how the Nollans would benefit from a public viewing spot on their own property. Similarly, in Dolan, the Court failed to discuss whether Dolan would receive a benefit from the conditions imposed on her property. The Court stated that a dedication of land for a pedestrian/bicycle pathway and land for the protection of the creek would satisfy a "nexus" requirement. Dolan v. City of Tigard, 114 S. Ct. 2309, 2317–18 (1994). However, it is hard to imagine Dolan receiving a benefit from a pedestrian/bicycle pathway as, presumably, few of her customers would arrive at her plumbing store by bicycle. Furthermore, Dolan would have received no benefit from a dedication of land near the creek. If the City was able to obtain all the land running near the creek, there would have been some flood protection for her property. However, Dolan's dedication of land, absent additional dedications from neighboring landowners, would provide her property with no benefit.


156. Wash. Rev. Code § 39.92.010 (1994) provides:

Purpose. The legislature finds that there is an increasing need for local and regional transportation improvements as the result of both existing demands and the foreseeable future
mitigating off-site transportation impacts.\textsuperscript{157} Fees can be imposed only under the limited circumstances provided in the statute. First, a development’s transportation impacts must be measured for their “pro rata share” of the improvements being funded.\textsuperscript{158} Second, the fees must be “reasonably necessary as a direct result of the proposed development.”\textsuperscript{159} Moreover, the collected fees must be spent within six years or be refunded.\textsuperscript{160} The statute prohibits fees for projects that are incapable of being carried out for lack of funds or other foreseeable problems.\textsuperscript{161}

1. \textit{Transportation Impact Fees Satisfy “Rough Proportionality”}

The statutory requirements for transportation impact fees should meet the \textit{Nollan} and \textit{Dolan} tests. The language of the transportation impact fee statute is similar to “rough proportionality” and mandates the type of “individualized determinations” \textit{Dolan} requires. A “nexus” is established by satisfying the requirement that the fee must be “reasonably necessary as a direct result of the proposed development.”\textsuperscript{162} The “direct result” is measured by calculating the impact that will be created by the vehicles and pedestrians traveling to and from the development.\textsuperscript{163} The impact can be measured by determining whether there is any affect on the

\begin{itemize}
\item demands from economic growth and development within the state, including residential, commercial, and industrial development.
\end{itemize}


\textsuperscript{159} Wash. Rev. Code § 39.92.020(3) (1994) (“‘Direct result of the proposed development’ means those quantifiable transportation impacts that are caused by vehicles or pedestrians whose trip origin or destination is the proposed development.”).


\textsuperscript{162} Wash. Rev. Code § 39.92.030(4).

\textsuperscript{163} Wash. Rev. Code § 39.92.020(3).
transportation LOS. As long as the new subdivision affects the LOS, a "nexus" is satisfied.

Moreover, transportation impact fees demand the site-specific determination required by the "rough proportionality" test. Transportation impacts must be measured as a pro rata share of the improvements being funded by the fee. "Pro rata" is generally defined as in proportion or proportionate. The developer's fees must therefore be proportionate to the cost of the improvements. A road or transportation impact fee formula, or some similar site-specific determination, would satisfy Dolan's test because the amount of the fee would be calculated in proportion to the cost of the development.

2. Transportation Improvements Must Benefit a Specific Geographic Boundary

The Local Transportation Act also mandates that fees be exacted only within a limited geographic boundary that will benefit from the improvements. Under the local transportation program, municipalities must identify a limited geographic region. Fees imposed on new development must be spent within the boundary in which it is located. Thus, transportation fees impose a benefit requirement similar to that

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**LOS** | **Signalized Intersection** | **Highway**
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A | Uncongested operations | Free flow of vehicles in the traffic stream
B | Uncongested operations | Higher speed range of stable flow, volume 50% of capacity
C | Light congestion, occasional backups | Stable flow with volumes not exceeding 75% of capacity
D | Significant congestion of critical approaches but intersection functional | Upper end of stable flow conditions, volumes do not exceed 90% of capacity
E | Severe congestion with long standing back-ups on critical approaches | Unstable flow at roadway capacity, operating speeds 30-25 mph or less
F | Total breakdown, stop-and-go | Stop-and-go traffic, operating speed less than 30 mph

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164. Level of Service Definitions for Intersections and Highways with Signals:


166. Webster's New World Dictionary 1140 (2d ed. 1982).

167. For road impact fees, the Washington Department of Community Development recommends factors such as LOS, expected use of the roads, amount of new road required, and the cost of the needed right-of-way. Paying for Growth's Impacts, supra note 1, at 16.

168. Wash. Rev. Code § 39.92.030(1) (1994) ("The program shall identify the geographic boundaries of the entire area or areas generally benefited by the proposed off-site transportation improvements and within which transportation impact fees will be imposed under this chapter.").
imposed on development impact fees under § 82.02.050. Because the transportation impact fee statute imposes an additional benefit requirement, it is more restrictive than what the "rough proportionality" test requires.

C. Voluntary Agreements for Impact Fees or Dedications of Land: § 82.02.020

The Washington Legislature, in amending § 82.02.020 in 1982, provided that municipalities could collect fees or receive dedications of land through voluntary agreements with developers. Although § 82.02.020 generally prohibits impact fees except as specifically authorized by statute, impact fees or dedications of land are permitted as long as the municipality can demonstrate that they are "reasonably necessary as a direct result of the proposed development." Municipalities that receive payments pursuant to voluntary agreements must hold the funds in a reserve account and use them to fund the capital improvements identified by the parties. Moreover, the fees must be spent within five years of collection or be refunded with interest.

1. Voluntary Agreements Under Cobb v. Snohomish County and Trimen Development Co. v. King County Are Not Truly "Voluntary"

A voluntary agreement implies that the developer is given a choice between paying or not paying the fee. The word "voluntary" generally is defined as given or done of one's free will or choice. If agreements under § 82.02.020 are truly voluntary, then Dolan's requirements are

169. The statute "does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply." Wash. Rev. Code § 82.02.020 (1994).

In addition, the statute "does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat." Wash. Rev. Code § 82.02.020.

170. The statute's general prohibition does not apply to development impact fees under §§ 82.02.050–090, transportation impact fees under §§ 39.92.010–040, and tenant relocation assistance under §§ 59.18.440–450. Wash. Rev. Code § 82.02.020.


inapplicable because no constitutional provision prevents a person from voluntarily choosing to pay a fee or dedicate land to the government. However, Washington courts have interpreted such agreements as being voluntary even though the payment of fees or dedication of land under § 82.02.020 was not truly “voluntary” in the literal sense of the word. In fact, developers were forced to pay a fee or dedicate land to obtain approval for proposed development.

Initially, the Washington Court of Appeals held in Cobb that agreements are “voluntary” when a developer has a choice of either paying the fee or losing permit approval. However, this presents no viable choice because the developer’s only option is to pay the fee or have the requested permit denied. In Trimen, the Washington Supreme Court concluded that the developer is presented with a “viable choice” when faced with the option of either paying the fee or dedicating land. In both cases, the developer is not given the choice of actually refusing to pay the fee. If developers are compelled to either pay a fee or dedicate land, voluntary agreements, as interpreted under Cobb and Trimen, must comply with the “rough proportionality” test.

2. The Requirements for Voluntary Agreements Do Not Address the “Rough Proportionality” Test

Although a “nexus” is satisfied under § 82.02.020, the statute does not adequately address Dolan’s requirements. Voluntary agreements must be “reasonably necessary as a direct result of the proposed development.” Thus, the local government must identify how a reasonable relationship exists between the need for the voluntary agreement and the burden created by the development. New development generally will affect all or


176. 64 Wash. App. at 457-58, 829 P.2d at 173-74. See also Martha Lester, Subdivision Exactions in Washington: The Controversy over Imposing Fees on Developers, 59 Wash. L. Rev. 289, 297-98 (1984) (noting that developer is faced with “voluntary” choice when only option is to pay fee or have permit denied).

177. 64 Wash. App. at 464, 829 P.2d at 177 (Agid, J., dissenting).

178. 124 Wash. 2d at 272, 877 P.2d at 193.

179. But see Henderson Homes, Inc. v. City of Bothell, 124 Wash. 2d 240, 246, 877 P.2d 176, 179 (1994). In Henderson Homes, the Washington Supreme Court, contrary to Cobb, indicated that agreements under § 82.02.020 are not voluntary when the developer is given only the choice of paying a fee or losing permit approval.

some of the public facilities and services located near the development
by increasing the demand for those facilities and services. As long as a
municipality can demonstrate that the use of the fees or land will be used
to alleviate the problems created by the proposed development, the
“nexus” requirement will be satisfied.

Although voluntary agreements meet Nollan’s “nexus” test, they do
not address Dolan’s requirement that fees be based on some
“individualized determination.” Unlike the statutes authorizing
development and transportation impact fees, the statute governing
voluntary agreements does not mandate that fees cannot exceed a
“proportionate” or “pro rata” share of the costs of the improvements. Thus, the requirements of § 82.02.020 do not meet the customized, site-
specific fee determination envisioned by the Dolan Court.

3. Washington Courts Should Require “Rough Proportionality”
Between Voluntary Agreements and New Development

Because voluntary agreements do not statutorily meet Dolan’s
requirements, courts should analyze these cases by applying the “rough
proportionality” test on a case-by-case basis. Specifically, Washington
courts should ensure that municipalities make the proper site-specific
quantifications required by Dolan. Thus, the Washington Supreme Court
properly analyzed the voluntary agreements in Trimen and Henderson Homes. In Trimen, the court noted that the County conducted a
comprehensive park study and that the fees collected were appropriately
related to the size of the specific project. On the other hand, in
Henderson Homes, the court concluded that there was no evidence of the
impact the proposed development would have on the City’s park
facilities. Although the court did not specifically cite Dolan’s test, in
each case it scrutinized the local government’s attempt to measure the
impacts of the developments. The court’s decisions indicate that
municipalities are required to make a site-specific determination of the
burdens created by a new development when entering voluntary
agreements with developers.

D. Relocation Assistance Fees: § 59.18.440

Municipalities, required to plan under the GMA, have the authority to impose relocation assistance fees for low-income tenants. Local governments can assess fees on property owners upon the demolition, rehabilitation, or change in use of residential property in an assisted housing development. Thus, if a landlord wanted to demolish a low-income housing complex and build a new residential development, a municipality could impose relocation assistance fees on the developer. The fees may include various costs associated with relocation, such as moving expenses, security and damage deposits, utility connection fees, and additional rent and utility costs for a year. Relocation assistance fees cannot exceed $2000 for each residence displaced by the property owner and cannot exceed one-half of the tenant’s total relocation costs.

The relationship between the relocation fees and the landlord’s use of property does not satisfy Nollan’s “nexus” requirement. The Washington Supreme Court has consistently rejected the notion that individual property owners are responsible for a community’s low-income housing problem. In Guimont v. Clarke, the court examined the validity of the Mobile Home Relocation Assistance Act which required property owners to pay relocation fees for displaced mobile home owners. Although the court applied a substantive due process analysis, it determined that the main problem was not the closing of the mobile home park, but the lack of low-income housing and the low-income status of mobile home residents. Thus, the court concluded that the burden was not created by the actions of the property owner but by society as a whole.

186. Wash. Rev. Code § 59.18.440(2) (1994) ("[L]ow income tenants’ means tenants whose combined total income per dwelling unit is at or below fifty percent of the median income, adjusted for family size, in the county where the tenants reside.").
187. Wash. Rev. Code § 59.18.440(1) ("[A]ssisted housing development’ means a multifamily rental housing development that either receives government assistance and is defined as federally assisted housing in RCW 59.28.020, or that receives other federal, state, or local government assistance and is subject to use restrictions.").
191. 121 Wash. 2d at 591–92, 854 P.2d at 4.
192. The Washington Supreme Court stated:
Similar reasoning can be applied to relocation assistance fees for low-income tenants under § 59.18.440. The fees do not address a burden caused by the new development. The problem instead is created by the lack of adequate affordable housing. The shortage of low-income housing and the financial burden of the residents is not the direct result of the property owner’s actions. Instead, the problem is created by the community’s failure to resolve the affordable housing dilemma. Because the fees do not alleviate any problem created by the property owner, no “nexus” exists between the fees and the actions of the landlord.

IV. CONCLUSION

The U.S. Supreme Court’s decision in Dolan provides a new standard for evaluating impact fees. Under Dolan, municipalities must demonstrate “rough proportionality” by quantifying the degree to which the exactions alleviate the burdens created by the new development. In Washington, development fees under sections 82.02.050–090 of the Washington Revised Code and transportation fees under §§ 39.92.010–040 satisfy the site-specific determinations required by Dolan. In fact, these statutes are more restrictive because they demand an additional benefit requirement not addressed by the Dolan Court. On the other hand, voluntary agreements under § 82.02.020 and relocation assistance under § 59.18.440 do not adequately address the “rough proportionality” test. Voluntary agreements may be valid as long as Washington courts evaluate the statute in light of Dolan’s requirements. However, relocation assistance fees do not satisfy Nollan’s “nexus” test. Thus, under a Nollan and Dolan development exaction analysis, Washington courts should invalidate relocation assistance fees.

The costs of relocating mobile home owners, like the related and more general problems of maintaining an adequate supply of low income housing, are more properly the burden of society as a whole than of individual property owners. While the closing of a mobile home park is the immediate cause of the need for relocation assistance, it is the general unavailability of low income housing and the low income status of many of the mobile home owners that is the more fundamental reason why the relocation assistance is necessary.

Id. at 611, 854 P.2d at 15.

193. Id.

194. Developers contend that there is no “link” between new development and low-income housing. Porter, supra note 7, at 74–75.

195. But see Public Needs, supra note 2, at 177–89 (concluding from Sacramento Housing Nexus Analysis that nexus exists between employees of various commercial and industrial buildings and number of low-income employee households directly associated with buildings).