



Summary: This policy is designed to increase the production of housing by ensuring that exactions—requirements or conditions—imposed on a proposed project are roughly proportional to the cost of mitigating an identified adverse impact that would result from the proposed project. Any exaction must provide project applicants with an opportunity for an individualized determination of the adverse impact and associated costs the government may make the property owner bear. The policy also provides remedies if an application is unreasonably denied or delayed. In doing so, it addresses statewide housing shortages and promotes affordability by reducing the unconstitutional conditions put on property owners in exchange for permits that are guaranteed to drive up the cost of housing and sometimes make it entirely unaffordable.

The Safe Harbor from Excessive Exactions Act

Section 1: Title

This Act shall be known as the “Safe Harbor from Excessive Exactions Act.”

Section 2: Purpose

The purpose of this Act is to ensure that exactions imposed on a proposed project are roughly proportional to mitigating an identified adverse impact that would result from the proposed project. Any exaction must provide project applicants with an opportunity for an individualized determination of whether the exaction is limited to mitigating only for adverse impacts that would result from the proposed project. This Act also provides remedies if an application is unreasonably denied or delayed.

Section 3: Definitions

For the purposes of this Act:

- (a) “**Exaction**” means any fee, dedication, or condition imposed by a government entity on a project applicant or property owner as a condition of granting a permit or other approval for the project. Exactions are imposed to mitigate identified adverse impacts that would result from a proposed project and do not include fees for government services such as utilities or regular permit application fees.



- (b) **“Proposed project”** means any application for use or development of real property, including but not limited to residential, commercial, recreational, agricultural, and industrial use or development.
- (c) **“Individualized determination”** means a written analysis specific to the proposed project to assess whether an exaction, including an impact or mitigation fee, is roughly proportional in nature and extent to the adverse impacts of the proposed project.

Section 4: Required Procedure for Individualized Determination

- (a) Any exaction, including a mitigation or impact fee, must be accompanied by written notice to the project applicant of the required exaction. Upon receipt of a written exaction notice, the project applicant may request an individualized determination prepared at the expense of the government entity demonstrating the basis for the exaction or fee amount imposed on the proposed project, including the methodology and supporting data and information used to determine the adverse impact anticipated to be caused by the proposed project and the method of calculating the fee amount based on that identified adverse impact.
- (b) The government entity must provide the completed individualized determination within 60 days of the request. Unless an administrative appeal is filed, this individualized determination will be the final decision of the local jurisdiction. If the individualized determination as described above is not completed and delivered to the property owner within 60 days, the fee is deemed excessive and waived.
- (c) If the project applicant objects to the methodology, supporting information, or conclusions set forth in the individualized determination, the applicant may file an administrative appeal to [appropriate jurisdiction]. Such appeal may be filed immediately or may be delayed and included with other matters arising in the permit review process related to the project application. In such an appeal, the burden of proof is on the local jurisdiction to demonstrate that the exaction or fee amount is roughly proportional in nature and extent to the adverse impact of the proposed project.



Section 5: Project Applicant May Elect to Satisfy an Exaction Under Protest

- (a) A project applicant may elect to proceed under protest and satisfy a required exaction while the exaction is challenged or appealed. Any satisfaction or payment under protest of a mitigation or impact fee shall not be construed as a waiver of any objections or appeals or right to judicial review of the exaction. The government entity shall not require the project applicant to satisfy the exaction as a prerequisite to challenge or appeal the validity of the exaction.

Section 6: Enforcement and Judicial Review

- (a) Project applicants may bring an action in an appropriate court to challenge the validity or constitutionality of an exaction. The court shall review the exaction de novo with the burden of proof on the government entity to demonstrate that the exaction is roughly proportional in nature and extent to the adverse impact of the proposed project. The court shall award compensatory damages and attorney fees exclusively to a prevailing plaintiff.

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