

# Residential Impact Fees in California

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Current Practices and Policy Considerations to Improve  
Implementation of Fees Governed by the Mitigation Fee Act

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## About the Turner Center

The Turner Center formulates bold strategies to house families from all walks of life in vibrant, sustainable, and affordable homes and communities. Our focus is on generating constructive, practical strategies for public policy makers and innovative tools for private sector partners to achieve better results for families and communities.

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## About the California Department of Housing and Community Development

The Department awards loans and grants to public and private housing developers, nonprofit agencies, cities, counties, and state and federal partners. The Department also develops housing policy, building codes, and regulates manufactured homes as well as mobile home parks.

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# Table of Contents

Executive Summary	4
Introduction	13
Background	14
Study Design	23
Fee Transparency	26
Fee Structure	31
Fee Design Process	49
Alternative Funding Options for City Infrastructure	58
Conclusion	75
Appendix A. Scan Cities and Counties	77

## Executive Summary

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Local governments levy fees and exactions to help fund the expansion of infrastructure needed to support new housing. These charges support important local services, such as school, parks, and transportation infrastructure, which many California jurisdictions are struggling to fund. State-imposed policies that restrict local taxes, such as Proposition 13, leave municipalities with limited means of raising revenue for infrastructure. As a result, California jurisdictions have increasingly relied on development fees. While fees offer a flexible way to finance necessary infrastructure, overly burdensome fee programs can limit growth by impeding or disincentivizing new residential development, facilitate exclusion, and increase housing costs across the state.

In this report, the Turner Center for Housing Innovation at UC Berkeley analyzes the use of residential “impact fees”—development fees regulated by the Mitigation Fee Act—to inform policymakers on the trade-offs of policies intended to improve housing supply and affordability. This report focuses narrowly on impact fees and reviews of policy approaches to reduce Mitigation Fee Act fees on residential development, as stipulated by the Legislature in AB 879 (Grayson, 2017). However, impact fees exist within a much wider ecosystem of fees and exactions charged to new development (see table), thus some of the findings and implications of this analysis could apply to that broader ecosystem.

### Development Fees by Type and Authority

<b>Exaction</b>	<b>Eligible Uses</b>	<b>Subject to the Mitigation Fee Act?</b>
<b>Subdivision Map Act In-Lieu Fees</b>	Must be tied to General Plan (e.g. bike paths, open space, etc.)	No
<b>Quimby Act In-Lieu Fees</b>	Parks	No
<b>Inclusionary Housing Ordinance In-Lieu Fees</b>	Affordable housing	No
<b>Utility Connection Fees</b>	Cost to provide connection to utility system	No
<b>School Facilities Impact Fees</b>	School facilities	No
<b>Permit Processing Fees</b>	Costs associated with permit processing	No

<b>Exaction</b>	<b>Eligible Uses</b>	<b>Subject to the Mitigation Fee Act?</b>
<b>Development Agreements (DA)/Community Benefit Agreements</b>	Contracted between the jurisdiction and the developer	No
<b>CEQA In-Lieu Mitigation Fees</b>	Mitigate projects' environmental impacts through actions identified in an EIR under CEQA	Yes (if non-voluntary)
<b>Impact Fees</b>	<b>Any impact reasonably attributed to new development</b>	<b>Yes</b>

To better understand how impact fees are developed, structured, and implemented, we interviewed agency staff, nexus study consultants, land use law experts, and municipal budgeting experts across California. We also conducted case studies of fees, nexus studies, and capital improvement budgets in a cross-section of jurisdictions throughout the state.

This report presents the findings of our interviews and case study analysis and also explores an assortment of potential reforms to the current system that arose in our research and engagement process. While each policy proposal that surfaced is intended to better balance efforts to have residential development “pay its way” with strategies to ensure that fees are transparent and reasonable, each comes with benefits and costs. In addition, some proposals are more feasible than others, some may function best in tandem or instead of one another, and others may have costs or unintended consequences that could outweigh their benefits. Given the complexity of these issues, a reform agenda could take many different forms. By laying out the pros and cons of each policy alternative, this report aims to inform the public conversation and ground state policymakers as they consider a variety of pathways to lower impact fees.

## Findings

Based on a survey of 40 jurisdictions, in-depth case studies in 10 localities, and interviews with almost 30 experts, we explore four key aspects of impact fees in California. First, we review current practices around fee transparency and consider proposals to improve the predictability of impact fees. Second, we examine typical fee rate structures and weigh proposals that would adjust fee structures to better promote housing supply and affordability. Third, we outline the tools that localities use to design fee programs, including nexus and feasibility studies, and analyze the potential impact of proposals that aim to lower the burden of fees on development. Finally, we consider the alternative options available to fund local infrastructure and outline the trade-offs of different approaches aimed at shifting local budgets towards other funding sources.

## Fee Transparency

For fees to be truly transparent, the public and developers should be able to easily access the nexus studies used to establish impact fees as well as current fee schedules, and they should be able to estimate related project costs in advance. The ways impact fees are implemented under the current legal and regulatory framework reveal:

- **Nexus studies are rarely easily available to the public; only 28 percent of the localities surveyed posted all of their nexus studies clearly online.** Often, researchers had to sift through city council agendas or submit a public records request to access the studies.
- **Development fee schedules, including impact fee schedules, are often unclear and difficult to find.** Confusing or fragmented schedules limit developers' ability to estimate their costs for a prospective project and hinder oversight and transparency.
- **While impact fees are relatively straightforward to calculate, estimating the full stack of development fees is often challenging.** Developers need to be able to estimate their local costs in order to draft precise proformas and accurately assess the feasibility of a project. In addition, tracking the full range of development fees would help localities gauge the effect of adding any type of fee on local development costs.

### Improving Fee Transparency

To increase transparency and predictability of fees, the state could consider the following approaches:

- **Require jurisdictions to clearly post all nexus studies and any related feasibility studies on localities' websites.** The public, developers, researchers, and other jurisdictions would have easier and more reliable access to these important analyses.
- **Require jurisdictions to post clear, comprehensive, and up-to-date development fee schedules.** Fee schedules would clearly present details on fee variation by geographical area.
- **Require local governments to make annual fee reports easily available to the public.** Annual impact fee reports, which list fee schedules, fee revenue, and projects funded by fees, would be consolidated within a locality and also made easily available online.
- **Require jurisdictions to confirm the availability of their fee schedules and annual fee report in their Annual Progress Reports (APRs) for their Housing Element.** This adheres to the spirit of housing element law by encouraging transparency of required development fees.
- **Require jurisdictions to provide fee estimates as well as public guidance on how to calculate development fees.** By providing fee estimates, localities can help developers determine their total project costs more accurately. Updated fee schedules with clear guidelines for calculating fees would also improve the transparency of local fees for the general public, including researchers and other governments. Clear fee schedules and estimates could take the form of a workbook or an online program and would include all development fees, with the exception of project-specific exactions.

The state could provide technical assistance or support for municipalities with limited capacity to undertake these fee transparency requirements.

## Fee Structure

The way local governments structure their fees can affect the cost to developers, and can incentivize different types of housing. A review of current practices, and an estimation of impact fees for a prototypical single-family and multifamily development in our case study localities, found the following:

- **The timing of fee imposition varies depending on the jurisdiction and the fee.** Some localities impose fees—meaning they establish the total cost of fees for a project—at the time of building permit application, while others wait until the issuance of the certificate of occupancy. Imposing fees later in the development process can hinder precise project cost estimation and thus increase risk for developers.
- **The timing of fee collection varies widely.** Some jurisdictions collect fees when permits are issued and others collect when the certificate of occupancy is issued. Collecting fees earlier extends the length of time developers must carry the cost of fees.
- **Impact fees on accessory dwelling units (ADUs) can vary widely; many localities waive them completely, while others charge as much as \$50,000 per unit.** ADUs are typically built on single-family lots and tap into existing infrastructure, lessening their impact on public facilities.
- **Localities often rely on geographically-specific impact fees in order to account for variations in infrastructure costs.** This common practice ensures that fee rates closely reflect the cost of improvements. It also distributes the cost between developments that will benefit from the new infrastructure, ensuring that no one project is left to shoulder a majority of the burden.
- **When infrastructure needs transcend jurisdictional boundaries, inter-jurisdictional fees provide a streamlined way to mitigate impacts.** These fees also offer a way for less-resourced localities to leverage fees for infrastructure funding.
- **Impact fee amounts vary widely across localities.** Fees on prototypical projects in our ten case study localities varied by as much as \$19,100 per unit for a multifamily project and by as much as \$29,600 per unit for a single-family project. Variations in fee levels reflect differences in local housing markets as well as in local funding strategies and priorities.
- **Uses of fee revenue varies across localities.** While some localities focus their impact fee use entirely on transportation funding, others prioritize funding for parks or affordable housing.
- **In all ten of our case study jurisdictions, the cost of impact fees per square foot was lower for single-family projects than for multifamily projects.** However, when assessed at the unit level, the cost of impact fees for the prototypical single-family project was higher than for the prototypical multifamily project in eight of the ten jurisdictions. Localities have some flexibility to choose how they structure fees, including the basis on which fees are calculated, and, in doing so, can intentionally or unintentionally incentivize certain types of development.

## Improving Fee Structure

To ensure that impact fee rates are structured in ways that encourage housing supply and affordability, the state could weigh the benefits and costs of the following approaches:

- **Determine fees earlier in the development process.** Calculating fees based on fee rates in effect at an earlier point in the development process would lower risk for developers. This approach would need to set fee determinations contingent on the project receiving a certificate of occupancy within a strict time frame; projects that stall would be subject to changes in fee rates. While some interviewees highlighted this as a valuable approach, others raised concerns that it could result in the collection of outdated fee amounts and imperil infrastructure funding.
- **Require jurisdictions to consider alternative multipliers for fees and to justify their choices.** The fee basis can further or undermine policy goals; for example, setting fees on a per-unit basis incentivizes less-dense development. Conversely, charging lower fees to reflect the lesser impacts of multifamily developments, particularly when they are situated near transit or built for special needs populations, can incentivize more affordable and sustainable unit types. Weighing different potential fee structures as part of their nexus study and presenting a justification would require cities and counties to consider the relationships between infrastructure impacts, housing affordability, and sustainability goals. However, interviews raised concerns that this may increase costs for localities with limited impact; without meaningful oversight, localities could easily justify their desired fee structures.
- **Consider different approaches to reduce fees on ADUs to encourage their development.** These approaches range from expanding requirements around nexus study prototypes to mandating fee waivers, and each approach presents its own trade-offs. Lowering fees on ADUs could remove a key obstacle for small-scale owner-developers and incentivize housing production in single-family neighborhoods.
- **Require jurisdictions to determine if separate fees for infill and greenfield developments are necessary, and if so, calculate fees separately based on the cost to bring service to the respective type of project.** While this approach would assuage some concerns that fees are not always proportional to impacts, it would be challenging to implement, and other alternatives that seek to improve the precision of nexus studies may better achieve this goal.
- **The state could establish additional nexus guidelines for inter-jurisdictional fees.** Guidelines could assuage concerns that inter-jurisdictional fees, particularly those that cover a large region, may be less closely tied to impacts. However, interviews noted that the current nexus guidelines function well for inter-jurisdictional fees, and did not highlight this approach as a priority.

While the Legislature may determine that some of the policy considerations above may not be appropriate for statewide regulation, the state could provide technical assistance to encourage localities to implement them as best practices. Other best practices related to fee structure and implementation that surfaced in our interviews include the following:



- **Splitting collection times for fees:** Cities and counties could review their more costly fees and consider whether they can afford to collect a portion of those fees later in the development timeline.
- **Implementing fee deferral programs:** Some localities build more flexibility into their fee timing by designing fee deferral programs. Deferral programs represent an important tool for localities to accommodate developer concerns when fiscally possible.
- **Increasing fees incrementally:** Rather than applying the full amount of a fee or fee increase when approved, localities can stage its implementation in steps over a period of time to give the housing and land markets a chance to adjust to the higher cost of development.
- **Adjusting rates for submarkets within a locality when sufficient variation exists:** Zoning rates according to local housing markets or changes in project impacts can ease the impact of fees on weaker submarkets and ensure that fees accurately reflect project impacts.

## Fee Design Process

The way fees are designed affects the cost of development. Ambitious policy proposals that surfaced during our interview and case study analysis reframe the way fees are devised, including the nexus studies that set the maximum legal impact fee based on the cost of infrastructure needed to serve a new project. Interviews with agency staff and nexus study consultants, and reviews of nexus studies in 40 jurisdictions, demonstrate:

- **While state statute does not require a specific methodology for nexus studies, most studies follow a similar structure.** Nexus methodologies vary according to fee type—a parks fee requires a different analysis than an affordable housing fee, for example. Furthermore, methodologies can vary within fee types, depending on planning strategies, whether a locality expects greenfield or infill development, and the data available, among other factors.
- **Nexus studies generally assess impacts across broad categories and geographies, and assessed fees are not required to be tied to specific improvements or areas in a jurisdiction.** Nexus analyses are sometimes used to justify fees used for improvements far removed from a particular development—for example, a transportation fee charged to a project may be used to expand a section of road on the other side of the city—as long as the improvement aims to maintain an overall level of service for the jurisdiction.
- **Localities have the authority to determine acceptable levels of service, which can influence the maximum fee level defined by a nexus study and increase variation between jurisdictions.** Localities determine and plan to meet levels of service for major types of infrastructure, including parks, transportation, and fire protection. Once a city determines its desired level of service, a nexus study calculates the maximum fee amount based on the cost of providing that level of service to new residents. For example, one city may decide that the appropriate amount of parks should be 5 acres per 1,000 residents, while another may decide on 3 acres per 1,000 residents. A nexus study consultant would then determine what an appropriate park impact fee should be for new development in order to maintain that city’s desired level of service.

- **Fees are often set under the legal maximum amount as defined by the nexus study, with notable exceptions.** While many localities set their fees well below the legal ceiling, some ask new developments to pay for all related infrastructure costs to support high levels of service, which may prove exclusionary in practice by stymieing new development or increasing housing prices.
- **While most jurisdictions make good-faith efforts to consider feasibility when setting rates for individual fees, their processes often do not adequately analyze the impact of total fee amounts on housing supply.** Determining whether a fee is overly burdensome can be challenging, particularly when housing markets may vary within a locality. Decision makers often rely solely on a comparison of fee levels from adjacent or similar cities to determine a reasonable fee amount, but those comparisons often fail to consider the highly localized nature of the housing market.

## Improving Fee Design

Improved fee design processes have the potential to lower the cost of impact fees broadly, or to rein in outlying fees. To facilitate these benefits, the state could weigh the trade-offs of the following approaches:

- **Set guardrails around the levels of service or investment that can be considered in a nexus study.** By setting reasonable caps on service standards used by localities to determine the cost of impacts and set maximum fee amounts, the state could rein in overly burdensome fees. However, localities often set fees well below the maximum legal amount. If policymakers wish to lower fees more broadly, additional approaches may be needed.
- **Require cities to establish stronger connections between the fees they charge and the actual impacts of a specific development.** The Mitigation Fee Act could be amended to require a stronger tie between the fees local governments collect from projects and the infrastructure funded by fees. Specifically, Section 66001 of the California Government Code could be changed to require local agencies connect their nexus studies and fee schedules to a Capital Improvement Program (CIP), and make stronger connections between fees levied and the infrastructure the fees will finance. Similar to the proposal above, this approach would likely lower outlying fees because many localities already set their fees below the legal maximum. If policymakers wish to decrease fees more broadly, this approach would need to be paired with additional policy levers.
- **Create a feasibility standard for determining fee amounts.** Cities and counties could be required to consider the impact of proposed fees and fee increases on new development by incorporating a feasibility standard into their decision making process. Any consideration of feasibility should take into account the full universe of fees and exactions and review how they layer onto a development in the context of a local housing market. Interviews emphasized that such a requirement would represent a significant cost to localities, and runs the risk of “pricing out” less-resourced localities from implementing impact fees. If policymakers decide to take this approach, they should strongly consider developing a feasibility tool, and providing technical support to lower the burden of analysis on localities. Localities could use the tool or choose to conduct their own analysis, subject to review and approval by HCD.

- **The state could cap impact fees based on a set formula.** Proposals to cap fees have gained some political traction as a simple approach to lowering impact fees, but fee caps ignore the variation in how cities pay for infrastructure and may be too blunt an instrument. In many cases, high fees are a symptom of increasing strain on local budgets. Interviewees were almost unanimous in cautioning that capping the revenue stream provided by fees could severely hinder the ability of localities to fund their infrastructure needs. Other, more complex proposals that aim to lower impact fees may be less disruptive to local budgets, but might require technical assistance to implement.

## Alternative Funding Options

In AB 879, the California Legislature called for recommendations to reduce impact fees. Impact fees in California are high relative to other states, and high fees can increase the cost of housing and stymie production. Still, any step taken to lower fees on housing development should be considered in the broader context of local fiscal conditions and constraints. California localities rely on fee revenue to a greater extent than their peers nationwide, and this reliance is in large part due to the intersection of intense growth pressures and severe limitations on traditional forms of revenue generation (e.g., property taxes). Fees are used to support the funding of much-needed growth-related infrastructure. However, it is possible for municipalities, intentionally or unintentionally, to establish fee schedules that can in practice be exclusionary, regressive, or harmful to housing affordability.

We reviewed the impact fee revenue and CIP budgets for five different localities and found:

- **Impact fee revenue and CIP budgets vary widely, reflecting differences in local needs and priorities.** Young, growing localities with a significant amount of greenfield development, like Roseville, rely heavily on impact fees to fund infrastructure like roads and parks. In contrast, older, urbanized communities with greater maintenance needs, like Los Angeles and Oakland, fund the majority of their infrastructure improvements from other sources, such as user charges and local bonds, and are more likely to use impact fees to fund affordable housing.

## Improving Local Financing for Infrastructure

In order to encourage localities to use other infrastructure funding mechanisms that have less impact on housing production, the state can weigh the following approaches:

- **Require cities and counties to justify why an impact fee is the most appropriate mechanism to fund the proposed infrastructure.** Localities could be required to consider whether fees are the appropriate tool, among the others available to them, to raise local revenue for critical infrastructure without overburdening new housing production. However, this approach does little to address the fact that there are few alternative funding mechanisms available to localities, particularly given California's restrictions on raising property and special taxes. Interviewees asserted that this alternative would likely prove ineffective, given that localities could easily justify impact fees and could reuse similar justifications for each fee update or approval.

- **Build local capacity to use other forms of infrastructure funding.** By assisting local governments to employ more politically feasible, but complex forms of financing, such as tax increment financing in the form of Enhanced Infrastructure Finance Districts (EIFDs), the state could reduce pressure on local budgets.
- **Revisit ways to better support local infrastructure and planning, including statewide tax reform.** As long as current restrictions around tax revenue and other forms of local funding remain in place, California localities will rely more heavily on other sources of infrastructure funding, including impact fees, development agreements, Community Facilities Districts (CFDs), and other exactions on residential development. The legislature could consider new programs to backfill infrastructure funding, such as providing additional funding to localities that meet their Regional Housing Need Allocation (RHNA). The legislature could also consider changes to the Proposition 13 framework to directly address the underlying problem and expand local access to infrastructure funding. However, policymakers should review any tax reform—including measures placed on the ballot by initiative—for negative effects on housing supply, and should implement parallel efforts to address those consequences.

## Next Steps

As stipulated in Assembly Bill 879, this report seeks to weigh the costs and benefits of a range of policy alternatives aimed at lowering impact fees on residential development. Impact fees represent only one part of a much wider universe of development fees, and additional research is needed to review the relationship between development fees, broadly, and the cost of housing. We hope that our findings and analysis in this report—informed by talking to stakeholders, reviewing current literature, and estimating impact fees across the state—helps policymakers make informed choices when considering how to curtail unreasonable fees without hindering the financing of local infrastructure.

# Introduction

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This report traces its origins to Assembly Bill 879 (2017), in which the California Legislature directed the Department of Housing and Community Development to conduct a study of impact fees and their relationship to housing affordability. The bill, by Assemblymember Timothy S. Grayson (D-Concord), expands annual housing development reporting requirements at the local level. The bill also amended §50456 (b) of the Health and Safety Code, calling for the Department to:

complete a study to evaluate the reasonableness of local fees charged to new developments as defined by subdivision (b) of Section 66000 of the Government Code. The study shall include findings and recommendations regarding potential amendments to the Mitigation Fee Act to substantially reduce fees for residential development.<sup>1</sup>

In this report, we review the current practices surrounding fees that are subject to the authority of the Mitigation Fee Act and levied on new development for related infrastructure costs (commonly referred to as “impact fees”). The report evaluates a range of policy alternatives that have the potential to lower fees on residential development, as stipulated in AB 879.

In order to determine the “reasonableness” of impact fees, we first reviewed current fee implementation. In a scan of cities and counties, we found fee schedules and other public reports related to impact fees to be difficult to access. As a result, this report relies on a case study approach to assess the full range of fees at the local level.

Next, we consider structural factors that affect the cost of fees on development. We review the implications of the timing of fee imposition (when fees are assessed for a project) and fee payment for developers, and weigh the costs and benefits of different approaches aimed at adjusting fee timing to lower costs. The structure of fee rates can affect the cost of fees as well, incentivizing different housing types. We evaluate a number of potential policy reforms that aim to structure fees so that they closely reflect the cost of development impacts while encouraging sustainable and affordable housing types.

Policymakers and advocacy groups have put forward several policy solutions that take a more ambitious approach to lowering costs. We evaluate policy alternatives that would change the foundations of fee rates. These approaches include setting stricter guidelines around the required nexus between fee amounts and costs, setting statewide standards for levels of service that can be supported by fees, compelling local governments to consider the feasibility of fees in their current market, and capping fees outright.

Finally, we consider the implications of restricting fees on local budgets. Fees are exceptionally high in California; this is, in part, because many California municipalities find themselves facing intense growth pressures coupled with severe limitations on traditional revenue sources. Localities rely on a variety of tools to collect the revenue they need, ranging from taxes to intergovernmental transfers. We find that, among the revenue options available to localities, fees provide a flexible funding tool and can generate substantial revenues in strong markets.

This report seeks to inform policymakers and the public of the trade-offs inherent in a range of policy approaches, and bring nuance to the conversation around impact fees in California.

# Background

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## Development Fees

### Development Fees vs. Impact Fees

This report focuses on “impact fees,” fees that fall under the authority of the Mitigation Fee Act. However, localities charge a host of other fees on new development to cover the cost of infrastructure related to that development. These fees include permit processing fees, utility connection fees, school fees, and others (see Table 1 for a complete list). All of these fees, including impact fees, are referred to collectively as development fees.

### Development Fees as a Local Revenue Source

Charges on new development represent a key source of local revenue in California, funding infrastructure in a time of increasing costs. Cities and counties have relatively few revenue sources at their disposal, and the state of California has imposed strict limits on the use of taxes, still cities’ largest revenue source. Compared with the U.S. average, California counties and cities now collect relatively little of their own-source revenue (revenue generated by the local government itself) from taxes, and the share of revenue from property taxes declined from 58 percent of own-source revenue in 1972 to 36 percent in 2012.<sup>2</sup> This is largely a result of state-imposed policies such as Proposition 13, which was passed in 1978 and sets strict limits on property taxes as well as special taxes levied by local governments. The state of California also sets statutory limits on sales and uses taxes and entirely preempts local personal income taxes. Additionally, Proposition 218, passed in 1996, requires majority or supermajority voter approval to impose, extend, or increase any state or local tax, limiting the political feasibility of taxes as a revenue source.<sup>3/4</sup>

As tax revenues have constricted, a number of important intergovernmental transfers to local governments have also declined or been eliminated. Federal support to local communities has waned for decades. Large block grant programs to support infrastructure and housing goals such as Community Development Block Grants and the HOME Investment Partnership Program have been cut by half or more from their peak funding.<sup>5/6/7</sup> The 2012 elimination of California’s Redevelopment Agencies, which funded local priorities via tax-increment financing, both removed a source of revenue and, in many cases, saddled cities with the liabilities of the dissolved agencies.<sup>8</sup>

Declines in revenue from taxes and transfers have been largely offset by an increase in local charges and other sources of revenue. Charges include all revenues designed to cover the costs of various services provided by local government. These include garbage collection and sewage fees, fees from municipal seaports and airports, charges paid by hospitals to counties, and, importantly, impact fees.<sup>9</sup> California counties and cities now collect over 45 percent of their own-source revenue from these sorts of charges. This is substantially higher than the national average of about 38 percent, and much higher than the 25 percent of own-source revenue that Californian cities and counties collected from charges in 1972.<sup>10</sup> Today up to a third of some California cities’ budgets are composed of development-related fees.<sup>11</sup> The largest category of these fees (29 percent) relate to utility fees, which cover a development’s water, sewer, electric, and gas requirements. Fourteen percent come from other fees, which can include traffic fees, park fees, and administrative fees.<sup>12</sup>

## Increasing Local Infrastructure Costs

While tax revenue and intergovernmental transfers have decreased, the capital needs of local governments have grown, propelled by population growth and aging infrastructure. From 1990 to 2010, the state's population grew by 7.5 million.<sup>13</sup> This growth required investment in a broad array of new infrastructure, much of which relied on local government funding. It also put additional pressures on existing infrastructure. Given the constrained revenue environment, many cities' infrastructure systems show the wear of years of deferred maintenance. While estimates of the collective capital needs of local governments are unavailable, the state estimated that it had accrued \$77 billion in deferred infrastructure maintenance costs by FY 2016/17.<sup>14</sup> In 2016, the City of Oakland estimated that the backlog of street maintenance *alone* was \$443 million,<sup>15</sup> while the total annual budget of the city was \$1.2 billion.<sup>16</sup>

The state and federal governments have also imposed a number of new requirements and guidelines regarding the level of services local governments must provide, including infrastructure. Local governments must now comply with mandates regarding the provision of clean water, sewage treatment, transportation, energy efficiency, and housing production and location goals even as support from the federal and state levels has dwindled. For example, the federal Clean Water Act requires local governments to make substantial investments, for which the federal government provides only limited support.<sup>17</sup> While Proposition 4, passed in 1979, in theory requires the state to reimburse local governments for additional requirements imposed by the state, in practice this law has failed to alleviate the fiscal pressures imposed on localities.<sup>18</sup>

With few options to generate revenue and faced with pressing current and anticipated capital needs, California cities have increasingly relied on impact fees as a revenue source. While it is difficult to depict a detailed picture of this shift (due to a lack of a comprehensive data source on local financing), a number of surveys and analyses have shown that fees are commonplace in the state, that fees are high relative to the rest of the country, and that there is substantial variation in the extent to which California localities rely on fees to finance growth.<sup>19/20</sup> Rising fees often translate to higher housing prices. By relying on fees rather than taxes to fund infrastructure, localities ask less of existing property owners and more of new residents. Greater fees can also cut into government subsidies for affordable housing projects (with the notable exception of affordable housing impact fees, which are typically waived on affordable projects and fund affordable housing development).

## Defining Impact Fees

In order to cover the cost of new development, cities and counties typically use a mix of different fees. Development fees come in many forms, and fall under a variety of regulations (Table 1).



**Table 1: Development Fees by Type and Authority**

<b>Exaction</b>	<b>Authority</b>	<b>Eligible Uses</b>	<b>Subject to the Mitigation Fee Act?</b>
<b>Subdivision Map Act In-Lieu Fees</b>	Subdivision Map Act	Must be tied to General Plan (e.g. bike paths, open space, etc.)	No
<b>Quimby Act In-Lieu Fees</b>	Quimby Act	Parks	No
<b>Inclusionary Housing Ordinance In-Lieu Fees</b>	Police Power and AB 1505	Affordable housing	No
<b>Utility Connection Fees</b>	Various Statutory Authorities Depending on Type of Utility	Cost to provide connection to utility system	No
<b>School Facilities Impact Fees</b>	Education Code	New school facilities constructions.	No
<b>Permit Processing Fees</b>	Police Power	Costs associated with permit processing.	No
<b>Development Agreements (DA)</b>	Government Code §65864 - 65869.5 and Contract Law	A contract between the jurisdiction and the developer that can include fees and other exactions	No
<b>Community Benefit Agreements (When independent of a DA)</b>	Contract Law	A contract between a third party and the developer with no limitations	No
<b>CEQA In-Lieu Mitigation Fees</b>	Various/Police Power	Mitigate impacts of projects on the environment through actions identified in an EIR under CEQA	Yes (If non-voluntary)
<b>Impact Fees</b>	<b>Police Power</b>	<b>Any impact reasonably attributed to new development</b>	<b>Yes</b>



Fees exacted under the Mitigation Fee Act (MFA) constitute just one portion of a much broader slate of residential development fees. For example, the education code, rather than the MFA, regulates school impact fees exacted to build new school facilities. In-lieu fees collected under the Subdivision Map Act and the Quimby Act also fall outside of the authority of the MFA, as do permit processing fees. Contract law regulates development agreements, as a form of contract between the locality and the developer, as well as community benefit agreements, as contracts between a third party and the developer. While water and sewer connection fees must abide by certain provisions of the MFA, including covering only the reasonable cost of services, they are excluded from the Act's findings and accounting requirements. Mitigation fees identified and required through an environmental impact report (EIR) conducted under the California Environmental Quality Act (CEQA) are subject to the MFA. Taken together, these fees can represent a sizable proportion of development costs.

*In It All Adds Up: The Cost of Housing Development Fees in Seven California Cities* (2018), the Turner Center estimated the development fees for two prototypical developments: one single-family project and one multifamily project. The study defined development fees as any fees levied on a project, inclusive of impact fees, special assessment districts, Quimby Act in-lieu fees, inclusionary housing in-lieu fees, and fees covering the cost of staff hours and overhead in the development process. That analysis excluded utility fees due to their complexity.

*It All Adds Up* identified several issues with the implementation of development fees. Namely, fees can be difficult for a developer or member of the public to estimate and, because they are often set without oversight or coordination between departments, they can vary widely between jurisdictions in terms of both type and size. Additionally, fees can be very expensive; our analysis of fees found that they represented anywhere from 6 to 18 percent of the local median home price, often with additional exactions, such as development agreements, which, if project-specific, are not captured in any fee schedule. That report called for more transparency around development fees and for the adoption of objective standards to determine the amount of fees that can be charged. It also found that state action could be warranted to codify when fees can be levied and changed during the development process, so that builders can better estimate their costs up front. Finally, it underscored the need to identify alternative ways to pay for new growth, in order to lessen the burden on new residents.<sup>21</sup>

Building on the findings of *It All Adds Up*, we focus here only on fees subject to the Mitigation Fee Act (often referred to in this report as “impact fees”), per AB 879, but not project-specific fees required by an EIR (as identified in the final column of Table 1). While more research on all types of development fees is needed to consider how different types of exactions align with local needs, that topic falls outside of the scope of this paper. However, many of our recommendations about transparency could apply more broadly to how cities and counties implement all development fees.

## Impact Fees

### Impact Fee Regulation and Case Law

While localities began exacting fees to finance infrastructure in the 1920s, legislation, court rulings, and regulations have since molded impact fees into their current form. Article 11 of the California Constitution grants cities and counties police power to draft and enforce ordinances and regulations to maintain public health, safety, and welfare. Fees fall under this police power, and went largely unchecked until state courts

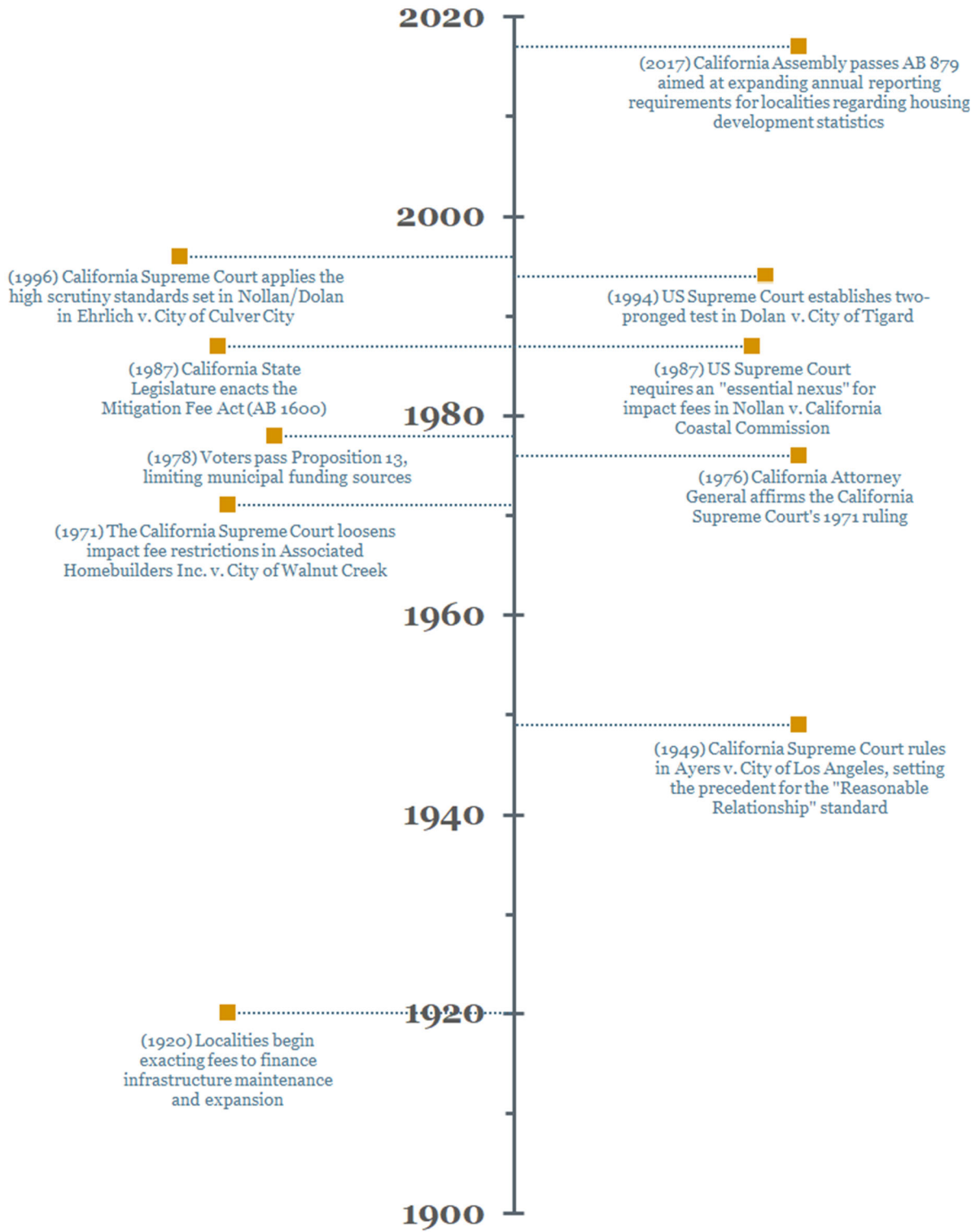
required a “reasonable relationship” test in *Ayres v. City of Los Angeles* in 1949, requiring that any exactions on development be reasonably related to the impact of the project on public infrastructure. The California Supreme Court later expanded this test, ruling that development fees could also be used to mitigate indirect development impacts in *Associated Homebuilders Inc. v. City of Walnut Creek (1971)*. In 1976, the California Attorney General affirmed this ruling with an opinion asserting that a locality can impose exactions that are related to their general plan and hold, at minimum, an indirect relationship with project impacts.<sup>22/23</sup>

By raising the voting threshold from a simple majority to two-thirds vote for proposed taxes and restricting property taxes, Proposition 13 (1978) both shrank and limited funding sources for cities and counties. The following decade saw localities increasingly turn to impact fees to pay for infrastructure needs. The U.S. Supreme Court set a key limitation on fees in *Nollan v. California Coastal Commission (1987)*, ruling that local agencies must demonstrate an “essential nexus” between the project impact and the fee charged.<sup>24</sup>

The California State Legislature also passed Assembly Bill 1600 and enacted it as the Mitigation Fee Act in 1987, which more stringently regulated impact fees. The Act defined impact fees as those imposed on projects to cover the costs of their impacts on public facilities, but excluded Quimby Act in-lieu fees, fees covering the cost of processing applications, or those collected under development agreements.<sup>25</sup>

In the 1990s, the courts further refined the standards of scrutiny for development fees. In *Dolan v. City of Tigard (1994)*, the U.S. Supreme Court established a two-pronged test for exacting real property, such as land. The first requirement affirmed the *Nollan* ruling that there must exist a nexus between the state interest and the exaction itself. The second prong stipulated that the exaction be “roughly proportional” to the project impact. The California Supreme Court applied the heightened scrutiny standard of the *Nollan/Dolan* test to project-specific fees exacted in an ad hoc basis in *Ehrlich v. City of Culver City (1996)*. Under the *Nollan* and *Dolan* rulings, the government must demonstrate the reasonable relationship between a proposed fee and project impacts, also required under the MFA in the form of legislatively-enacted findings. However, once the city or county approves the fees, a developer contesting a fee must prove to a court that the fee does not advance a legitimate state interest or that it precludes viable economic use of the land.<sup>26</sup> The MFA, together with established case law, regulates how local agencies set and report on impact fees.

**Figure 1: Impact Fee Historical Timeline**



## Impact Fee Implementation Under the Mitigation Fee Act

Local jurisdictions assess impact fees (also referred to as “AB 1600” fees) according to the regulations set out in the MFA and refined through case law. First, a city or county must select an impact fee as their instrument of choice to raise revenue. As noted, localities have relied on impact fees for almost 100 years, but some larger, more urbanized cities, such as Los Angeles and Oakland, only recently established substantial citywide impact fee structures for residential projects. In 2015, the Los Angeles City Controller released an audit of the city’s impact fees, calling for broader use and better management of the fees and noting that the city might be missing out on as much as \$91 million per year in potential revenue on commercial, industrial, and residential development.<sup>27</sup> Since then, Los Angeles has established city-wide parks and affordable housing impact fees. Oakland’s decision to implement a city-wide impact fee structure—covering affordable housing, transportation, and capital improvement costs—was motivated, in part, by court decisions that restricted the reach of their inclusionary zoning program to for-sale projects.

Once a city or county decides to establish a new fee, they typically satisfy the reasonable relationship standard of the MFA by conducting a nexus study. This study quantifies the impact of new development on local infrastructure and determines its cost, the maximum legally defensible fee amount. Exceeding the fee ceiling could leave a locality vulnerable to litigation. Typically, jurisdictions contract out the studies to consultants who specialize in such analyses, looking for firms with a history of crafting fee studies that hold up to scrutiny. We explore nexus studies in more detail later in this report.

Cities and counties often draft capital improvement programs (CIPs) in concert with their proposed fee program. Capital improvement programs plan the construction and financing of public facilities within a jurisdiction (Gov. Code §65403). The MFA encourages the use of CIPs to set out the planned use of fee revenue for improvements related to new development, but it does not require it. Nexus studies, particularly when combined with CIPs, bolster the required findings for a city establishing or increasing a fee, by requiring that the jurisdiction: identify the fee’s purpose and use, determine a reasonable relationship between the fee’s use and the type of the project required to pay the fee, determine a reasonable relationship between the need for the public facility and the type of project required to pay the fee, and demonstrate a reasonable relationship between the amount of the fee and the costs of the facilities needed to cover developmental impacts (Gov. Code §66001(a) and (b)).

The city or county drafts the fee ordinance, and must receive feedback via at least one public hearing before adoption (Gov. Code §66018). The locality may collect fees beginning 60 days after the passage of the ordinance, and must create separate funds to collect revenue from each impact fee. Furthermore, agencies must draft annual reports on the status of the funds, including descriptions of each fee and the balance and use of each fund (Gov. Code §66006(a)). Five years after the city or county begins to collect revenue, and every five years thereafter, they must identify the fee purpose and demonstrate the reasonable relationship for fees with unspent revenue (Gov. Code §66001(d)).

Under the Mitigation Fee Act, any party may protest or request an audit of development impact fees. If a developer suspects that their fees surpass the true cost of their project’s impacts, they can request an audit of the fees. The protesting party may request an independent auditor but they must cover the cost of the audit. However, the local government must cover the cost of the audit if they required the payment of the fee, but failed to adhere to MFA regulations surrounding the establishment or increase of a fee for three

consecutive years. If the audit determines that the fees exceed the cost of public facilities, the local agency must adjust the fee (Gov. Code §66023).<sup>28</sup>

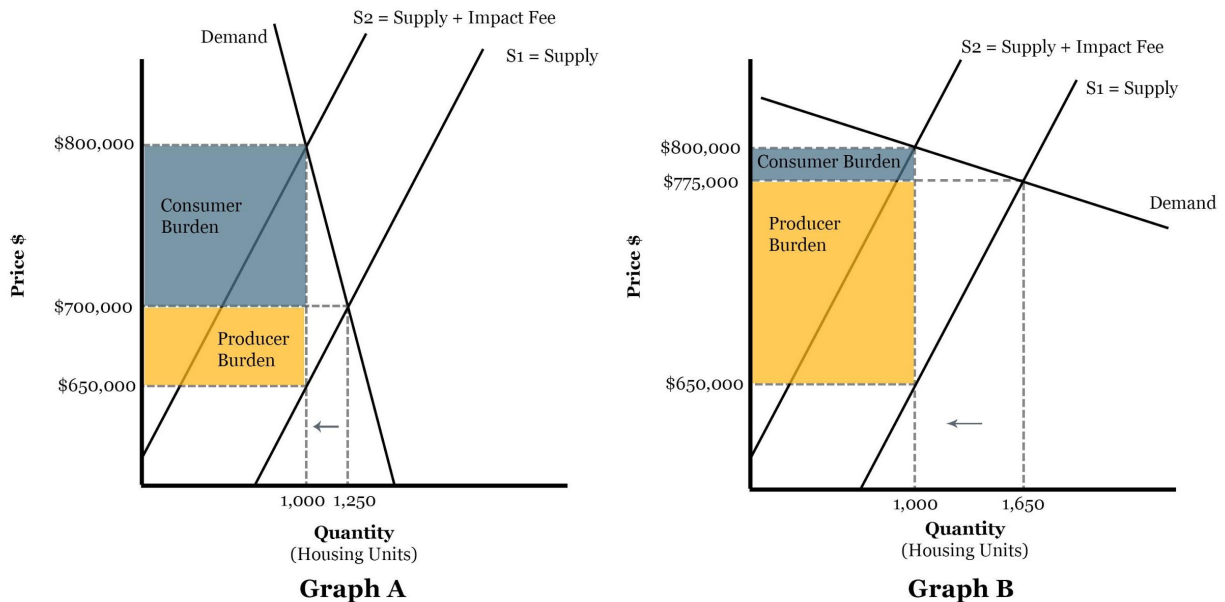
The Mitigation Fee Act also includes a mechanism by which a party can protest an impact fee. When a development project is approved or the fee is imposed, the local agency must send a notice of the fee amount and note that the 90-day window to issue a legal protest has begun. When protesting, the applicant must still pay the fee in full or show evidence of arrangements to pay the fee when due, as well as serving a notice to that effect and outlining the reasoning for their protest. If the court invalidates a fee ordinance or resolution or finds in favor of the plaintiff, the local agency at fault must refund the unlawful portion of the fee plus interest (Gov. Code §66020).<sup>29</sup>

## Impact Fees and Housing Affordability

Impact fees, and development fees more broadly, are politically popular because they are charged to developers rather than current residents. However, research has shown that existing landowners and homebuyers often ultimately pay at least a portion of the fees, while existing homeowners do not. While developers can pay the fee themselves (by accepting a lower return), they can also “pass” these costs to the sellers of developable land (who could accept a lower price for their land), or to the residents of the new developments (in the form of higher home prices). If the imposition of a fee pushes a project below an acceptable risk-adjusted return, investors will not contribute capital to the project, meaning that the development is unlikely to be built.

The strength of housing demand and the availability of similar developable land in nearby localities will affect who will bear the burden of an impact fee. Economists typically analyze the effect of a fee as similar to that of a tax, arguing that the incidence of the fee depends largely on the elasticity of demand (Figure 2). If housing demand is strong, or inelastic, and if there are no substitutable sites in similar markets with a lower fee, developers will likely still have opportunities to achieve the return necessary to attract institutional financing by “passing” the fee to buyers of the new homes, shouldering less of the burden of the fee themselves (Figure 2, Graph A). Weaker markets, or markets where there are substitutable sites in nearby localities without fees, will likely see developers and landowners pay more of the fee from their profit margin, or see a short-term drop in building as few or no developable sites meet the return requirements of developers and investors (Figure 2, Graph B). Over time, owners of developable land will adjust to the fee and accept lower prices, allowing for more housing production.<sup>30/31</sup> Empirically, impact fees have often been found to be borne by buyers of both new and existing housing, particularly for those who bought homes in strong economic markets or shortly after the fee was implemented, with landowners also bearing a portion of the fee in some cases.<sup>32/33 /34/35/36/37</sup> The share of fees borne by developers, and the factors that affect this share, are unclear—likely because of a lack of data about developers’ financial circumstances.

**Figure 2: Incidence of an Impact Fee with Inelastic and Elastic Demand**



Through an examination of two Bay Area submarkets (East Bay and South Bay), we found that impact fees comprise a relatively small but significant amount of the overall cost of development, and that increasing fees could result in higher rents to maintain threshold return requirements for financial partners, or could shelve the project overall if project revenues fall below the threshold. For example, the South Bay prototype analysis revealed that an increase of impact fees from \$40,000 per unit to \$60,000 per unit on a 160-unit residential project considerably lowered the project's return on cost,<sup>38</sup> thereby lowering the likelihood that the prototype project would be built absent higher rents or other measures to offset the increase in fees.<sup>39/40</sup>

Fees can also, either by intent or effect, be exclusionary or regressive. High fees have been shown to limit or preclude the development of lower-cost housing. Research has shown that fees contributed to a halt in the construction of starter homes in a number of California cities.<sup>41</sup> In addition, fees have been found to be associated with increases in home values for existing homes, which can result in increased tax revenue, but also has implications for housing affordability across a community.<sup>42</sup> Reducing development fees in some California localities could be expected to lower new home prices enough to significantly reduce the minimum income necessary to buy a new home.<sup>43</sup>

Scholars have also found evidence of exclusionary intent in some fee programs.<sup>44/45</sup> Fee programs that assess high fees on housing for low- and moderate-income people, or that fund particularly high levels of public services, should be subject to greater scrutiny. While affordable housing impact fees are typically waived for affordable projects,<sup>46</sup> these types of projects are often expected to pay other impact fees, and these fees are often substantial. Sacramento recently announced that the city will waive all impact fees on affordable housing projects as a way to encourage this type of development; one affordable housing developer estimated that the program could save as much as \$450,000 in costs on a current project.<sup>47</sup> While high fees are not inherently inefficient or unethical, they raise concerns about limiting housing production, skewing production that does occur to higher-priced units, and worsening regional housing affordability.



The relationship among fees, housing prices, and affordability is complex. It is clear that, in many markets, impact fees may be passed on to consumers in the form of higher home prices. While impact fees may increase home prices, it is possible that some amount of the observed price increase is the result of fees increasing the quality of housing (for example, by increasing investment in neighborhood related amenities such as parks), clouding the impact that fees may have on housing affordability. In addition, given the very limited resources to support growth-related infrastructure in California, it is possible that, in certain circumstances, fees may be the most feasible option to finance infrastructure for housing generation. Fees can also impose a cost on externalities, such as traffic and air pollution, encouraging more efficient development patterns and providing benefits to new residents including, for example, lowering transportation expenses. Lastly, affordable housing fees are channeled to affordable development, redistributing resources to low- and moderate-income families by lowering their housing costs.<sup>48</sup> However, given California's acute housing shortage, the state should consider options for minimizing fees and ensuring that they are not imposed in such a way that limits new supply.

## Study Design

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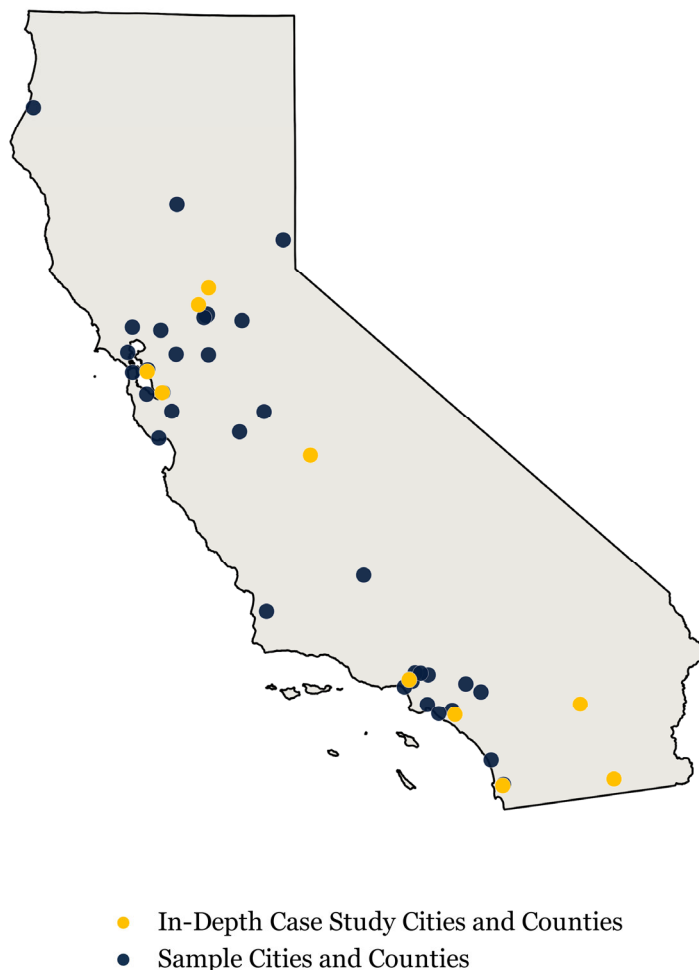
### Shining a Spotlight on Impact Fees

Cities and counties in California impose a wide variety of fees on residential development. Per AB 879, this report focuses only on fees subject to the authority of the Mitigation Fee Act, commonly known as impact fees or AB 1600 fees. To better understand the diversity of impact fees in California, we selected cities and counties across the state to review in greater detail. We interviewed local agency staff and nexus study consultants, and reviewed an array of public documents. In addition, we traveled to three regional forums organized by the California Department of Housing and Community Development in the fall of 2018, where we discussed our research and interviewed local staff, developers, and advocates. Our scans, interviews, and fee calculations from these localities informed our findings throughout the report.

### Study Cities and Counties

We conducted in-depth case studies of ten localities for this report (Figure 3). This group of ten includes the three urban/suburban pairings from an earlier Turner Center fee study, *It All Adds Up*: Los Angeles and Irvine in the southern coastal area, Oakland and Fremont in the Bay Area, and Sacramento and Roseville in the Sacramento area.<sup>49</sup> We also added four new localities, selected to increase geographic and market diversity: Riverside County, and the cities of Imperial, San Diego, and Fresno. We conducted in-depth interviews with planning professionals in each locality and worked closely with them to calculate impact fee estimations.

**Figure 3: Case Study and Sample Cities and Counties**



To broaden our analysis, we also conducted a scan of 40 jurisdictions across the state (Appendix A). We reviewed the availability of fee schedules, nexus studies, and annual financial reports in each of these 40 cities and counties, and drew from this sample when analyzing nexus studies in greater detail. We chose a set of cities and counties that included a variety of sizes, densities, housing prices, and household incomes, as well as balancing majority renter and majority homeowner cities. The research team also reviewed data from the Turner Center California Residential Land Use Survey to select cities and counties with differing levels of single-family and multifamily zoning, impact fee amounts, and inclusionary requirements.<sup>50</sup>

### Impact Fee Calculation

For our impact fee estimates, we returned to the two prototypical projects originally designed by Mawhorter, et al. in *It All Adds Up*. The researchers designed these projects (described in Table 2), based on detailed interviews with architects, civil engineers, developers, and planning staff.



**Table 2: Characteristics of Prototypical Projects**

	<b>Multifamily project</b>	<b>Single-family project</b>
<b>Location</b>	Urban infill	Suburban greenfield
<b>Number of units</b>	100 apartments	20 single-family homes
<b>Bedrooms per unit</b>	50 1 bedroom apartments 50 2 bedroom apartments	10 3 bedroom, 2.5 bath homes 10 4 bedroom, 3 bath homes
<b>Stories</b>	5 residential stories above 2-story parking garage	2-story homes
<b>Square feet per unit</b>	850 square feet average	3 bedroom: 1,850 square feet 4 bedroom: 2,250 square feet
<b>Total building square feet</b>	143,240 square feet	50,680 square feet
<b>Lot size</b>	0.64 acres total	2.44 acres total
<b>Density</b>	156.3 units per acre	8.2 units per acre

We relied on fee schedules and annual financial reports to identify which fees were applied to our prototypical projects and calculate the total exaction for our prototypical projects in each of our case study localities. Local staff helped us to identify fees and reviewed and confirmed each of our fee calculations.

In *It All Adds Up*, we considered all of the local development fees that would apply to a project, however, we amended and updated our calculations for this analysis to only include Mitigation Fee Act fees.<sup>51</sup>

### Fee Typologies

Localities typically categorize fees based on the services they fund. We found that impact fees in our ten case study localities fell into one of eight categories:

**Transportation fees** fund the costs of expanding transportation infrastructure usage related to new development.

**Environmental fees** pay for environmental mitigation programs.

**Fire and public safety fees** go towards expanding the capacity of fire and public safety systems.

**Library fees** go towards expanding library resources.

**Park fees** are set aside for parks facilities and parkland.

**Housing fees** are earmarked for developing affordable housing needed to complement market-rate housing growth.

**Capital improvement fees** are fees that pay for any expansions of city facilities or infrastructure, such as facilities for general administration, health and human services, and public works.

**Utility impact fees** pay for expansions of water, sewer, electricity, and gas infrastructure.

Some localities pair impact fees with a small administrative fee to cover the cost of fee implementation and collection. In those cases, we placed the administrative charge in the same category as the fee it supported.

Our scan of cities and counties, as well as our in-depth case studies, informed our finding that local jurisdictions can improve the accessibility of fees. In the next section, we review those findings and consider the benefits and costs of proposals to improve fee transparency.

## Fee Transparency

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One of the key findings from *It All Adds Up* is the difficulty of estimating the total fees (which we refer to as the “fee stack”) on any specific project. This lack of transparency can prevent the state and localities from tracking and assessing the feasibility and reasonableness of fees. We reviewed three aspects of fee transparency: availability and accessibility of nexus studies, the availability of fee schedules, and the accessibility of fee calculation.

## Publicly Available Nexus Studies and Fee Schedules

Development cost information enables developers to gauge the feasibility of their project at the earliest stages of development. Developers draft a proforma as a first step in conceptualizing a potential project, and the cost of all local development fees represents an important line item in that project budget. Developers we spoke to noted that they often begin this process by searching online for development fee schedules to come up with an estimate of fee costs. Beyond their value for estimating project feasibility, development fee schedules also provide a window into the cost of building at the local level, as well as funding priorities for the city. Those priorities are reflected in the nexus studies that provide the foundation for establishing a specific impact fee and a locality’s related fee schedule.

Nexus studies are rarely easily accessible to the public.

Only 28 percent of the localities surveyed posted all of their nexus studies clearly online. For the majority of localities reviewed, this information was not readily available and in some cases was very difficult to obtain. Often, researchers had to sift through city council agendas or submit a public records request to access the studies or annual reports. In some cases where nexus studies were provided, the information appeared to be outdated, sometimes significantly so. In one instance, a locality provided a nexus study from the 1980s, and explained that this was the most recent study they had. The lack of availability of this information is concerning because without access to this information, the appropriateness of a locality’s nexus study cannot be examined.

While most municipalities reviewed did not clearly post nexus information on their websites or faced challenges providing the requested information, some stood out for their transparency and ease. For example, the cities of Los Angeles, San Diego, Oakland, and Ontario clearly posted their nexus studies on their websites, and required no additional requests or follow up with local staff.

## Fee schedules can be challenging to find.

Jurisdictions draft fee schedules, but they can prove challenging to locate and are not always updated or complete. While some schedules provide a neat compendium of all residential development fees and clearly indicate impact fees therein, other jurisdictions adopt their fees through different ordinances or post them on different department websites, complicating the process of identifying and estimating fees. In our scan of ten case study localities, we found that only six localities had a central, comprehensive impact fee schedule easily available online, two of which were located on a master fee schedule. In four of the ten localities, impact fee schedules were scattered across various department websites, and in one case, the fee schedules had to be requested via email.

In contrast, cities like Fremont clearly list all their development fees on an updated master fee schedule with impact fees clearly identified. The city also provides a summary sheet on impact fees that lists the fee amounts and answers frequently asked questions about the fees. Oakland is another example of using best practices for accessibility of impact fee schedules, specifically. The city sets aside all impact fees on a separate web page, and places the fee schedule next to information on related meetings, municipal code chapters, administrative regulations, links to utility and school fees, nexus and feasibility studies, and annual fee reports.

While public fee schedules ensure public transparency around impact, fees estimates can allow developers to draft more precise proformas early on in the development process. Some jurisdictions rely on fee estimates rather than schedules to help developers identify total development fee costs. For example, Sacramento, Roseville and Fremont provide comprehensive estimates for development fees in advance.<sup>52</sup>

## Impact fees can be difficult to identify on fee schedules.

Jurisdictions rarely distinguish impact fees from other residential fees, and sometimes refer to fees that are not subject to the mitigation fee act as mitigation or impact fees. We found that, in many cases, fees may be termed “impact fee” or “mitigation fee” and not be treated as such by the city, or be clearly identified as a tax or a Quimby Act in-lieu fee in city ordinance. While this distinction may be less important to developers, given the specific audit and findings provisions of the Act, it seems reasonable for localities to clearly flag fees that fall under the Mitigation Fee Act.

We found that it was typically easiest to request annual reports to determine which fees were identified as impact fees. However, only six of forty jurisdictions clearly posted their annual reports online. Some jurisdictions did not consolidate all of their impact fees in a single annual report. In one case it was necessary to request reports separately from three different departments. One locality’s annual fee report also included development agreement fees, which should fall outside of the authority of the Mitigation Fee Act. Finally, counties, transportation districts, and councils of governments sometimes exact impact fees that apply to developments within the city jurisdiction and issue their own annual fee reports. Although annual fee reports should assist the public in identifying impact fees, tracking down those reports can pose a separate challenge.

Some localities provided more clarity around impact fees. Riverside County, for example, hosts a website called “Map My County” which outputs a full report on a parcel, including the applicable development

impact fees. This approach is a clear way to identify all applicable impact fees, particularly when a locality has fees which vary by geographic or proximity zones. Others, like the City of Oakland, only levy a small number of impact fees and clearly title them as such on a separate webpage. Whether localities provide an online database of fees or simply list them online, such approaches ensure that impact fees are transparent and accessible.

## Policy Considerations

Clearly post all nexus studies and feasibility studies on localities' websites.

The state could create a standard of transparency for nexus studies, as well as any other information utilized to set fee amounts such as feasibility studies (which determine how fees impact the feasibility of housing development). In addition, respondents highlighted the importance of requiring municipalities to plainly exhibit what the nexus fee amounts are and how they were determined—perhaps in a standardized format—rather than assuming the information presented in a consultant's report can be easily understood by the general public. Interviews also surfaced the importance of releasing studies well in advance of fee adoption, allowing time for the public to review the materials and debate their reasonableness. The same could be true of any information or process used to determine what the final fee amount will be, which is almost always different than the maximum allowable fee as determined in the nexus study itself.

Requiring a higher level of transparency for nexus studies would impose administrative costs on local agencies. While the cost of locating and posting nexus studies should be relatively low, it might be more challenging for localities to translate nexus studies for the general public. The upfront expense and administrative burden of this requirement could be lowered by grandfathering in existing nexus studies, so that localities could fold this added transparency into future contracts with nexus consultants.

Require jurisdictions to post clear, comprehensive, and up-to-date development fee schedules.

Localities could remove one of many barriers to development by making local development fees easier to estimate. Calculating more precise project costs earlier in the development timeline would allow developers to enter the market with less risk, increasing the likelihood that new housing projects will get financed. Cities and counties could make this most effective by including all local development fees and taxes on a single regularly updated fee schedule. (This recommendation would not apply to highly variable fees, such as those based on staff hours.) Rather than burying a fee schedule in city council minutes or ordinances, localities could clearly title the schedule and prominently display it on the website of a department typically catering to developers. Cities like Roseville are already doing this, and conversations with developers highlighted the importance of using schedules can help to estimate the cost of fees.

Jurisdictions with fees specific to a neighborhood or area could provide clear fee maps, and, where possible, provide an interactive GIS map with all of the fees so applicants would not have to check their project site against multiple documents. For example, Riverside County's Map My County website effectively overlays neighborhood-specific fees so that a developer can easily assess the fees that apply to a prospective site. For the sake of estimation as well as transparency, localities could make maps easily available and searchable.

Localities could further promote transparency and oversight by clearly identifying impact fees in a master fee schedule or making a separate fee schedule available for impact fees. While it may seem like a small step, providing a consolidated fee schedule could improve efficiencies, yielding an outsized payoff for the cost of implementation.

Require local governments to make annual fee reports easily available to the public.

Local governments are already required to list fee amounts in their annual reports,<sup>53</sup> however, as discussed, these reports are often only available via request and are sometimes submitted by separate departments within the same jurisdiction. Since cities and counties already draft these reports, requiring localities to submit one annual report that coordinates across departments to summarize all of their AB 1600 fees—and to clearly post the report online—would provide a relatively simple solution.

Require jurisdictions to confirm the availability of their fee schedules and annual fee report in their Annual Progress Reports (APRs) for their Housing Element.

To improve jurisdictional accountability to making their fees transparent, HCD could require that localities provide their fee schedule and annual fee report as part of their APR reporting. The Housing Element, updated on a four-, five-, or eight-year cycle, already includes a section where localities must identify constraints on housing development, both governmental and non-governmental, and outline efforts to remove obstacles to meeting their housing needs. “Fees and Exactions” are one of the constraints localities must cover, and the required analysis includes topics such as identifying development fees and explaining “how they have been established relative to [...] statutory requirements.” However, Housing Elements do not require that cities provide an updated fee schedule or annual fee reports.<sup>54</sup>

The state could amend Housing Element law to require that localities provide a comprehensive and updated schedule of all development fees exacted on a residential development and the most recent annual fee report in their annual progress reports, which provide an update on housing production and steps taken to implement the housing element. HCD could compile the fee schedules and fee reports into one publicly-available document, similar to their collection and posting of ADU ordinances. By requiring localities to regularly report their fee schedules and annual fee reports, the legislature could further the spirit of Housing Element law, which aims to ensure that localities plan for and encourage residential production. Ideally, the law would require localities to post an updated development fee schedule that collates local, county, and utility fees in a single document or interactive program, as well as an updated annual fee report.

Requiring confirmation in the APR would effectively incentivize localities to collect, update, and make accessible their schedules and annual fee reports every year. The approach would also prove efficient, in that HCD already tracks and reviews APRs, and the addition of a confirmation requirement would fit easily into the existing structure.

# Transparency in Fee Calculation

Impact fee calculation can be relatively straightforward if clear and current fee schedules are available.

Once an applicant locates an accurate and clear fee schedule, impact fee calculation is typically fairly straightforward. Whether calculating fees based on acreage, units, bedrooms, or square feet, a developer should have a sense of those metrics earlier in the development process, and be able to estimate the magnitude of their impact fee costs. Fees that vary by area are similarly straightforward; as long as jurisdictions release clear fee maps, an applicant should be able to locate which fees apply to their project. The challenge in estimating impact fees comes less from calculating the fees than from first, determining which fees fall under the authority of the Mitigation Fee Act, and second, finding or requesting and obtaining the various fee schedules. Because fees under the Mitigation Fee Act are subject to specific findings and protest provisions, it is important to be able to identify them.

However, developers and the public may run into more complications when attempting to calculate total development fees for a proposed project.

In *It All Adds Up*, we estimated the total stack of development fees for a project. We encountered a number of obstacles in that research, ranging from unavailable or obsolete development fee schedules to missing maps for neighborhood-specific fees. Other types of fees, such as service fees charged per staff hour, further complicated estimation.

## Policy Considerations

Require jurisdictions to provide fee estimates as well as public guidance on how to calculate development fees.

By requiring localities to provide development fee estimates before fees are determined, policymakers could lower the risk of residential development. Fee estimates help developers assess project cost and feasibility more precisely during the pre-development phase, bringing more certainty to the financing process.

Cities and counties could also provide sufficient materials and guidance for an applicant to estimate all of their development fees early in the development process. These materials should include updated maps for neighborhood fees (ideally accessible via an online mapping interface that overlays multiple zones for quick review), typical service hour ranges and utility fees for relevant project types, and updated, comprehensive development fee schedules. Localities could go further to create a workbook similar to Roseville's Residential Fee Booklet, which walks applicants through each step of estimating their fees. This may not be necessary if all applicable fees are collected in one schedule, and the fees are simply structured with clear multipliers and amounts.<sup>55</sup>

Such an approach would require a relatively small, upfront cost while lowering risk for developers and increasing government transparency. By bringing more transparency to local development costs, this requirement would allow potential developers to shore up their proformas earlier in the process. While some might contend that local estimates serve the same purpose as fee schedules, updated fee schedules

with clear guidelines illuminates these costs for all interested parties, not just project applicants. Furthermore, collating development fees across developments will help localities consider the feasibility of any proposed fee increases and how those increases would affect their total fee stack.

**A note about support for local capacity**

In many ways, the challenge of finding detailed fee schedules, annual fee reports, and nexus studies online reflects a lack of resources at the local level. We heard this repeatedly at regional forums with local agency staff and occasionally when working with staff in our case study localities. For less-resourced local governments, the daily work of reviewing and approving applications takes precedence over conducting a full review of all development fees or consolidating annual reports and nexus studies. Any requirement focused on increasing transparency or reducing the cost of fees should consider the budgetary and staff capacity implications for local governments and could be paired with additional support and/or technical assistance from the state.

## Fee Structure

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The ways in which localities structure fees—from timing to rate schedules—can affect development costs in subtle ways. In this section, we first review current practices around the timing of fee imposition and collection, and consider policy proposals aimed at increasing the window between the two in order to lower carrying costs and reduce risk. Localities can also design fee schedules to incentivize certain types of development. We outline the ways in which localities currently structure their fees and weigh a number of proposals that aim to improve the proportionality of fees—the extent to which they accurately reflect the cost of development impacts—while stimulating the development of dense multifamily housing, rather than large single-family homes.

## Fee Timing

The timing of *fee imposition*—the point in the entitlement and development process at which impact fees are calculated and assessed—can be just as important to developers as the feasibility of fee estimation. The sooner a developer knows their fee costs, the sooner they can estimate a project’s overall costs and feasibility. Local agency staff, on the other hand, prioritize setting fee amounts later in the development process to better capture the most up-to-date fee rate. Staff also impose fees later in order to capture the up-to-date impacts of developments that experience delays in the period between building permit review and construction.

Developers we spoke to raised concerns about the timing of *fee collection*. Developers prefer to pay fees later in the development timeline, seeking to shorten the window between collection and project completion in order to lower the cost of interest on loans. Local agency staff would prefer to collect the fees earlier in the process. They want to ensure that they can fund the infrastructure needed to support a



new development, some of which, such as utilities and transportation investments, need to be built in tandem with the new development.

## Fee Imposition

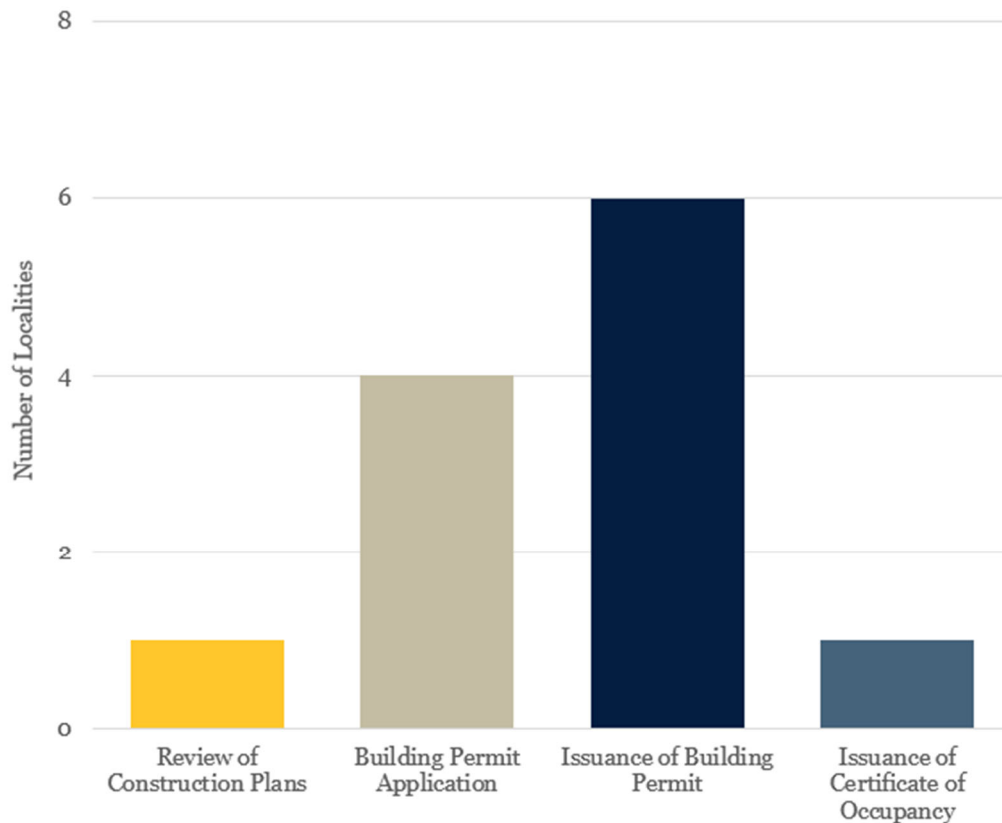
Fees are typically imposed at the time of building permit application or issuance.

In our case studies, we found that cities and counties in California typically impose fees—or determine the fee rate for a project—at the time of building permit application or building permit issuance (Figure 4). One city imposes fees at the time of construction plan review, while another imposes one of their fees when the certificate of occupancy is issued. Six localities imposed at least one of their fees at the time of building permit issuance, while four imposed at least one fee at the time of building permit application.

Oakland provides an example of a more complicated fee imposition schedule; the city specifies in their online materials that if a building permit application expires, or changes are made that require a new building permit, the fees are imposed at the time of the new application. Similarly, if a building permit is not approved within a one year window following the most recent application, the fees are imposed at the time of approval. Finally, the certificate of occupancy must be issued within three years of the building permit issuance; otherwise, the fees are imposed at the time of issuance of the certificate.<sup>56</sup> Oakland needed to clearly outline the timing of fee imposition because their new impact fees stepped up dramatically over the first few years after adoption. For example, their total impact fees per unit in Fee Zone 1 (downtown Oakland and the hills) increased from \$8,500 in September 2016 to \$15,500 in July 2017, ultimately leveling off at \$28,800 in July 2018.



**Figure 4: Fee Imposition Timing Across Case Study Cities**



Local staff noted that often there is a lag between project approvals and development. When discussing this lag, some noted that several years can pass between permitting, building approvals, and the actual construction of a building due to project-specific or market changes, such as a recession. In some cases, a developer may substantially revise the project, which could result in substantive changes to the project scope and infrastructure impacts. Localities impose fee amounts later in the development process in order to better insulate against these types of changes in scope. In contrast, developers want to set fee amounts earlier in the process in order to lower the risk of substantial cost increases during the development process. Lowering the risk of cost increases delivers more certainty to investing institutions, increasing access to funding, and also lowers the contingency needed, lowering overall carrying costs. While developers may be able to freeze fees early in the process by relying on development agreements or vesting maps, those processes typically only apply to very large projects or subdivisions.

## Fee Collection

The Mitigation Fee Act restricts when localities may require developers to pay impact fees.

According to Gov. Code § 66007, jurisdictions may not require developers to pay fees until the issuance of a certificate of occupancy or the date of final inspection, whichever happens first. However, an agency may collect fees earlier if they determine “that the fees or charges will be collected for public

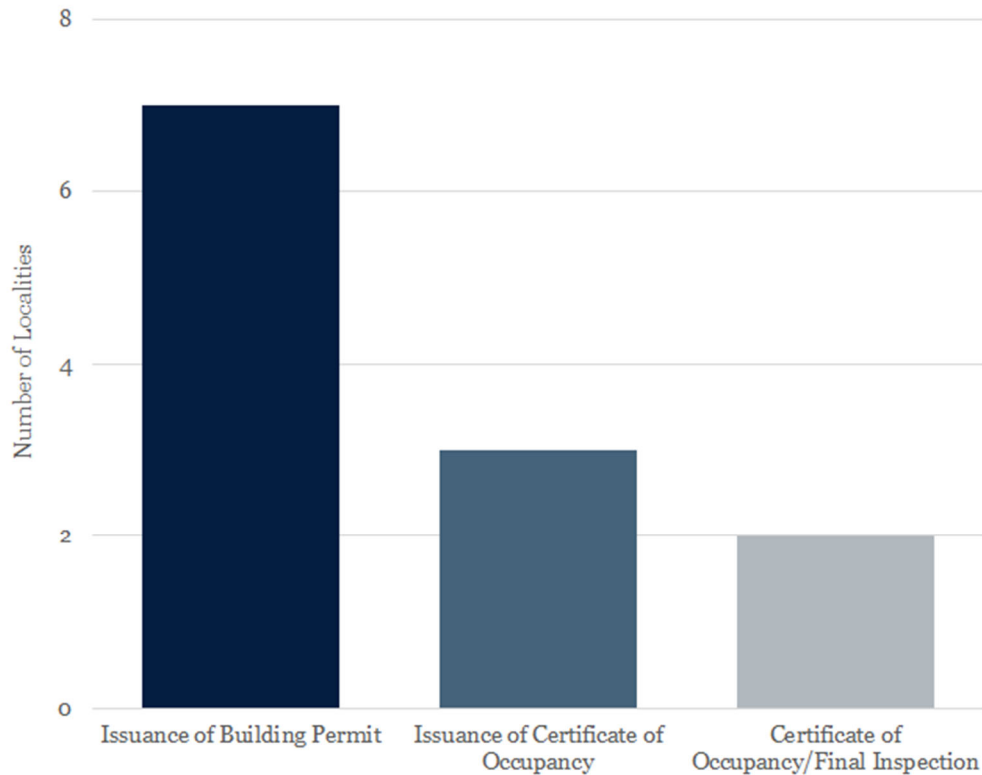
improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan or [the fees] are to reimburse the local agency for expenditures”.<sup>57</sup> Utility service fees may also be collected at the time of application for service. Our scan of fee payment timing across 10 jurisdictions shows that agencies frequently use these exceptions.

Most jurisdictions collect impact fees at the time of building permit issuance, although timing can vary according to the fee.

As illustrated in Figure 5, our 10 case study jurisdictions typically collect fee payments at the time of building permit issuance, with a minority of jurisdictions collecting fee payments when issuing the certificate of occupancy. Two jurisdictions allowed for fee payment at the time of either certificate of occupancy or final inspection, whichever event happened first, and planning staff explained that they use this timeline because it aligns with the incidence of the impacts on public facilities. Two cities collected fee payments at different points in the development timeline for different fees. Oakland collects half of its affordable housing impact fees at the time of building permit issuance and half at the issuance of certificate of occupancy (temporary or permanent). The city’s planning staff explained that this approach was purposeful; affordable housing fees make up the lion’s share of total fees (82 and 92 percent of total fees for our single-family and multifamily prototypes, respectively), and splitting collection times was intended to free up funds for affordable housing while also limiting the amount of carrying costs on loans.

Some localities provide fee deferral programs to build more flexibility into the timing of fee collection. For example, the City of Fremont offers a program that allows developers to defer their impact fees for 18 months if all other fees are paid at the time of building permit issuance. Fresno and Sacramento also allow developers to request a deferral of certain impact fees. Interviews highlighted that fee deferral programs incentivized housing production, as builders can pull larger batches of permits at once. A steady supply of work allows builders to move construction workers smoothly from project to project rather than reassembling teams, which can be costly and challenging in the tight labor market. However, other interviews also surfaced potential challenges with fee deferral options in that, without the presence of collateral, it may be difficult to recoup the full amount of the fee later in the process.

**Figure 5: Fee Payment Times Across Case Study Cities**



From a developer’s perspective, the timing of fee collection is important because spending money earlier in a development process results in a longer period between fee outlay and occupancy, when revenue begins to flow back to the developer. When localities prolong this window, developers must incur carrying costs over a longer period of time, which many times must be paid out of pocket as many banks will not close financing on a project until permit issuance. Because of this dynamic, requiring fee payment early in the development process may be difficult for smaller developers without capital on hand.

From the jurisdiction’s perspective, however, some fees may be more important to collect early in order to cover more immediate costs. For example, jurisdictions may want to collect transportation or utility impact fees before occupancy of a project in order to fund timely construction of the street improvements required to serve the residents of a new development. As our scan shows, most localities either ask for payment at the time of building permit issuance or certificate of occupancy, but the difference between these two stages includes construction, which can take a long time; an analysis of development pipeline data from the City and County of San Francisco in production between 2009 and 2017 found that the time between entitlement and certificate of occupancy averaged around two years.<sup>58</sup> Developers argue that the additional carrying costs can increase the overall price of housing.

## Policy Considerations

### Determine fees earlier in the development process.

Some have proposed that the state could lower costs in housing production by calculating (“imposing”) fees early in the development timeline. Such an approach gained both traction<sup>59</sup> and criticism<sup>60/61</sup> in recent legislative cycles. Assemblymember Caballero proposed AB 3147 in 2018, which originally required all localities to impose all fees, charges, and exactions at the time of building application submittal—one of the earliest points in the development process. The legislation aimed to lower cost and risk to developers, but also generated concerns that projects may change too drastically after the submittal of a building application to effectively assess impact fee amounts.

A variation on this policy approach would be to determine the impact fee schedule, rather than the assessed fee amount, at a set point in the pre-development process. Specifically, the legislature could amend the Mitigation Fee Act to require localities to use the impact fee schedule in place at time of completed planning application or project adoption to calculate fees. By doing so, policymakers would allow fee assessments to adjust to natural changes in project scope during the permitting process. Since the fee schedule, rather than the total fee amount, would be frozen at the time of application or adoption, an increase in project size would increase the total fee amount, while the base fee remained the same.

Policymakers considering such an approach would need to decide at which point in the development process to determine a project’s applicable fee schedule. Relying on the fee schedule earlier in the life of a project, such as the time of planning application, provides benefits in terms of allowing developers to better estimate fee costs. However, policymakers could alternatively require localities to determine fees later in the process, such as the time of project adoption, which would lower risk (although to a lesser extent) while easing concerns about drastic changes in project scope or the cost of impacts.

Interviews highlighted that any such approach would need to be contingent on a project moving through the pre-construction phase in a timely manner. For example, policymakers could condition fee rate determination on the issuance of a certificate of occupancy (or temporary certificate of occupancy) within a reasonable window of time. In addition, all project calculations would need to allow for fee increases that solely reflect the cost of inflation, as measured by the Consumer Price Index (CPI) or a development-related cost index, such as the Construction Cost Index (CCI).

Freezing impact fee schedules would improve the predictability of fee amounts and protect against situations where a drastic increase in fees makes a pipeline project infeasible. This policy would also provide clarity on fee amounts in times of fee transition. However, the proposed approach fails to address other issues raised with regards to AB 3147, including the concern that tracking the fees in place at the time of a project application or adoption would impose a substantial administrative burden on local governments. Freezing fee schedules earlier in the development process might also have the unintended consequence of incentivizing local agencies to defer approving applications until they are certain that the project will proceed without delay.<sup>62</sup>

Legislators considering such an approach would need to grapple with the concern that such a proposal might result in the collection of outdated fee amounts. Some interviewees worried that as the cost of project impacts increase over time, localities could find themselves with insufficient revenue to build the infrastructure necessary to serve new residents. In addition, if the fee structure is considered outdated

and insufficient, environmental fees may not function as mitigation mechanisms under CEQA, resulting in legal complications and increasing costs for housing development in the long run.<sup>63</sup>

### Best Practices

*While not appropriate for every city and county, our interviews highlighted the following as best practices:*

- **Split collection times:** Cities and counties could review their more costly fees and consider whether they can afford to collect a portion of those fees later in the development timeline.
- **Fee deferral programs:** Some localities build more flexibility into their fee timing by designing fee deferral programs. Deferral programs represent an important tool for localities to accommodate developer concerns when fiscally possible.

## Fee Rate Structure

Our interviews with local planners and nexus study consultants underscored the importance of the way in which localities structure their fees, from the fee multipliers they choose (e.g. by square foot, by unit, by bedroom) to whether they vary the cost of fees by neighborhood. According to the Mitigation Fee Act, impact fees should be structured to reflect the incidence of impacts; a utility fee might be based on meter size, for example. Fee structures also influence what is built: depending on what property types “cost more”, cities can either incentivize dense, affordable housing or larger, single-family types of developments. We reviewed the costs of impact fees on single-family and multifamily projects, and found that fee structures vary widely by location, reflecting different approaches and priorities.

Jurisdictions use a variety of fee structures to calculate fees.

Jurisdictions typically multiply a set fee amount by a characteristic of a building, such as square feet, dwelling units, or bedrooms. For example, Riverside County charges all of their fees on a per-unit basis. The fee amount itself can also vary by neighborhood or area (often fee regions are tied to specific plan areas), or by unit type (such as single-family homes or multifamily projects). San Diego, for example, adjusts their fee amount across more than 40 different designated communities.<sup>64</sup> While this diversity of fee structures introduces complexity, we found that, in cities that provided a clear and comprehensive fee schedule with clear maps of neighborhood-specific fees, calculating impact fees was fairly straightforward.

Of the 10 jurisdictions surveyed, four used different multiplier bases across their impact fees (Figure 6). According to interviews with planning professionals, this variation can reflect the process of designing and setting the fees: different types of fees require different types of nexus analysis and localities typically adopt the multiplier used in the nexus study. In addition, changing political priorities and revenue needs, as well as different departmental authority over fee implementation, often results in staggered rollouts of different fees, leading to different multipliers across fee types. For example, the Los Angeles Parks and Recreation Department implemented a new Parks Impact Fee in 2016 based on the number of units in a

development,<sup>65</sup> and the city’s Department of Housing and Community Investment implemented a new Housing Impact Fee in 2017, which instead used square feet as the multiplier. The management of the two fees remains split across the departments.<sup>66</sup>

**Figure 6: Impact Fees Exacted on Prototypical Residential Projects  
By Type and Basis in Case Study Localities<sup>67</sup>**

	Los Angeles	Sacramento	Roseville	Oakland	Irvine	Fremont	San Diego	Fresno	Imperial	Riverside County
<b>Parks:</b>	Units	Sq Ft	Units			Bedrooms	Units	Units	Units	Units
<b>Transportation:</b>		Units	Units	Units	Units/Other	Bedrooms	Units	Acres/Units	Units	Units
<b>Capital Improvement:</b>			Units	Units		Bedrooms			Units	Units
<b>Housing:</b>	Sq Ft	Sq Ft		Units						
<b>Fire and Public Safety:</b>		Units				Bedrooms	Units	Units	Units	Units
<b>Environmental:</b>		Sq Ft								Units
<b>Libraries:</b>							Units		Units	Units
<b>Utilities</b>		Meter Size/Units	Units/Sewer							
			Units/Meter Size							

The multiplier basis can vary both across fee types within a jurisdiction and across jurisdictions within a fee type category. For example, while Fremont uses the number of bedrooms as the basis for their fire and public safety fee, other localities simply rely on the number of units. This variation may reflect the fact that jurisdictions set fee multipliers with different local circumstances, goals, or limitations in mind. Some jurisdictions identified multipliers that would incentivize denser forms of development. For example, planning staff for the City of Los Angeles chose square feet as a multiplier for their housing fee because they hoped to encourage density and wished to avoid negatively impacting more affordable micro-units. In other localities, staff noted that they typically tried to use the same multiplier for all their fees, with the reasoning that it was easier to administer.

Some localities highlighted the importance of using a legally defensible multiplier—one more strongly correlated with impacts. In one case, city staff noted that they wished to switch their impact fees from a per-dwelling-unit to a per-square-foot basis in order to encourage smaller, more affordable units and higher density. However, they heard from nexus consultants that some categories of fees, such as utilities, have the same impact on infrastructure costs irrespective of changes in unit size. For example, a 2,000 square foot home and a 1,500 square foot home may impact a water system similarly. Therefore, requiring developers to pay more in fees for a larger home might leave the jurisdiction susceptible to litigation.

## Some localities do not lower or waive fees for accessory dwelling units.

Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs)<sup>68</sup>—second units typically built on a single-family lots—offer the opportunity to provide more housing in single-family neighborhoods. Because they are built on lots with existing units, ADUs, and especially JADUs, typically rely on existing infrastructure systems and have a limited impact on public facilities. These units are also more affordable to build, since they are smaller, with no expensive parking structures, elevators, or construction materials, and homeowners already own the land. These savings are often passed onto renters; 58 percent of owners with ADUs on their property rented them below the current market rate.<sup>69</sup> As a result, ADUs are seen as an important avenue for increasing the supply of more affordable housing options.

Legislators have aimed to loosen requirements and lower utility fees on ADUs in recent cycles, easing the burden on homeowners aspiring to add another unit. Effective in 2017, SB 1069 (Wieckowski, 2016) mandated that localities waive utility fees and charges on ADUs built within an existing home or accessory structure. The bill also stipulated that utility fees and charges must be proportionate to impact or the cost of service for attached and detached ADUs. AB 2406 (Thurmond, 2016) required utility fee and charge waivers and waived parking requirements for JADUs. SB 1069 and AB 2299 (Bloom, 2016) also mandated ministerial approval for ADUs that complied with certain requirements. More recently, SB 229 (Wieckowski, 2017) and AB 494 (Bloom, 2017) required special districts and water companies to scale fees proportionate to ADU size or the number of fixtures. The bills also expanded the definition of ADUs to include conversions of garages, carports, and covered parking, and further reduced parking requirements.

The recent wave of legislation reflects an understanding of the key role that ADUs play in densifying the single-family neighborhoods that characterize Californian communities. The Turner Center survey of land use regulation found that, on average, less than 25 percent of land within California jurisdictions is zoned for multifamily housing.<sup>70</sup> Single-family development patterns dominate even in urban centers; more than three-quarters of the land area of both Los Angeles and San Francisco is composed of neighborhoods where single-family units make up 60 percent or more of the local housing stock.<sup>71</sup>

Impact fees can have a larger effect on ADU feasibility because they are typically built by homeowners rather than large-scale developers, and at much lower cost than single-family homes. A 2013 survey in Oregon found that 29 percent of respondents noted development fees as the primary challenge in constructing an ADU.<sup>72</sup>

Local agencies sometimes waive or lower their impact fees on ADUs in order to incentivize the production of a naturally affordable housing type. Of our ten case study localities, seven waived impact fees on all ADUs. Irvine charges impact fees to ADUs at the multifamily rate, Fresno charges them at the duplex rate, and Roseville charges ADUs at the multifamily rate while waiving fees for attached units.



**Table 3: ADU Fee Waivers in Case Study Localities**

<b>Locality</b>	<b>ADU fee waiver</b>
<b>Fremont</b>	Yes
<b>Fresno</b>	Charged as duplex
<b>Imperial</b>	Yes
<b>Irvine</b>	No
<b>Los Angeles</b>	Yes
<b>Oakland</b>	Yes
<b>Roseville</b>	Fees charged as multifamily for detached ADUs, not charged for attached ADUs
<b>Riverside County</b>	Yes
<b>Sacramento</b>	Yes
<b>San Diego</b>	Yes

While recent legislation has limited utility charges on ADUs,<sup>73</sup> impact fees can still present a daunting prospect to families wishing to add a unit to their property. The Terner California Residential Land Use Survey showed a wide variance among respondents in the amount of impact fees charged to ADUs, with a low median total of \$3,706, but notable outliers. Seventeen percent of respondents reported total fees of \$20,000 or higher. In one case, impact fees were as high as \$50,000 per ADU.<sup>74</sup>

Localities often rely on geographically-specific impact fees in order to account for variations in infrastructure costs in different locations.

In addition to varying by amount and basis, some fees also vary by geography, using localized rates that reflect differences in infrastructure needs by area. While average pricing for fees takes into account the total cost of development impacts over an entire jurisdiction, marginal cost pricing takes into account the infrastructure cost of each additional unit of housing.<sup>75</sup> In practice, this translates to creating zone-based impact fee programs, where the rate for each zone attempts to capture the cost of development in that area specifically. Local agencies draw zones according to variation in infrastructure investment; the urban core may have lower costs due to the fact that new development can plug into existing sewer, water, and road systems, while a development in a typical greenfield area would have much higher infrastructure costs. This approach to pricing has been shown to result in more efficient development, reducing permitting in the urban fringe and limiting sprawl.<sup>76</sup> Neighborhood-specific fees seek to address concerns that, by setting fees according to average infrastructure costs across a large geographic area, projects with lesser impact will be asked to bear more than their “fair share” of the financial burden.<sup>77</sup>



We found significant variation in how jurisdictions addressed the challenge of directing the cost burden more precisely to future beneficiaries. All of our localities, with the exception of Fremont and Imperial, imposed at least one impact fee that varied according to neighborhood. Some rely on heavily detailed fee maps. San Diego sets out more than 40 community planning areas, each with their own fee amount, set to reflect the different infrastructure cost levels for greenfield and infill development.

Jurisdictions also improve the equity of fees through credits for developer-constructed or existing infrastructure. Some localities, such as Sacramento, reimburse developers for building sections of infrastructure with impact fees paid by the developments that stand to benefit from the improvements. Fresno noted their reliance on historical infrastructure mapping in order to provide fee reductions and credits for previously constructed infrastructure.

Some highly urbanized cities, like Los Angeles and Oakland, have very few greenfield projects, and their level of urbanization is reflected in their fee structures. Los Angeles has only a handful of small, neighborhood-specific fees, and their new parks and affordable housing impact fees are applied at the same rate city-wide. Oakland does vary its impact fees across zones, but these zones are designed to address housing feasibility concerns rather than reflect localized differences in impacts. The city relies on project-specific CEQA mitigation fees and development agreements to mitigate the costs of larger greenfield developments, which are relatively rare.

When cities and counties refrain from differentiating their rates for greenfield and infill development, they theoretically run the risk of overcharging developments with lower impacts by averaging costs across a larger region. However, we did not find this to be an issue in practice in the 10 case study cities. While Oakland's nexus study relied on an analysis of transportation and capital improvement needs across the city, the actual fee amounts were set so far below the maximum legal fee amounts outlined in the study that it seems highly unlikely that developments are overpaying for their impacts. The city's reliance on CEQA mitigation fees and development agreements to cover the increased costs of larger-scale greenfield developments effectively avoids overcharging projects with lesser impacts.

Local staff and consultants all agreed that creating localized fee rates for development areas benefits the majority of developers. By spreading the costs of intensive infrastructure development across all projects built in an area, no one developer is left with a higher cost than the others and all project costs are equally competitive.

When infrastructure needs transcend jurisdictional boundaries, inter-jurisdictional fees provide a streamlined way to mitigate impacts. These fees also offer a way for less-resourced localities to leverage fees for infrastructure funding.

In recent years, localities have come up with innovative ways to better capture the impact of development that cross jurisdictional boundaries. For example, many households in Western Riverside County live in one town and commute to work in another, creating a type of "commute shed." While their hometown will benefit from fees on new development, those funds can only be spent within city boundaries. The Western Riverside Council of Governments Transportation Uniform Mitigation Fee (WRCOG TUMF) instead collects fees from new development *throughout* the COG's boundaries and redistributes that funding to reimburse local agencies for transportation improvements within the broader commute shed.<sup>78</sup> Similarly, the I-5 Subregional Corridor Mitigation Fee Program (SCMP) represents a joint effort on the part of the Sacramento Area Council of Governments (SACOG) and the cities of Sacramento, West Sacramento, and

Elk Grove. The jurisdictions partnered with Caltrans to develop a mandatory fee on new development to address impacts on the I-5 corridor, which developers may also employ as a CEQA mitigation for the same purpose. To better reflect variations in traffic patterns, the SCMP has four fee districts with different rates, one of which includes both Sacramento and West Sacramento.<sup>79</sup> These regional fees can also provide a path for less-resourced communities to assess and implement impact fees, as long as they address the broader impacts of development.

## Case Studies: Impact Fee Estimates

To better understand the ways in which localities impose impact fees, we calculated the total fees for two prototypical projects: a small greenfield development of 20 single-family homes and a 100-unit multifamily infill building. Of course, impact fees represent only one slice of a broad universe of local fees and exactions placed on new development, and these calculations should not be taken to represent the full extent of local costs. Our calculations do, however, shed light on the high level of variation between localities in terms of fee amounts, structures, and uses.

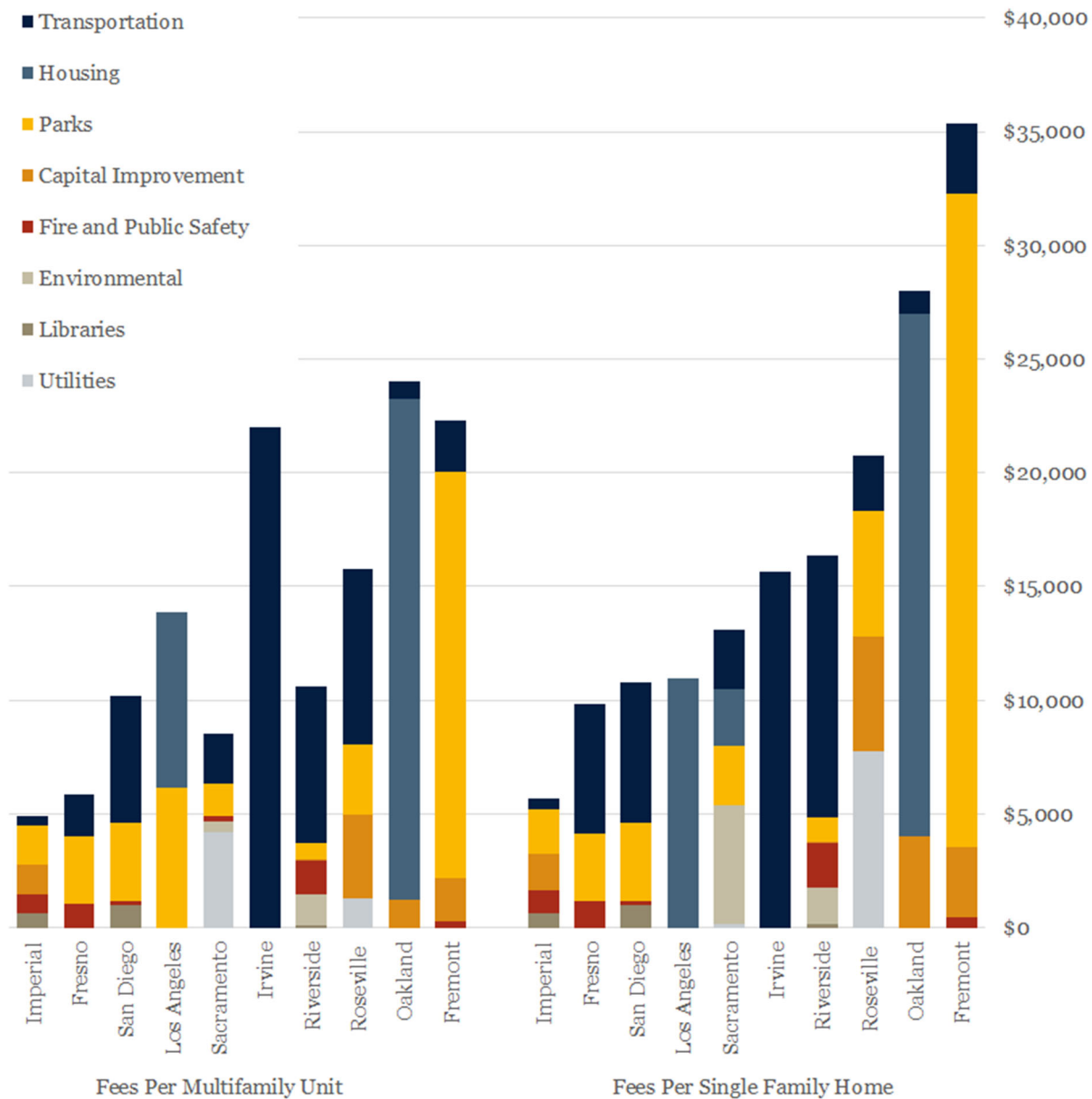
### Impact fee amounts and types vary widely by jurisdiction.

We found that impact fees varied in magnitude between cities when viewed on a per-unit basis, particularly for the single-family prototype. As shown in Figure 7, impact fees per multifamily unit totaled between close to \$4,900 in Imperial and \$24,000 in Oakland. The range is considerably broader for single-family greenfield projects. Impact fees per single-family unit ranged from \$5,700 in Imperial to \$35,300 in Fremont.

The impact fees levied by cities and counties also reflect high variance in terms of funding priorities. Localities with more greenfield development, such as Irvine and Roseville, prioritize transportation funding in their fee structures. Conversely, Los Angeles and Oakland, both built-out, large cities, prioritize affordable housing fees. Fremont prioritizes parks fees across both project types. Other localities such as Los Angeles include parks fees that fell outside of the scope of this analysis because they were categorized as Quimby in-lieu fees. Only two localities charged environmental impact fees on our prototypical projects in this study sample; projects built in Sacramento pay fees imposed by the Sacramento Flood Control Agency, while Riverside County prioritizes fee revenue for the protection of species such as the Stephens' kangaroo rat and other services such as flood control. Riverside County impact fees also go towards supporting utilities, as well as lower cost items such as libraries and fire and public safety infrastructure.

Fee charges should be considered cumulatively across all such assessments. Many cities and counties rely on multiple fee structures in addition to impact fees to fund the same categories of infrastructure. Los Angeles leverages Quimby fees to fund parks for their subdivision development, as do many other localities. Some localities, including Fremont and Irvine, currently have inclusionary zoning ordinances, which function similarly to affordable housing impact fees by requiring developers to build affordable housing onsite or pay an in-lieu fee.

**Figure 7: Total Mitigation Fee Act Fees by Type  
Estimated for a Unit in Prototypical 100-Unit Multifamily  
and 20-Unit Single-Family Projects**



When reviewed on a per-bedroom or per-square-foot basis, impact fees are often assessed on multifamily projects at a higher rate than single-family projects.

The fee multipliers chosen by localities and consultants may incentivize single-family housing over multifamily infill units, which are often more sustainable and affordable. Seven of our ten localities charge multifamily projects less on a per-unit basis, and three localities—Los Angeles, Irvine, and Riverside County—charge multifamily projects more (Table 4). However, Los Angeles charges single-family projects a Quimby parks fee that would close the fee gap between the unit types. The trend reflects the per-unit fee

basis popular in the majority of our case study localities. However, when reviewed on a per-bedroom or per-square-foot basis, every locality in effect charges the multifamily development at a higher rate. These findings suggest that localities could do more to set fees in a way that reflects the lesser impacts of multifamily development, which can more readily connect to existing infrastructure such as roads and utility connections at a lower cost per resident.

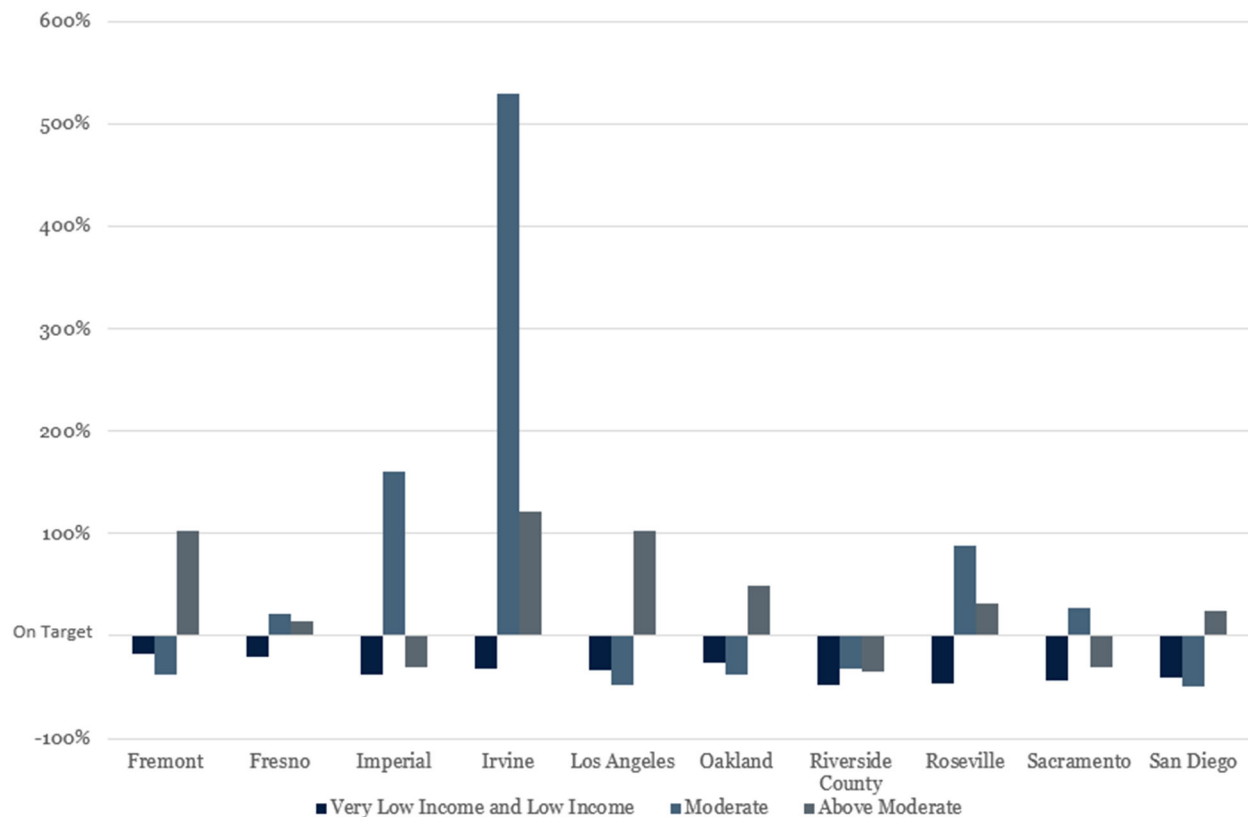
**Table 4: Total, Per Unit, Per Bedroom, and Per Square Foot MFA Impact Fees  
Estimated for Prototypical Projects**

		Total Project Impact Fees									
		Los Angeles	Sacramento	Roseville	Oakland	Irvine	Fremont	Fresno	Imperial	San Diego	Riverside County
Total Project Fees	MF	\$ 1,387,600	\$ 853,638	\$ 1,577,826	\$ 2,400,000	\$ 2,200,200	\$ 2,233,100	\$ 585,740	\$ 487,815	\$ 1,018,800	\$ 1,062,000
	SF	\$ 218,667	\$ 262,286	\$ 415,031	\$ 560,000	\$ 313,440	\$ 706,680	\$ 197,176	\$ 114,052	\$ 215,320	\$ 326,720
		Fees Per Unit									
Fees Per Unit	MF	\$ 13,876	\$ 8,536	\$ 15,778	\$ 24,000	\$ 22,002	\$ 22,331	\$ 5,857	\$ 4,878	\$ 10,188	\$ 10,620
	SF	\$ 10,933	\$ 13,114	\$ 20,752	\$ 28,000	\$ 15,672	\$ 35,334	\$ 9,859	\$ 5,703	\$ 10,766	\$ 16,336
		Fees Per Bedroom									
Fees Per Bedroom	MF	\$ 9,251	\$ 5,691	\$ 10,519	\$ 16,000	\$ 14,668	\$ 14,887	\$ 3,905	\$ 3,252	\$ 6,792	\$ 7,080
	SF	\$ 3,124	\$ 3,747	\$ 5,929	\$ 8,000	\$ 4,478	\$ 10,095	\$ 2,817	\$ 1,629	\$ 3,076	\$ 4,667
		Fees Per Square Foot									
Fees Per Square Foot	MF	\$ 14	\$ 9	\$ 16	\$ 25	\$ 23	\$ 23	\$ 6	\$ 5	\$ 11	\$ 11
	SF	\$ 5	\$ 6	\$ 10	\$ 14	\$ 8	\$ 17	\$ 5	\$ 3	\$ 5	\$ 8

## Localities base impact fees on market conditions.

Some of the variance between localities' impact fee rates reflects the difference between housing markets; interviews surfaced that local governments may set their fees higher assuming that developers will be able to cover the costs due to overall high housing prices. In Figure 8, we review each locality's progress toward meeting their 5th cycle Regional Housing Needs Allocation (RHNA), which allocates units to be produced at different levels of affordability based on forecasts of how much housing needs to be built to accommodate future population growth.<sup>80</sup> RHNA cycles vary between four and eight years, and Figure 8 overlays the prorated RHNA for each locality based on their cycle length. Bars above the "On Target" axis reflect places that are ahead of the pace of permitting expected to meet their RHNA allocation by the end of the current cycle, while bars below the axis are not on pace to meet their goals. For instance, none of our case study localities were on track to build sufficient units of housing affordable to very low- and low-income households. However, seven jurisdictions were ahead of their goals for above-moderate income households, including Fremont, Oakland, Irvine, and Roseville, which each charge among the highest fees in our sample.

**Figure 8: Percentage Point Difference between Share of RHNA Allocated for Permitting By 2017 (Prorated RHNA) and Share of RHNA Permitted by 2017**



Data Source: California Department of Housing and Community Development, 5th City Annual Progress Report Permit Summary, <http://www.hcd.ca.gov/community-development/housing-element/index.shtml>

## Policy Considerations

Require jurisdictions to consider alternative multipliers for fees and to justify their choices.

Requiring jurisdictions to consider alternative multipliers and justify the measure they choose could nudge localities to leverage fee structures more strategically. Under such a policy, localities would be required to consider different fee multipliers relative to a set of priorities, which could include impact on infrastructure needs, housing affordability, and transit-oriented housing goals. Because the final fee basis typically mirrors the basis used in the nexus study, localities could explain their consideration and justification at the beginning of their nexus report. The legislature could amend the Mitigation Fee Act to require cities and counties to explain measures taken to consider alternative fee measures and to justify the current structure in their nexus study.

The additional justification in the nexus study does present some potential concerns. Firstly, interviewees noted that any increased analysis will likely increase costs for localities. Secondly, localities could commit to a fee schedule that preferences large-scale, single-family housing development and explain away less desirable fee structures in their nexus studies, meaning that this policy alternative could increase regulation and local administrative costs with limited impact on housing affordability.

Consider different approaches to reduce fees on ADUs to encourage their development.

The state could take a number of approaches to lowering fees on ADUs, or to ensure that the fees are more proportional to their impact on infrastructure. For example, the state could require nexus studies to include an ADU prototype if the fee is based on unit type (single-family, duplex, multifamily, etc.). This approach would maintain the same rates for fees based on utility connections or bedrooms. By specifying that fees must be proportional to the lower impact of ADUs, as determined in a nexus study, localities can be sure that their fees are tailored to better fit ADUs. Alternatively, the state could simply mandate that localities charge ADU fees at a lowered rate for fees based on unit type. Finally, the state could consider mandating waivers for all impact fees on ADUs.

Consultants noted that requiring additional prototypes in a nexus study (or interim analysis for current fees) would likely add cost to localities in the form of staff time and consulting fees. Waiving impact fees would have the greatest effect on local budgets by discontinuing a source of revenue. However, incentivizing ADUs could help localities add housing with less impact on local infrastructure, and would encourage density in the single-family neighborhoods that dominate California.

Require jurisdictions to determine if separate fees for infill and greenfield are necessary, and if so, calculate fees separately based on the cost to bring service to the respective type of project.

Localities already often rely on neighborhood-level fees and CFDs to differentiate fee rates between areas with greenfield development, where infrastructure may need to be built from scratch, and infill developments, which can often rely on less costly updates to current infrastructure. The legislature could consider mandating that localities weigh whether this differentiation is necessary as a way of ensuring that fees are reasonably proportionate to project impact. If done correctly, this approach could help



ensure that developers pay for their true impacts, rather than averaging highly variable costs across a broad swath of different projects.

Requiring localities to consider implementing separate fee rates for different land use types could prove complicated. For example, the legislature would need to define the classifications of developments necessary to reflect diverse types of developments—“greenfield” and “infill,” and would likely need to break out more nuanced development classifications to reflect the diversity of development types. Localities could argue that they know the variation of costs within their communities best, and that neighborhood fees are best determined at the local level, rather than determined by a state-structured formula. The legislature would also need to determine what types of fees would fall under the purview of the requirement. While transportation, environmental, and fire and public safety costs might be significantly higher for greenfield development, for example, affordable housing costs may not be as strongly correlated with development type.

This approach would also impose costs for many localities. The number of localities impacted would depend on the definition of development types and other details, but any form of mandated differentiation would require a segment of localities to conduct new nexus studies. Restructuring all impact fees would be expensive, although these costs could be lowered by grandfathering in current fee structures and restricting the mandate to certain fee types.

In our review of case study localities, and in interviews with local staff, we found that many cities and counties already rely on neighborhood-specific fees, CFDs, and developer agreements to fund infrastructure in greenfield developments. The incentive of raising higher fees on greenfield development, and the disincentive of facing lawsuits for fee structures that do not reflect the true impact of infill development, may be sufficient to propel localities to build in neighborhood fees when needed. If so, making this approach a regulatory requirement—rather than a locally-adopted best practice—may increase local costs to fix a problem that is not widespread.

### The state could establish additional nexus guidelines for inter-jurisdictional fees.

Inter-jurisdictional nexus studies, particularly those covering broad swaths of land, raise concerns about nexus precision. Detractors worry that nexus studies that cross jurisdictional lines may average impacts across a region with heterogeneous costs, charging projects with lower costs at a higher rate for impacts in another city. The state could consider adding guidelines for these types of fees to ensure that impact fees are closely tied to the true impacts of a project.

However, our review of fees and our interviews with consultants highlighted that inter-jurisdictional fees are often designed specifically to target an area with more homogenous costs. For example, the I-5 Subregional Corridor Mitigation Fee Program (SCMP) affects the cities of Sacramento, West Sacramento, and Elk Grove, but targets a region that relies on a section of the freeway, varying rates according to four different fee districts based on usage.<sup>81</sup> In this case, the inter-jurisdictional nature of the fee is simply incidental to the fact that impacts cross the boundaries of three different communities. Indeed, many of our interviews highlighted the fact that inter-jurisdictional fees function similarly to other types of impact fees, and may be effectively regulated by other, more general proposals.

The broader concern for both policy alternatives above, that some fees are not proportional to impacts, may also be more elegantly served through other policy solutions that apply across all types of impact

fees. We will investigate other approaches to improving proportionality when we review the fee design process.

### Best Practices

*While not appropriate for every city and county, our interviews highlighted the following as best practices:*

- **Adjusting rates for submarkets within a locality when sufficient variation exists:** Zoning rates according to local housing markets or changes in project impacts can ease the impact of fees on weaker submarkets and ensure that fees accurately reflect project impacts.
- **Increasing fees incrementally:** Rather than applying the full amount of a fee or fee increase when approved, localities can stage implementation in steps over a period of time to give the housing and land markets a chance to adjust to the higher cost of development.

## Fee Design Process

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While adjusting the structure of fees may provide opportunities to lower fees and incentivize the production of more affordable housing, policymakers and stakeholders have come up with a variety of more ambitious policy proposals to reform the fee design process, all aimed at ensuring fees are set at a level that allows for development. In this section we first review the current practices for conducting nexus studies—used to set fee amounts proportional to project impacts—before considering proposals that would adjust nexus study methodologies to guard against unreasonable fee amounts. We then review ways in which localities consider the effect of fees on project feasibility. Finally, we weigh the costs and benefits of proposals that go beyond current fee-setting mechanisms and impose measures of feasibility when structuring new impact fees.

## Nexus Studies

The Mitigation Fee Act generally applies a broad “reasonable relationship” standard to fees and exactions, meaning that fee amounts must be arguably reasonable, relative to the impacts of a development. A “nexus study” is commissioned by a locality to substantiate that the type and amount of Mitigation Fee Act fees charged on new development meet this standard.

As part of this report, we assessed various components of nexus studies, including how local agencies commission studies, what methodologies are used by consultants to assess different types of fees, and how policymakers use nexus study results to decide on fee amounts. In addition, we conducted interviews with local agency staff and consultants who regularly conduct or use nexus study analyses in California.

## Impact fees are regulated by a set of legal standards.

Section 66001 of the California Government Code lays out the legal requirements for local agencies regarding the creation and imposition of fees on “Development Projects,” defined as a project involving the issuance of a permit for construction or reconstruction. With regards to the reasonableness of the fees, local agencies are required to make two determinations: whether there is a reasonable relationship between the fee’s use and the type of development project on which the fee is imposed, and how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed. Moreover, local agencies are also responsible for determining the reasonable relationship between the amount of the fee and the cost of the public facility.

In practice, these legal requirements form the basis for a nexus study, which acts as the official, legally defensible analysis for demonstrating the relationship between a local agency’s fees and development project impacts. For example, if a new development would cause an increase in traffic in or around a site, the fees or “conditions” on permit approval would need to be demonstrably connected to that impact (e.g. require fees for road improvements, not parks) and the fees would need to be proportionate to the impact (e.g. for funding turn lanes, not major highway construction).

While fees are required to be connected to the cost of public facilities needed as a result of a project, local agencies are not allowed to levy fees for ongoing operations or maintenance of public facilities. Fee revenue may not be used for personnel related to new facilities (e.g., the salaries and benefits for additional firefighters) or maintaining infrastructure (e.g., keeping parks clean). However, it is generally accepted that local agencies can use fees for updating or expanding existing facilities, provided that there is a reasonable relationship to that project’s impact, even if the facilities are not themselves newly constructed (e.g., expanding existing underground wastewater capacity, or adding new or additional playground features to a park).

Per statute, nexus studies may reference the general plan, specific plans, or a capital improvement plan to establish findings of a reasonable relationship (CA Gov. Code §66001 (a) (2)). Local agencies must update these findings every five years. Cities and counties have the authority to determine the level of service for their infrastructure, and localities with less resources may set lower service standards. Taking parks standards as an example, while Riverside County sets its parks level of service between 1.81 and 2.4 acres per 1,000 residents (the eastern part of the county has a lower level of service).<sup>82</sup> Fremont adheres to a standard of 5 acres per 1,000 residents.<sup>83</sup> Designated levels of service are then reflected in the general plans or capital improvement plans featured in nexus studies.

While the results of a nexus study will include the amount a locality could reasonably charge for a fee, policymakers can decide to set their fee amounts at any level up to, but no higher than, the amount identified in their accompanying nexus study.<sup>84</sup> There is no further legal requirement or standard for local agencies to consider when setting their fees.

While this report focuses on impact fees, it is worth noting that development agreements and community benefit agreements are not held to a nexus standard. Rather, these fees are negotiated and formalized in contracts between the developer and the locality, typically paired with an agreement on the regulations and requirements that the developer will be subject to in order to gain local approval of the project. Developers may benefit from these agreements by locking in development rights and fees over a longer time period, which lowers risk and can ease access to financing. However, some interviewees voiced

concerns that case-by-case exactions and development agreements have more potential to be exclusionary than formally-adopted fee programs because they have not been subjected to a nexus study, and proposed applying the nexus standard to these “voluntary” fees. Similarly, some have proposed bringing other types of fees under the Mitigation Fee Act, including utility fees, and subjecting them to the same nexus requirements and levels of oversight in order to better ensure the proportionality of fees.

## Nexus Study Standards and Methodology

While state law requires that local agencies determine the reasonableness of fees charged to development projects, there are no set standards or parameters that exist in California state law regarding how policymakers and consultants reach conclusions of reasonableness. Nexus study consultants we interviewed for this report noted that while there are “best practices” many consultants employ, there are no specific industry standards.

Our analysis of nexus studies found wide variation in methodologies across localities, consultants, and types of fees.

While no specific methodology exists in statute regarding nexus studies, most studies follow a similar structure.

Our scan of residential nexus studies across 40 cities and counties yielded two general approaches to conducting residential nexus studies: the plan-based method and the level of service method. However, cities tend to set housing impact fees using a different process.

### **Plan-Based Method**

In the plan-based method, a nexus is determined by assessing the infrastructure needed to serve a future population based on growth estimates. Here, a consultant will typically follow the following broad steps:

1. Identify the future demand for services, often based on estimates from official planning documents such as a General Plan or relevant Metropolitan Planning Organization estimates;
2. Identify the facilities needed to meet this demand for service;
3. Estimate the cost to provide these facilities;
4. Subtract other sources of revenue that will be used to provide facilities to determine a net facilities cost;
5. Choose a demand variable (e.g. residents served, trips generated) and apply variable rates to various land uses (e.g. residential, commercial, retail);
6. Calculate total future demand by multiplying the total unit number (e.g. square footage, rooms) within each land use by each respective demand variable, and sum the land use totals to determine total demand;
7. Divide the net facilities cost by total demand to determine the cost per demand variable (e.g., cost per person served, cost per mile traveled);
8. Multiply the cost per demand variable by each land use demand variable to determine nexus.

### **Level of Service Method**

In the level of service method, a nexus is determined by identifying a level of service (either existing or desired) that a municipality would like to achieve or maintain in the future. Aside from state and federal floors on level of service standards, local agencies have full authority to determine the desired level of service for infrastructure for their jurisdiction under the Mitigation Fee Act.

Here, a consultant will typically follow these broad steps:

1. Define a level of service standard (e.g. number of firefighters per 1,000 residents) often identified in an official document such as a General Plan;
2. Use current replacement costs to determine a incremental facility standard, reduced by subtracting other sources of revenue that will be used to provide facilities;
3. Choose a demand variable (e.g. residents served, trips generated) and apply variable rates to various land uses (e.g. residential, commercial, retail);
4. Multiply each land use demand variable by the cost for each incremental facility standard to determine nexus.

### **Housing Fee Method**

One caveat to these approaches is regarding housing fee nexus calculations for residential development, which generally adhere to the following methodology:

1. Define a prototype project (e.g. single-family subdivision, multifamily building);
2. Estimate the income distribution of the households that would occupy the prototypes;
3. Estimate the spending of prototype households;
4. Estimate the number of new employees required to provide the goods and services needed by prototype households (minus existing residents that would be employed in this capacity);
5. Estimate the new housing required by new employees by income level;
6. Estimate the affordability gap between new employees and the homes they require to determine nexus.

Nexus studies do not always include an analysis of capital improvement plans as a basis for project impacts.

Existing language in the Mitigation Fee Act suggests that localities link their fees directly to projects, as identified in a capital improvement plan, but the language is non-binding. Instead, the impacts attributed to future growth may be general in nature, and fees do not have to be linked to a specific infrastructure improvement. For example, there are no requirements for fees collected for parks to be used to build or rehabilitate parks used by residents of new developments. Instead, these fees may be deposited in accounts that can be drawn upon to pay for infrastructure intended to maintain service levels across the city or county.

We found, however, that some localities rely on “neighborhood-specific” fees to ensure that funding funnels directly back to the neighborhood or area of the development. For example, the fees estimated for the prototypical San Diego projects were both determined specifically for the Navajo Community Planning Area, and all the fees go towards infrastructure improvements within the area. These approaches avoid average cost pricing and more directly link the cost of development to localized infrastructure costs.

Localities can improve transparency around their use of impact fee funds. Section 66006 of the California Government Code does require localities to report annually on fee amounts and what projects these fees were used to build, but these annual reports can be challenging to obtain. In more than half of the 40 localities in the scan, our research team could not find the report online and needed to request the report directly. The challenge of obtaining these reports is a significant barrier to determining whether or not fees are being levied, collected, and spent in an appropriate manner.

## Policy Considerations

Set guardrails around the levels of service or investment that can be considered in a nexus study.

The state could set objective standards for levels of service or levels of investment used in nexus studies. While it is reasonable to expect new development to pay for a portion of related infrastructure costs, localities that have very high current levels of service or set high goal levels of service, and then levy the cost of that standard on development, are effectively asking newcomers to pay a cost of entry. Setting high levels of service in nexus studies and transferring those costs to impact fees can prove exclusionary if the fees increase local housing prices. This policy approach is not unprecedented; the Quimby Act caps the level of service that localities may rely on when setting parks fees that fall under its jurisdiction.<sup>85</sup> This would largely affect localities with fees set at the full cost of their level of service standards, and could rein in particularly high fees.

If the state’s goal is to lower fees more broadly, this alternative may not be the most effective approach—unless combined with other reforms—because it would not affect localities that have established lower levels of service. Furthermore, this approach would not impact affordable housing fees, since those nexus studies do not rely on a level of service.

Require cities to establish stronger connections between the fees they charge and the actual impacts of a specific development.

The Mitigation Fee Act could be amended to require a stronger nexus between the collected fees and the investment in infrastructure. Specifically, Section 66001 of the California Government Code could be changed to require local agencies to base their nexus analyses on capital improvement plans that would directly serve new residents.

Better integrating capital improvement plans in nexus studies would ensure that fees are tightly tied to defined projects at the local level. However, many localities already set their fees well below the cap determined by their nexus studies, and this approach would not lower impact fees in those localities. In addition, requiring nexus studies to tie fee revenues to capital improvement plans could limit the flexibility of these funds. To avoid exacerbating current local budgetary strains, the state would also need to consider better supporting local infrastructure costs.

## Fee Feasibility

Nexus studies play a vital part in shaping impact fees by determining the relationship between new development and increased infrastructure usage, and ultimately setting a maximum legal fee amount. We found that in many cases, cities and counties choose to set their fees below this ceiling in an effort to assuage concerns about dampening housing development.

Fees are often set below the ceiling established by a nexus study.

Localities can choose to set their fees below the legal maximum, which is determined by the level of service for that type of infrastructure. Given the diversity of infrastructure needs and housing markets across the state, specific local funding priorities and potential effects on housing feasibility drive the ultimate decision on fee levels.

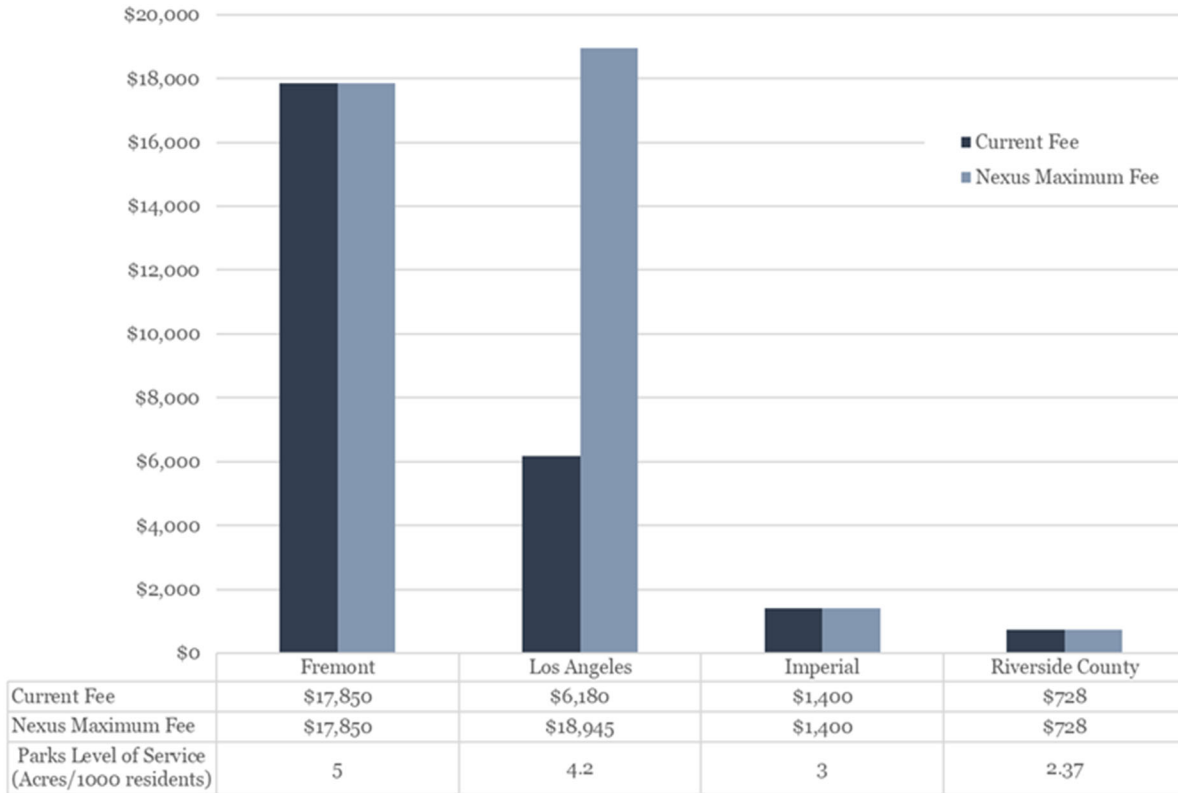
When Oakland implemented three new impact fees in 2016, the city set all three below the maximums determined by their nexus studies. For example, Oakland set a new capital improvement fee at 9 percent of the legal maximum determined by its nexus study, and Los Angeles set a parks fee at 33 percent of the legal maximum. Los Angeles chose to set their parks impact fee below the cap in order to preserve the feasibility of development for multifamily projects (the City's Quimby fee for single-family development is more expensive on a per-unit basis).

In contrast, Imperial City and Riverside County each set their parks fees at the maximum amount established in their nexus studies. However, both jurisdictions are among the localities that set lower levels of service, and have lower land and facility development costs; their nexus studies thus calculate low legal maximum fees.

Fremont both sets a high level of service for parks and pegs the related fee amounts to the legal maximum determined in the city's 2015 nexus study. The fees have since been subsequently increased to account for inflation.<sup>86</sup> Their current per unit parks fee amount is \$17,850, reflecting not only their high level of service, but also the high land and parks development costs (Figure 9).<sup>87</sup>



**Figure 9: Legal Maximum and Current Parks Fee Amounts Per Prototypical Multifamily Unit**



In some cases, localities lower their levels of service in their nexus studies in order to subsequently lower the fee amount and improve the feasibility of development. While Fresno’s parks level of service is 3 acres per 1,000 residents, the city relies on a lower level of service (2.4 acres per 1,000 residents) in its nexus analysis due to feasibility concerns.<sup>88</sup> Similarly, Sacramento’s general plan sets their parks level of service at 5 acres per 1,000 residents, but the central city’s parks impact fees were set based on lower standards (3.25 per 1,000 residents).<sup>89</sup>

Cities and counties rely on a variety of methods when setting fee amounts, but these do not always include a rigorous review of feasibility concerns.

Our interviews revealed that cities and counties generally set their fees using a few different methods. These methods range from an analysis of fees charged in adjacent jurisdictions to a full feasibility analyses to determine the amount of fees that the market can bear without slowing or stopping new development. The depth of analysis undertaken by localities is often a function of resources available. As a result, some localities do not commission additional analysis beyond a nexus study, and instead rely on more informal methods such as working groups comprised of individuals from the community with knowledge of the development process to inform their final decisions.<sup>90</sup>

While cities and counties generally attempt to make reasonable decisions when setting fees with limited information, there can be significant shortcomings in the rigor of their attempts to do so, and as a result, fees may not be set to optimize revenue without hindering new development. For instance, consultants shared that an analysis of fees in adjacent cities and counties is by far the most common level of quantitative analysis requested by clients to guide their decision-making. Cities and counties who rely on this analysis argue that setting fees in line with nearby localities acts as a proxy for development feasibility in their jurisdiction.

However, basing fees on what other jurisdictions are charging may not be the best approach to determining feasibility. Housing markets are highly localized, and the market for development can differ dramatically between jurisdictions, even those located in the same region. By relying solely on fee levels in adjacent or similar localities to inform their decisions, cities and counties may be under- or over-estimating the amount of fees that their local development markets can bear.

This type of analysis also does not include information on other sources of revenue that nearby jurisdictions may be leveraging to finance certain infrastructure needs (e.g. bonds, higher property taxes, or community facilities districts). For example, property tax allocations vary widely from locality to locality in California—one report found examples of cities receiving as much as 49 percent and as little as 3 percent of property tax revenue—and can greatly impact local infrastructure budgets.<sup>91</sup> As a result, while one locality may appear to have lower fees for a specific need, it may be the case that there are other revenue sources that that particular jurisdiction has access to that are not available to other localities. Similarly, a jurisdiction with higher fees may have funding limitations that a neighboring jurisdiction may not have, which can account for seemingly higher fee levels.

To account for this variation in revenue, some localities will request an infrastructure burden cost analysis. This approach provides a more in-depth view into how adjacent localities pay for their infrastructure by breaking down other sources of revenue that adjacent cities or counties are using. However, this form of analysis also does not examine market conditions, and therefore still faces shortcomings in that there is no information regarding what the development market can bear.

The most robust analysis is a feasibility study which determines the total fee amount that could be charged without slowing or stopping new development from taking place. Consultants noted that this is the most reliable form of analysis that can be undertaken. In a feasibility study, a range of “prototypical projects” (e.g. mid-rise projects, townhomes, single-family homes, etc.) are assessed, sometimes within city sub-markets. This level of analysis allows localities to see how the fee levels impact the feasibility of projects moving forward across different project types and locations. However, consultants noted that cities and counties “almost never” include feasibility studies along with nexus studies, with the exception of localities implementing new inclusionary zoning requirements or affordable housing fees.<sup>92</sup>

Interviews also raised some limitations of feasibility studies. While these studies may accurately capture local housing markets at the time they are conducted, they may have a short shelf-life. Market conditions can vary significantly over time, and feasibility studies only inform fee amounts at the time a locality updates or adopts a fee. Even a feasibility study that covers a variety of housing prototypes will not capture the full breadth of sites and projects that exist in a locality.

## Policy Considerations

Create a feasibility standard for determining fee amounts.

Cities and counties could be required to consider the impact of proposed fees and fee changes on new development by incorporating a feasibility standard into their decision-making process. Any consideration of feasibility should take into account the full universe of fees and exactions (e.g. exactions and fees the projects are subject to, above and beyond Mitigation Fee Act fees such as school fees) and review how these fees layer onto a development in the context of a local housing market. While most localities make “good faith” efforts to consider feasibility, the majority are not conducting analyses robust enough to fully account for the impacts that fees have on housing production. By requiring a feasibility standard alongside existing nexus study requirements, jurisdictions would be able to calibrate their development fees to maximize revenue without dampening development.<sup>93</sup>

Interviewees raised concerns about the added expense of feasibility studies, particularly in less-resourced localities. This is an important concern about this approach; less-resourced localities often need impact fees to fund the infrastructure necessary for development, and a requirement that makes it too expensive to devise and impose fees could have unintended consequences on their ability to raise revenue. Localities might see less value in development and thus not actively incentivize production, or may be encouraged to shift to less-regulated types of exactions on development, such as development agreements. If policymakers decide to implement a feasibility requirement, they should consider ways to lower its cost in the form of technical assistance and additional support to jurisdictions. The state should also consider the development of a feasibility tool, which cities and counties could use to fulfill the requirement. In the event a tool was available, localities could choose to conduct their own independently designed feasibility studies, which would be subject to HCD review and approval.

Localities with less resources could also combine funds and efforts to lower the costs of studies. Palo Alto and 15 San Mateo County jurisdictions participated in the 21 Elements effort to hire one consulting firm to conduct nexus and feasibility studies for the localities. The result of this group procurement strategy was costs for each jurisdiction at just 25 percent the cost of hiring consultants individually.<sup>94</sup> While this effort did not represent an inter-jurisdictional nexus study (in that a separate analysis was completed for each jurisdiction), it illustrates one way in which smaller localities can innovate to reduce the cost of feasibility analyses necessary to avoid unintended impacts on the housing market.

The state could cap impact fees based on a set formula.

One proposal to rein in unreasonable fees would be to establish a cap, which could lessen the costs of Mitigation Fee Act fees on development. However, our interviewees were almost unanimous in strongly discouraging a ceiling on impact fees, typically noting that it would likely be too blunt given the variation between highly localized housing markets, and could have negative unintended consequences.

Past state-level mandates limiting local revenue generation have led localities to increase funding from non-traditional sources and to fiscalize land use. The “taxpayer revolts” of the 1970s were a major reason that fees became increasingly common.<sup>95</sup> Localities in California have also responded to diminished tax receipts by using their powers of land use regulation to maximize the development of uses with the highest net financial benefits, such as car dealerships, and minimize development with the highest associated costs, such as housing for low- and moderate-income families.<sup>96/97</sup> A fee cap could make it more difficult to build housing, either by constraining resources in low resource communities, or

incentivizing localities to use regulatory tools to limit real estate development. To avoid the costs of development, localities could put in place a moratorium on building permit issuance (on the basis that the locality does not have the financial resources to provide necessary services) or could strategically zone to discourage density and/or limit growth.<sup>98/99</sup> Localities could also respond by reducing the levels of service for development used in their nexus studies, which could further erode lower levels of service in less-resourced jurisdictions.<sup>100/101</sup>

## Alternative Funding Options for City Infrastructure

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Over the past few decades, cities and counties in California have faced many of the same fiscal pressures as growing municipalities across the country. California jurisdictions, however, rely on fees to an exceptional degree.<sup>102</sup> Public finance theory suggests that the appropriate method of financing public infrastructure depends on the characteristics of the infrastructure itself, but California’s unique legal environment makes it difficult to achieve this goal. Intense growth pressures and severe limitations on taxes and other forms of local revenue generation have resulted in an increased reliance on fees and charges—often levied on new development—for a wide range of public services. Thus, any proposed reforms to fees should be considered in the context of the broader fiscal landscape facing California jurisdictions.

This section first broadly reviews the various methods Californian localities use to fund growth-related infrastructure, including impact fees, taxes, special assessments, user charges, intergovernmental transfers, and alternative revenue sources. A survey of local funding options highlights alternatives to fees, but also serves as a reminder that localities have limited options when funding infrastructure. We then review some of the diversity in capital improvement financing by presenting five case studies that cut across different geographic regions, growth rates, and residential densities. Finally, we draw on our findings to weigh different approaches that aim to encourage localities to shift away from their reliance on impact fees.

### Taxes

Local governments traditionally finance growth-related infrastructure through general taxes, such as sales or property taxes. Public finance theory suggests that general taxes represent the most efficient means of financing many types of growth-related improvements, from public safety facilities to schools and recreational facilities. However, some studies have found that development doesn’t “pay its own way” through increased tax receipts, suggesting a need for additional growth-related charges, at least for some public services.<sup>103/104</sup> In terms of equity, sales taxes can be regressive, while property taxes are more progressive. From an administrative and financial perspective, property taxes provide a relatively easy-to-administer, reliable stream of revenue to finance infrastructure. Property tax funds can also be used to back General Obligation (GO) bonds, which provide the lowest-cost financing available to local governments.<sup>105</sup>

Localities in California face major political hurdles to increasing general tax revenues for growth-related expenses. Some California localities already set taxes in their jurisdictions to the greatest extent allowed under state law. Under Proposition 13, raising additional tax revenue would require direct voter approval, often at a two-thirds threshold, which presents political difficulties. As previously noted, following the passage of Proposition 13, localities responded to the limitations on tax increases—and subsequent declines in general revenue—by increasing their fees, charging closer to “full cost” recovery.<sup>106</sup>

Californians have been willing to tax themselves for politically popular causes.<sup>107</sup> Some of these causes include growth-related infrastructure, such as the 0.5 percent sales tax assessed in three counties served by BART. The volatility of sales tax revenue can affect their suitability for debt financing, but dedicated BART revenues have supported the issue of highly-rated bonds. California's parcel tax to support schools is another dedicated tax that can support growth.<sup>108</sup> While dedicated taxes can garner more political support than general taxes, they provide less flexibility to governments to meet the needs of residents and voters, pose a larger administrative burden, and, crucially, face political hurdles due to their voter-approval requirements. Practically, even politically-popular tax measures require major campaigns to achieve the necessary levels of voter approval to pass, limiting their feasibility as a source of local revenue.

## Special Assessments

Localities often use special assessments as a method of financing growth. These involve the creation of a new district—typically capturing a new development—within which properties are charged on a per parcel basis to finance capital improvements. While, special assessments are not well-suited for marginal cost pricing, theory suggests that special assessments provide an economically efficient means of financing necessary improvements with low demand elasticity and large economies of scale, like stormwater facilities.<sup>109</sup> From a budgetary perspective, assessments represent a much more secure source of revenue than fees and are therefore better suited to secure debt, allowing for more flexibility in matching need for public services with investment. From an equity standpoint, assessments can be adjusted based on parcel characteristics which can roughly align with ability-to-pay criteria.

In California, Mello-Roos community facilities districts (CFDs) have proven to be a politically feasible method to finance growth-related infrastructure, particularly for greenfield development. Mello-Roos CFDs are not the only form of special assessment used in California, but they provide the greatest flexibility in the use of assessment proceeds.<sup>110</sup> While voters still need to approve the creation of the district by a two-thirds majority, localities often implement these districts in greenfield sites where landowners readily accept the assessment as a cost to unlock land value. Mello-Roos bonds are flexible and their proceeds can be used to fund any kind of local infrastructure. The bonds are secured by parcel taxes, a form of special taxes assessed as a charge on each parcel. Practically, localities typically use these bonds to finance public improvements like schools in large new subdivisions. They allow developers to pass the costs of improvements to future residents while avoiding the anti-growth sentiment of the larger electorate.<sup>111</sup> While the establishment and management of an individual special assessment district, such as a CFD, does not pose an outsize administrative burden, the proliferation of special districts (over 500 special districts of all types were established in California between 1982 and 2012, though some have since dissolved) can complicate administration. Experts noted that CFDs can undermine equity goals if levels of service are set higher than the rest of the locality, resulting in more expansive or higher quality infrastructure in the new community.

## User Charges

User charges are widely used and well-suited for some public services, such as road tolls, water and sewer charges, and parking fees. User charges are flexible enough to allow for marginal cost pricing. Financially, some user charges can be used to back revenue bonds, which offer a flexible, off-balance-sheet financing option for localities. <sup>112/113</sup>

However, user charges also have limitations. The service must be excludible, posing challenges to using fees for services like smaller roads and parks, unless agencies carefully enforce tolls and admittance fees. Charging for public services that are considered essential, such as water and sewer, raises ability-to-pay concerns, though some agencies have created assistance programs. Matching the timing of sources and uses can also pose a challenge for user charges, and raises equity and financial issues. Many infrastructure systems are built to accommodate anticipated growth and thus are expected to operate for at least a few years at less than full capacity. The challenge of financing these systems with user charges is that the initial pool of users being charged is, by design, relatively small. This means the early users may be charged more to support the initially oversized system. While financing could smooth this expected difference in per-capita charge between early and late entrants, it also adds expense by postponing the revenue streams and adding additional risk for bondholders. This problem is inherent to using user charges to finance growth-related infrastructure (although some scenarios, such as a toll road to a large new development, avoid this challenge).<sup>114</sup> While user charges provide stable financing for certain types of services, they are not always well suited to funding growth-related infrastructure.

## Intergovernmental Transfers

For decades the U.S. has moved in the direction of “fiscal federalism,” devolving the generation and spending of revenues for public services to the lowest possible level of government. Theoretically, this trend produces a number of advantages. Differences in local government policies regarding the provision of public services allows residents to “vote with their feet,” by moving to the locality whose mix of services best suits their needs. This mechanism also gives localities a motivation to compete for new residents which could, in theory, result in local governments that provide the most socially efficient mix of public goods and services at the lowest cost. Redistribution of resources, however, is much more difficult under a devolved fiscal authority. Fiscal federalism likely contributes to the widening wealth divide between localities, as prosperous localities capture a wealthy tax base, enabling them to provide excellent public services at tax rates that are the same or even lower than rates in less prosperous localities.<sup>115</sup>

The federal government and state governments are well-positioned to counter inter-municipal inequities, and both provide grant funding for large infrastructure projects. The federal government administers hundreds of grant programs,<sup>116</sup> such as Community Development Block Grant funds, which can be used for public facilities and improvements.<sup>117</sup> States also have the ability to engage in redistributive infrastructure investments, both by directing federal funds and own-source funds. There are a number of established programs through which California invests in local affordable housing, transportation, water, and sewer infrastructure, among others. Low-Income Housing Tax Credits, which fund affordable housing development, are funded by both the federal and state governments. Some local staff highlighted the new funds coming from the Road Repair and Accountability Act—typically referred to as SB 1 (Beall, 2017)—which disburses about \$5 billion in annual funding for local and state transportation projects.<sup>118</sup> The state also redistributes funding from cap-and-trade auction proceeds, funding uses including transit and affordable housing. For years the state has increased funding for certain programs through new bond issuances. California also recently created new funding streams, like cap-and-trade auction proceeds, which fund transportation infrastructure, the Affordable Housing and Sustainable Communities (AHSC) program, clean energy and efficiency programs, and natural resources and waste diversion programs.<sup>119</sup> Some interviewees raised equity concerns about the distribution of state and federal funds, however, questioning whether rural and urban areas received proportionate levels of support.



## Alternative Revenue Sources

As traditional sources of revenue for financing growth of public services has declined and growth pressures have held steady or increased, localities have increasingly turned to a wide variety of funding methods that are distinct from traditional methods. Some of these methods are outlined below. Many of these methods are designed to address specific problems, such as how to finance infrastructure that has regional impacts in the face of limited inter-governmental funds, while some, like the use of Tax Increment Financing (TIF), have broader applicability. Generally, however, the often innovative nonstandard financing measures that municipalities have deployed are better seen as the result of a constrained fiscal environment than as a real improvement in infrastructure finance relative to traditional methods.

Some of these alternative methods are similar to the funding strategies above. Limited obligation bonds, where a municipality pledges a specified amount of revenue, but without the backing of the full faith and credit of the municipality, are similar to tax-funded debt. San Jose and a few other California localities have enacted development taxes, which charge developers a percentage of the building valuation, or a charge based on other multipliers such as new floor area or unit. While they fall outside of the authority of the Mitigation Fee Act, development taxes function similarly to fees from the perspective of the real estate market. Special districts can issue securitized limited obligation notes (SLON) to access additional debt. These strategies do display important differences, however. Limited obligation bonds are a more expensive financing source than GO bonds. Development taxes provide general revenue and do not require a nexus study, unlike impact fees. SLON are limited to \$2 million per district, with terms of 10 years, backed by a pledge of dedicated revenue, but do not require voter approval, differentiating them from special assessment districts.<sup>120</sup>

Other methods are substantially different from traditional methods of infrastructure finance. Certificates of participation, which have become increasingly common, cannot be categorized as taxes, special districts, user charges, intergovernmental transfers, or fees. A municipality leases property from a third party (usually a nonprofit or Joint Powers Authority), and the third party issues certificates that provide buyers with the rights to a portion of the lease payments. Certificates provide a flexible funding source and do not require voter approval.

Tax Increment Financing (TIF), whereby bonds are issued to finance improvements that benefit a district, to be retired using earmarked increases in property tax revenue, has been used in the US for decades, though it has a complicated history in California. TIF was the foundation for Redevelopment Authorities in California, which were dissolved in 2012 in an effort to protect funding for core public services in a time of financial strain,<sup>121</sup> and amid critiques that Redevelopment did not generate additional economic growth and distorted the allocation of property tax revenue from local, regional, and state-level policy goals.<sup>122/123</sup> The dissolution resulted in offsetting about \$1.7 billion of state general funds.<sup>124</sup> TIF, however, remained possible in California, first through Infrastructure Finance Districts and later through Enhanced Infrastructure Finance Districts (EIFDs), Community Revitalization and Investment Authorities (CRIAs), and Affordable Housing Authorities (AHAs). TIFs are similar to special districts in their potential and limitations, and the legislative changes enacted in 2014 and 2015 that made EIFDs possible loosened the voter-approval, municipal eligibility, and TIF term limitations that had often made the first-generation of Infrastructure Finance Districts impractical. A few major projects have EIFDs as part of their financing strategies.<sup>125</sup> CRIAs function similarly to EIFDs, but are restricted to use in economically depressed areas



and do not require voter approval. AHAs may only finance the construction and rehabilitation of affordable housing projects with TIF, and do not require voter approval for debt.<sup>126</sup>

Still, localities have not been quick to implement EIFDs and other forms of TIF, and interviews surfaced a number of reasons for their reticence. Firstly, while Redevelopment Authorities had decades of economic growth contributing to revenue, new TIFs need time to begin reaping substantial levels of funding as the tax base expands. Secondly, the existing forms of TIF only collect the increment from local property tax, and many localities do not receive a large share of their property tax. In their current form, TIFs are most effective with a multijurisdictional partnership, which can be challenging in terms of garnering buy-in from agencies with larger tax increments. Thirdly, local governments are hesitant to structure new TIFs after going through the process of closing Redevelopment Authorities after they were dissolved. Finally, even if localities are able to structure a partnership and wait for EIFD revenue, the bond financing is less certain in that it is subject to voter approval.

Outside of Mello-Roos CFD parcel taxes, developer agreements, and impact fees—all of which levy fees and charges on new residential development—localities have few opportunities for own-revenue generation that are not subject to voter approval (such as local taxes and EIFDs). While the state has made some new funding sources available for infrastructure in recent years (such a revenue from SB 1 and 2 revenue), we heard from local staff that they face tight infrastructure budgets, and that impact fees represent a politically feasible and flexible tool for own-source revenue generation.

## Case Studies: City and County Budgets

The cost of infrastructure can vary widely by locality, depending on the age of public facilities and the rate at which the community is growing. In order to review some of this diversity, we examined Mitigation Fee Act fee revenue as well as total capital improvement program (CIP) sources and uses for Oakland, Fremont, Roseville, Los Angeles, and Riverside County—five localities that represent the diversity of city/county capital budgeting by (i) geographic region; (ii) growth rates and legacy infrastructure; (iii) uses of capital funding; (iv) sources of capital funding, with a focus on fees; and (v) level of service targets. Using data from fiscal year 2016–2017 municipal documents (including capital improvement programs, general plans, municipal budgets, and fee reports), we consider the diverse capital needs of those five municipalities and identify some of the funding methods used to meet those needs.

Growth rates and the need to replace legacy infrastructure vary among municipalities, which affects the importance of impact fees to the capital budget.

As a city or county grows, it needs to build additional infrastructure to serve its new population. Older cities will have more capital improvement costs directed towards replacing aging infrastructure systems. While localities can draw on Mitigation Fee Act fee revenue to build infrastructure for new residents, they need to draw on other sources of funding, such as user fees, to cover the cost of maintenance of existing infrastructure. Interviews with municipal finance experts highlighted that cities with significant levels of greenfield development will need to build out entirely new infrastructure systems, from roads to sewers, and impact fees can function to evenly distribute the burden of that cost among developers, rather than charging the first or last developer for a disproportionate share of the infrastructure. Alternatively, some cities that have extensive new infrastructure may require less updating to serve new residents, particularly those moving into infill developments.

Our case study localities run the gamut, from historic cities with more maintenance needs, to newer localities aiming to build out systems of infrastructure for their growing population (Table 5). Oakland and Los Angeles are older cities and have substantial legacy infrastructure systems. While both Los Angeles and Oakland have grown recently, both cities have also been effectively built-out for decades. In contrast, Roseville, which experienced the fastest pace of growth among our sample, grew from about 18,000 residents in 1970 to 135,000 in 2017; a substantial portion of which came from greenfield development. Fremont’s growth—the second fastest among the five jurisdictions—has historically come from greenfield development of single-family homes, but the city is getting close to being built out and its new units are increasingly coming in the form of multifamily infill projects. And even growing cities can face maintenance challenges. For example, Roseville expects to defer \$5.6 million of capital expenditures per year over a decade.<sup>127</sup>

**Table 5: Descriptive Statistics for Case Study Localities**

Jurisdiction	Population, 2016	Population Growth Rate, 2012-2016	Permitted Units, 2016	Impact Fee Revenue, FY 2016-17	Capital Improvement Program Budget, FY 2016-2017
Oakland	420,005	4.6%	2,136	\$ 1,406,000	\$ 32,150,843
Fremont	233,136	5.2%	622	\$ 19,098,186	\$ 28,915,025
Roseville	132,671	6.9%	920	\$ 26,156,394	\$ 57,517,180
Los Angeles	3,976,322	3%	13,890	\$ 10,319,890	\$ 467,750,859
Riverside County (Unincorporated)	364,413	2.2%	1,512	\$ 6,382,504	\$ 24,892,719

*Data Sources: US Census Bureau population estimates, US Department of Housing and Urban Development State of the Cities Data Systems permit data, annual fee reports, and municipal budgets.*

In the next section, we review the CIP budgets and annual impact fee revenue for our five case study localities, grouped by region: Oakland and Fremont are situated in the Bay Area, Roseville is located in the Sacramento region, and Los Angeles and Riverside County represent the Los Angeles area. While these case studies depict a snapshot of local budgeting in a handful of places, they highlight important patterns in the way different types of localities structure the sources and uses of their infrastructure budgets and prioritize fee uses.

**A note about the following tables.**

It is extremely difficult to separate growth-related capital needs from maintenance and replacement needs using only publicly available documents. Even with a limited number of cases, our research team could not separate out growth-related investments from the maintenance and replacement of existing infrastructure using Capital Improvement Plans alone. Still, the capital uses of funds provide a general sense of the magnitude of capital expenditures against which to compare fee collection. The data and visualizations below are intended to show the relative importance of fees relative to other sources of capital sources and a rough breakdown of capital sources between diverse localities.

The figures and tables below show the sources and uses reported in the municipalities' capital improvement program budgets and the impact fee revenue reported in the municipalities' annual impact fee reports. Fee revenue is used as a source in the capital improvement program budgets, but is often expended over a number of years, depending on infrastructure project timelines.

Fee uses vary from our analysis of prototypical projects due to the fact that this analysis looks at all reported impact fee revenue within a single jurisdiction— it includes neighborhood level fees that may not apply to our prototypical projects and excludes fees implemented by overlapping jurisdictions (e.g. the total fee revenue for a city does not include county fees).

# Oakland

**City of Oakland**  
**FY 2016-2017**

**Capital Improvement Program**

<b>Sources</b>	
General Fund: General Purpose	\$ 252,000
Measure B: ACTIA	\$ 7,249,855
Measure B: Bicycle/Pedestrian Pass-Thru Funds	\$ 798,922
Measure BB - Alameda County Transportation	\$ 5,484,066
State Gas Tax	\$ 150,000
Lighting and Landscape Assessment District	\$ 15,000
Development Service Fund	\$ 200,000
Sewer Service Fund	\$ 18,001,000
<b>TOTAL</b>	<b>\$ 32,150,843</b>
<b>Uses</b>	
Buildings and Facilities	\$ 252,000
Parks & Open Space	\$ 15,000
Sewers & Storm Drains	\$ 18,001,000
Streets & Sidewalks	\$ 9,753,367
Traffic Improvements	\$ 4,129,476
<b>TOTAL</b>	<b>\$ 32,150,843</b>

While Oakland is only one-ninth the size of Los Angeles, it is also a relatively large city that has been built-out for decades. Responding to rising housing prices, Oakland has focused on increasing its housing supply, and the city permitted 2,136 units in 2016. The city's capital budget shows some stress. Effectively no general revenue is used in the capital budget; instead, most of the funding comes from sewer user charges. Nearly all remaining funding comes from voter-approved bond issuances to pay for needed improvements to the city's street and transportation systems. Recently, the city passed measure KK, a property-tax-funded bond to support needed basic infrastructure improvements to the city's streets, buildings, water, and energy systems. The CIP budget does not include a line item for water, which may reflect a difference in service responsibility compared to other localities.

**City of Oakland**  
**FY 2016-2017**

<b>Impact Fee Revenue*</b>	
Affordable Housing Impact Fee	\$ 477,824
Jobs/Housing Impact Fee	\$ 303,360
Transportation Impact Fee	\$ 483,269
Capital Improvements Impact Fee	\$ 141,547
<b>TOTAL</b>	<b>\$ 1,406,000</b>

\*Because Oakland's impact fee program started on September 1, 2016, the fee revenues shown do not represent a full fiscal year.

Oakland has four significant development impact fees. The Capital Improvement Fee funds a wide range of growth related capital needs including libraries, police and fire stations, and parks. The Transportation Impact Fee funds a wide range of growth-related transportation improvements. The amount shown in the table above is also relatively low because the fee program was first collected in September of 2016, midway through the fiscal year, and Oakland increased their fees over time. In addition, because Oakland’s fee schedule allows developers to pay part of the fees later in the construction schedule, the amount collected in FY 2016-17 was lower than the amount assessed. Finally, many current projects were vested when the new fees came online, limiting fee revenue in the first few years of implementation. Most of the development impact fees that Oakland assesses are aimed at improving the city’s housing affordability. The city assesses the Housing Affordability Fee on residential development and the Jobs/Housing Impact Fee on commercial development. Both go to the city’s Housing Trust Fund. These fees are relatively new and the funds were too small to be used as a source in the FY 2016-17 capital budget.

## Fremont

**City of Fremont**  
**FY 2016-2017**

**Capital Improvement Program**

<b>Sources</b>	
Capital Improvement Fund (501) Fund	\$ 6,235,000
Gas Tax Funds Group	\$ 10,075,000
Traffic Impact Fee Fund Group	\$ 2,161,250
Pedestrian and Bike Fund Group	\$ 1,218,500
Park Facilities Development & Renovation Group	\$ 4,860,275
Committed/Restricted Funds Group	\$ 4,365,000
<b>TOTAL</b>	<b>\$ 28,915,025</b>
<b>Uses</b>	
Transportation Improvements	\$ 7,904,000
Parks and Recreation	\$ 5,013,000
General Government	\$ 2,268,000
Capital Maintenance	\$ 13,730,000
<b>TOTAL</b>	<b>\$ 28,915,000</b>

Fremont is a mostly built-out Bay Area city with approximately 233,000 residents in 2016. In FY 2016-2017, the city permitted 622 new housing units. A little less than half of Fremont’s capital budget was composed of capital maintenance projects, which are not eligible to be funded with fee revenue. These projects include the maintenance of streets, such as street sealing, and the rehabilitation of municipal buildings. Much of the funding for maintenance is provided by general fund dollars and state gas tax funds. In addition to maintenance, Fremont has been redesigning and redeveloping substantial pieces of municipal infrastructure, such as demolishing streets and rebuilding them to be more pedestrian and bike friendly. These projects fall under the category of “general government” and are funded largely with local tax dollars and competitively awarded funds from the state. Lastly, Fremont has been building new park

and transportation improvements. Park expansion is funded almost entirely with fee revenue, while transportation improvements are funded with a mix of fee, tax, and user charge revenue.

**City of Fremont**  
**FY 2016-2017**

<b>Impact Fee Revenue</b>	
Parkland Fees	\$ 4,755,094
Park Facilities Fees	\$ 9,552,317
Traffic Impact Fees	\$ 2,479,761
Capital Facilities Fees	\$ 2,015,435
Fire Facilities Fees	\$ 295,579
<b>TOTAL</b>	<b>\$ 19,098,186</b>

Fremont has five substantial impact fees, ranging from capital facilities to traffic improvements. Fremont collected more than \$19 million in fee revenue in FY 2016-2017, with the majority earmarked for parks. Fremont’s parks fee rate reflects a high level of service standard for parks (five acres per 1,000 residents) and high acquisition costs of land.

## Roseville

**City of Roseville**  
**FY 2016-2017**

<b>Capital Improvement Program</b>	
<b>Sources</b>	
General Fund	\$ 6,110,250
Enterprise Fund	\$ 33,301,500
Special Revenue	\$ 5,170,250
Capital Project Funds	\$ 12,935,180
<b>TOTAL</b>	<b>\$ 57,517,180</b>
<b>Uses</b>	
Public Building Projects	\$ 515,000
General Projects	\$ 13,490,155
Drainage Projects	\$ 216,500
Street Projects	\$ 11,630,525
Water Projects	\$ 5,785,500
Wastewater Projects	\$ 3,113,500
Park Projects	\$ 846,000
Golf Course Projects	\$ 90,000
Electric Projects	\$ 21,830,000
<b>TOTAL</b>	<b>\$ 57,517,180</b>

Roseville is a rapidly growing suburb of about 133,000 residents in the Sacramento metro area and has seen extensive greenfield development and annexation in recent years. City staff noted that Roseville generally refrains from subsidizing infrastructure for new development with general funds, instead relying



heavily on impact fees and Mello-Roos CFDs. All growth-related road projects are paid for with fees, while road maintenance is paid for with gas tax funds. The city also relies on special district revenue to fund street lighting and landscape maintenance. Water, sewer, and electric maintenance and rehabilitation projects largely rely on user fees, while impact fees pay for capacity and new conveyance improvements. Electrical infrastructure built to support new growth is paid via direct installation charges, rather than impact fees. Roseville’s capital uses consist of general projects (including parks and landscape maintenance and capital IT projects), street projects, and water and sewer. Roseville also has its own power plant and builds its own electrical infrastructure, a rare occurrence among localities, and electric projects represented a sizable capital cost of almost \$22 million in FY 2016-2017.

**City of Roseville**  
**FY 2016-2017**

<b>Impact Fee Revenue</b>	
Drainage Fees	\$ 647,156
Public Facilities Fees	\$ 3,503,202
Sewer Connection Fees	\$ 506,050
Water Connection Fees	\$ 9,029,141
Traffic Mitigation Fees	\$ 1,082,990
Animal Control Facility Fee	\$ (1,212)
Parks Fees	\$ 5,112,062
Electric Backbone Impact Fees	\$ 2,064,156
Solid Waste Impact Fees	\$ 691,473
Development Agreement Fees	\$ 3,521,376
<b>TOTAL</b>	<b>\$ 26,156,394</b>

Roseville has a host of impact fees, mainly focused on funding utilities and traffic/road costs. Many of these fees are specific to certain areas of greenfield development, and are aimed at covering the high cost of extending infrastructure to previously undeveloped parts of the city.



# Los Angeles

**City of Los Angeles**  
**FY 2016-2017**

**Capital Improvement Program**

<b>Sources</b>		
General Fund	\$	22,103,627
Special Gas Tax Street Improvement Fund	\$	686,000
Stormwater Pollution Abatement Fund	\$	2,243,200
Sewer Construction and Maintenance Fund	\$	245,327,000
Park and Recreational Sites and Facilities Fund	\$	3,000,000
Street Lighting and Maintenance Assessment Fund	\$	1,190,000
Local Transportation Fund	\$	1,595,322
MICLA - Municipal Facilities	\$	141,605,710
GO Bonds - Physical Plant	\$	50,000,000
<b>TOTAL</b>	<b>\$</b>	<b>467,750,859</b>
<b>Uses</b>		
Arts and Cultural Opportunities	\$	167,840
Buildings and Facilities	\$	12,404,787
Recreational Opportunities	\$	3,000,000
Street Repair and Improvement	\$	7,017,860
Street Lighting	\$	2,440,000
Bikeway & Pedestrian Improvements	\$	1,595,322
Stormwater	\$	3,443,200
Contingencies	\$	749,140
Clean Water Facilities (Sewer, Reclamation, Treatment)	\$	245,327,000
Capital Repair and Street Lighting	\$	141,605,710
Clean Water Facilities - Prop. O Projects	\$	50,000,000
<b>TOTAL</b>	<b>\$</b>	<b>467,750,859</b>

The City of Los Angeles is by far the largest city in California, with a current population of 4 million. It continues to grow, and permitted 13,890 new units in 2016. Los Angeles' capital budget for fiscal year 2016-2017 was over \$467 million, a significant portion of which was earmarked for clean water facilities such as sewer and reclamation. These expenses were paid in part using the Sewer Construction and Maintenance Fund, which was mostly funded with user charges billed on metered water use, as well as sources including the city's General Fund, which is funded by taxes and general obligation bonds. Revenue from the parks impact fees is funneled into the Parks and Recreational Sites and Facilities Fund. Substantial expenditures in 2016-2017 included buildings and facilities, street repair and lighting, and stormwater improvements. Transportation improvements were largely funded with sales tax revenues, mostly with the state gas tax and also a local sales tax. Street lighting costs were partially supported by special assessments on property owners, and sewer construction and maintenance was largely funded by user charges. The City of Los Angeles also receives funding from federal and state grants, but they are earmarked for specific projects and not included in the capital budget above.

**City of Los Angeles**  
**FY 2016-2017**

<b>Impact Fee Revenue</b>		
Parks Fee	\$	4,454,627
Affordable Housing Linkage Fee		<i>Collected beginning June 2018</i>
Parking Fee	\$	11,114
Traffic Congestion Fee	\$	5,854,149
<b>TOTAL</b>	<b>\$</b>	<b>10,319,890</b>

In FY 2016-2017, Los Angeles collected more than \$10 million in fee revenue. The only impact fee at the time was the parks fee, which is only collected from multifamily units (single-family units must provide parks or pay a Quimby in-lieu fee). The city currently collects an affordable housing impact fee, but the fee only became effective in 2018.

## Riverside County

**Riverside County**  
**FY 2016-2017**

<b>Capital Improvement Program</b>		
<b>Sources</b>		
Revenue from Use of Money and Property	\$	891,264
Charges for Current Services	\$	40,280,805
Other Revenue	\$	10,194,611
Operating Transfers in	\$	5,249,715
Use of Department Reserves	\$	(31,723,676)
<b>TOTAL</b>	<b>\$</b>	<b>24,892,719</b>
<b>Uses</b>		
Accumulative Capital Outlay Fund	\$	189,600
Capital Improvement Program	\$	15,965,062
Developers Impact Fee Operations	\$	5,361,663
Mitigation Project Operations	\$	56,283
Tobacco Securitization	\$	3,281,714
Wine Country CRA Capital Improvement Fund	\$	38,397
<b>TOTAL</b>	<b>\$</b>	<b>24,892,719</b>

Unincorporated Riverside County has a substantial population, with approximately 364,000 residents in 2016.<sup>128</sup> In 2016, the jurisdiction permitted 1,512 new units. The capital budget for Riverside totaled about \$25 million. It should be noted that unincorporated areas typically have much lower development standards than incorporated areas, lowering the cost of infrastructure maintenance and improvements. Funding for Riverside County in FY 2016-2017 included general fund revenue, largely from sales taxes as well as service charges. Large capital projects are not included in the Capital Improvement Program budget, as they are bond-financed with various debt structures including lease-revenue bonds. Separate from the Capital Improvement Program, the County has a development impact fee program established to build out growth-related infrastructure. Even adding the separate fee-supported capital funding and

bond-funded projects, Riverside County’s capital budget appears small relative to its growth and population. This is because the county is responsible for a relatively limited set of capital needs for the unincorporated parts of the county. Funding for growth-related transportation, sewer, water, street lighting, and landscaping improvements comes mostly from Community Facilities Districts and other special district debt facilities.

**Riverside County**  
***FY 2016-2017***

<b>Impact Fee Revenue</b>	
Development Impact Fees	\$ 5,878,492
Transportation Mitigation Fees	\$ 504,012
<b>TOTAL</b>	<b>\$ 6,382,504</b>

The impact fee program collected about \$6.4 million in FY 2016-17 with fee revenue earmarked for specific types of improvements.<sup>129</sup> The majority of Riverside County’s fee revenue was set aside for transportation and capital improvement projects. The county generated substantial funds for fire and parks as well. Library and environmental fees raised the lowest revenues.

## Case Study Takeaways

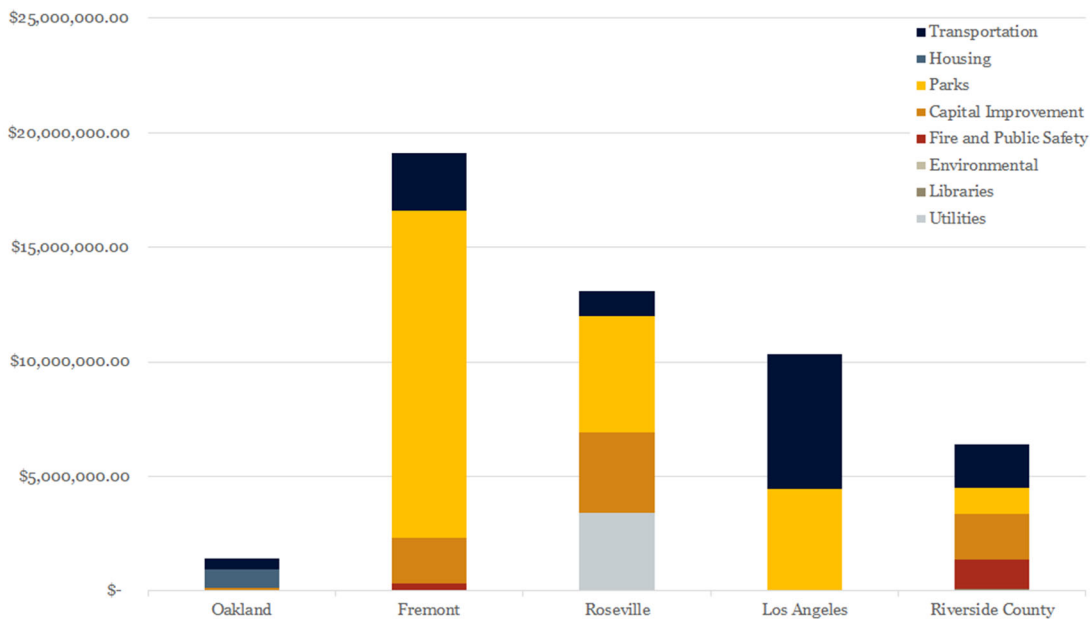
Impact fee revenue varies widely, reflecting differences in local needs and priorities.

Our case studies display a variance in fee revenue indicative of the breadth of ways in which localities rely on impact fees to fund public services (Figure 10). Fremont collected the highest amount of fee revenue among the case studies. This reflects the fact that Fremont grew at a substantial rate, while also charging the highest and second-highest impact fees for our multifamily and single-family prototypical projects, respectively, primarily driven by its prioritization of a high level of service for park land and facilities. Roseville, a city that has seen significant levels of greenfield development recently and that depends on impact fees to fund development-related infrastructure like transportation and utilities, collected the second highest amount of impact fee revenue in 2016 among our case studies. Riverside County collected a little more than \$6 million in fees, relying on revenue to fund a variety of services, including parks, transportation, fire, and library improvements.

Of the five jurisdictions we reviewed, Oakland collected the lowest amount of revenue via impact fees, but that may be more reflective of the fact that Oakland’s fee program was very new in FY 2016-2017, and many of the projects under construction had been grandfathered out of the program. In addition the fee rates were initially set at relatively low amounts, and stepped up in subsequent years, so this figure is not representative of the current levels of revenue. Still, the types of fees collected by both Oakland and Los Angeles are indicative of their statuses as cities that are experiencing growth but that also are already more built out. Oakland rarely sees greenfield development, and therefore requires less funding for new, development-related public systems. Instead, because of displacement pressures,<sup>130</sup> Oakland prioritizes affordable housing fees. Los Angeles also recently implemented affordable housing fees; interviews with staff highlighted that federal and state cuts to affordable housing funding led the city to rely on impact fees as an additional source of revenue. Staff also noted that parks are a priority for Los Angeles, and the

city asks development to support new parks within a certain radius of the project in order to maintain existing levels of service.

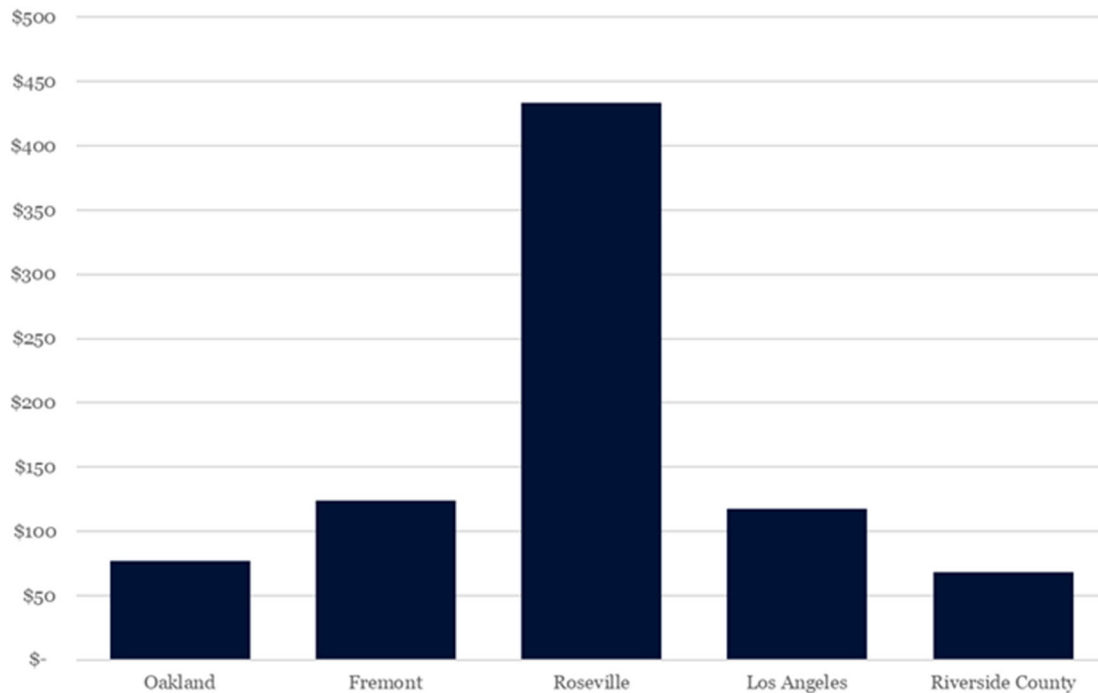
**Figure 10: Impact Fee Revenue (FY 2016-2017)**



The total cost of capital improvement plans provides insight into the needs and constraints faced by different types of localities.

Among the case study cities, Roseville has the highest capital improvement costs per person, likely stemming from the high cost of the greenfield development that fuels the city’s high growth rate (Figure 11). Conversely, Riverside County required the lowest amount of funds per-capita; this reflects the fact that some counties are responsible for a lower level of public services, which are typically subsidized by incorporated cities. In addition, the unincorporated areas of Riverside County had the lowest growth rate in our sample, resulting in fewer capital improvement needs. Fremont and Los Angeles’s capital improvement program costs are similar in magnitude. Although Los Angeles is growing less quickly than Fremont, the city is older and may face more maintenance needs. Oakland spends less than Los Angeles, perhaps due more to local budgeting constraints than differences in maintenance needs.

**Figure 11: Budget for Capital Improvement Program Per Resident (FY 2016-2017)**



Localities also take very different approaches to financing growth, both in terms of what they fund and the way they structure funding.

While some generalizations can be made about the funding of public services across municipalities (for example, sewer systems are often funded in part by user charges) there is substantial variation in the funding of many basic services. The City of Roseville provides a wide range of public services and collects fees to fund much of this growth. Unincorporated Riverside County, however, provides a relatively limited set of public services, and funds what it does provide largely through various special districts with special assessments.

The older, more built-out cities in our case studies used impact fees differently, rarely exacting large fees for transportation or utility infrastructure. Los Angeles collects fees for parks and affordable housing but uses other mechanisms to address its other substantial capital needs. Los Angeles's CIP was largely composed of wastewater and street investments which were paid for primarily by sewer user charges, taxes, and parking charge revenue. Similarly, while Oakland has recently implemented capital improvement and transportation impact fees that are meant to support growth-related infrastructure, the city had not collected enough fee revenue to use them as CIP sources in FY 2017-18. Like Los Angeles, most of Oakland's sources of capital revenue in this period came from taxes and user charges.

While it can be difficult to parse out the proportion of CIP budgets funded by fee revenue—in part because budgets are annual while fee-based revenue can be spent down over multiple years—the comparative sizes of budgets and fee revenues collected in a given year can provide insight into a locality's funding priorities, as well as the extent to which the locality relies on fees to fund capital improvements. For instance, in newer, more suburban towns like Fremont and Roseville, fee revenue in 2016 was higher compared to the size of the 2016-2017 CIP budgets. Fremont collected \$19 million in fee revenue in 2016,

about 66 percent of the size of their CIP budget that year, which totaled \$29 million.<sup>131</sup> Much of that revenue came from parks fees. While many of Roseville's capital sources came from taxes (general fund and special revenue) as well as user charges, fee revenue totaled about 45 percent of the size of their CIP budget in 2016. Slower-growing Riverside County's fee revenue was the second lowest of the sample, but it represented about 26 percent of their CIP in 2016.

The more urban, built out cities collected a much smaller proportion of fee revenue—Oakland's nascent Transportation and Capital Improvement fee revenue only totaled 2 percent of the size of their capital improvement expenses; instead, the city collects most of their fees to support affordable housing development. Oakland relies more heavily on user charges and voter-approved bond issues to pay for its capital improvements. Los Angeles' fees were only 3 percent the size of their 2016-2017 CIP. Again, Los Angeles's fee program was also new, and the city relies on other fee types for capital improvements, such as Quimby fees, as well as user charges, state and local taxes, and federal and state grants.

## Policy Considerations

Require cities and counties to justify why an impact fee is the most appropriate mechanism to fund the proposed infrastructure.

While fees may be a reasonable mechanism to generate needed revenue, particularly given constraints on local revenue alternatives, the state could require localities to justify these decisions by evaluating alternative funding strategies and weighing their costs and benefits. In reviewing alternative options, localities could weigh long-term budgeting concerns alongside housing production and affordability goals. It may mean that some localities would need to better integrate capital improvement planning and budgeting with land use planning and development standards. If the state were to consider requiring a justification, the requirement might be paired with new feasibility standards that would accompany the consideration of a new fee. However, interviewees noted that this requirement would represent a substantial increase in costs for localities, and would likely require state support to implement, particularly for smaller jurisdictions with less capacity. In addition, because localities have few feasible funding alternatives, this process may not ultimately discourage the adoption of new fees. For these reasons, interviewees voiced concern that this approach may increase regulation and local administrative costs with limited impact to the structure of local infrastructure financing.

Build local capacity to use other forms of infrastructure funding.

While localities are limited in their options to raise revenue for infrastructure, some relatively new forms of financing, such as Enhanced Infrastructure Finance Districts (EIFDs) and Community Revitalization and Reinvestment Authorities (CRIA) to implement tax increment financing (TIF), could help to ease the pressure on budgets. TIFs are more politically feasible than some other funding measures, and the resulting revenue can fund infrastructure needed to support new residents, which could reduce reliance on impact fees as a revenue tool. However, few localities have implemented TIFs, due in part to the inter-agency buy-in required to reap significant financial gains under their current structure. The state could support local capacity to coordinate inter-jurisdictional TIFs and other alternative funding mechanisms.

Interviews also highlighted the importance of the state's role in building local capacity to apply for grants and increase awareness of new state funding programs. In the past few years, California voters have approved a number of measures funding infrastructure, but experts pointed out that smaller localities



may struggle to find the capacity to seek out and apply for this funding. By improving access to existing funding sources, the state can relieve some of the pressure on local budgets that leads jurisdictions to rely on tools like impact fees.

## Revisit ways to better support local infrastructure and planning, including statewide tax reform.

Our interviews almost unanimously highlighted a key driver of local reliance on impact fees: limited sources of funding. As previously discussed, state regulation of local tax revenue—including limitations on property taxes, and the two-thirds majority needed to increase local special taxes under Proposition 13—severely restrict the ability of localities to raise funds to build and maintain infrastructure. Almost every interviewee cited Proposition 13 as a key driver underlying the increasing use of local exactions on development. If the state wishes to lower impact fees but also ensure sufficient infrastructure funding, it should consider pathways to adjust Proposition 13 in order to expand the capacity of localities to generate their own revenue.

If the state wishes to lower the burden of fees on new residential development, it should also consider new programs to support local infrastructure. This could come in the form of incentivizing development by providing additional funding to localities that meet their RHNA allocations for affordable units, or by restructuring TIF tools to increase their funding power. There are a number of current proposals to increase state funding for local projects, and they should be considered with an understanding that limited budgets for local infrastructure often lead to higher fees on new housing development.

Broader reform also requires inter-governmental coordination and planning. California currently has 18 metropolitan planning organizations, 58 counties, 327 transit organizations, 482 cities, and 4,975 special districts. The state has established procedures to plan for growth including, for example, the production of general plans including housing and other mandatory elements, RHNA allocations, and SB 375 (Steinberg, 2008) integrating transportation and housing at a regional scale. These processes are intended to work in concert to provide a detailed growth management strategy for the entire state and provide mechanisms to finance growth from sources at different levels of government. In practice, however, these systems are under-resourced, and the legal, political, and funding frameworks have not led to growth in line with established plans.<sup>132</sup>

Any changes to the systems by which infrastructure is financed should be part of a larger plan to ensure that various levels of government have the powers and financial resources to plan for and facilitate growth, and that the benefits and costs of growth are allocated equitably across the state.

## Conclusion

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Impact fees represent an important tool for localities to raise revenue for the expanded infrastructure needed to support new housing development. Our review of impact fee implementation in cities and counties across California found that greater fee transparency could help shed light on often obscure fee stacks, lowering risk for developers and helping policymakers make more informed decisions about infrastructure funding. Rethinking the structure of fee rates and schedules may provide opportunities to lower costs and incentivize the types of units that will help California reach its housing and environmental



goals. More ambitious changes could be made earlier in the fee design process, when impact fees are first proposed, considered, and developed. By refining standards for nexus studies, policymakers may be able to rein in impact fees and thus facilitate housing development. Other proposals look beyond the current process of fee implementation to consider additional, more stringent requirements aimed at lowering fees, such as adding a feasibility analysis to help ensure that fees do not negatively impact future housing supply.

While all the proposals explored in this report aim to lower the cost of impact fees, each comes with its own costs and benefits. Policymakers should not only consider how those trade-offs align with their policy goals, but also how various reforms would interact with each other if adopted; some may be more effective in tandem with others (e.g., increased transparency is necessary to identify overly burdensome fees but may not be sufficient to rein in any outliers), while some represent different options to achieve a similar goal (e.g., capping fees to avoid unreasonable costs versus including a feasibility requirement to ensure local markets can support development with the fee levels under consideration).

As policymakers consider what the most effective slate of reforms to Mitigation Fee Act fees would be, they should assess the potential impacts of those reforms within the broader fiscal and budgetary context facing California's jurisdictions. Impact fees represent just one of many types of fees and exactions on new development that localities rely on to fund necessary infrastructure amid substantial restrictions on local sources of revenue generation. California can better facilitate housing production and affordability at the local level; the question is how to do so while balancing local budgeting realities with state policy goals. Providing support for local infrastructure needs and enabling localities to change their revenue structures could reduce the reliance on impact fees, and understanding the consequences of each change will be crucial before implementing final reforms.

## Appendix A. Scan Cities and Counties

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|----------------------|-----------------------|
| 1. Antioch           | 21. Pasadena          |
| 2. Arcata            | 22. Redwood City      |
| 3. Bakersfield       | 23. Riverside         |
| 4. Burbank           | 24. Riverside County  |
| 5. Carlsbad          | 25. Roseville         |
| 6. Chico             | 26. Sacramento        |
| 7. Elk Grove         | 27. Sacramento County |
| 8. Fairfield         | 28. San Diego         |
| 9. Fremont           | 29. San Francisco     |
| 10. Fresno           | 30. San Jose          |
| 11. Glendale         | 31. San Rafael        |
| 12. Huntington Beach | 32. Santa Cruz        |
| 13. Imperial         | 33. Santa Maria       |
| 14. Irvine           | 34. Santa Monica      |
| 15. Long Beach       | 35. Sonoma            |
| 16. Los Angeles      | 36. Stockton          |
| 17. Los Banos        | 37. Sutter Creek      |
| 18. Merced           | 38. Truckee           |
| 19. Oakland          | 39. Tustin            |
| 20. Ontario          | 40. West Hollywood    |

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<sup>29</sup> Interviews raised concerns about the rigor of oversight for permitting and utilities fees, and some have proposed subjecting these fees to the same protest and audit provisions that apply to MFA fees. In *Barratt American, Inc. v. City of Rancho Cucamonga* (2005), the California Supreme Court found that permit and plan review fees were not subject to the Mitigation Fee Act's protest period or its individual refund remedy. Instead, the Court held that the remedy for permit and plan review fees was found in CA Gov. code §66016—any excess revenue would be put towards reducing the fees in the future. The Court also ruled that the period of limitations for permit and plan review fees fell under the authority of §66022, meaning that a protest must be filed within 120 days of the passage of the ordinance or resolution (or an amendment to the ordinance or resolution), not 90 days within the imposition of the charge on a project. Finally, the ruling held that local agencies do not need to complete annual audits of their permit and plan review fee revenue. Similarly, §54999.35 sets a 120-day limitation period for protesting capital facilities fees for utilities. This window to request a fee refund begins on the date that an ordinance, resolution, or motion becomes effective. While interviewees raised the issue of increasing oversight for non-Mitigation Fee Act fees, we refrain from addressing it in detail here in order to maintain a focus on impact fees.

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- <sup>67</sup> This graphic displays type and basis of the Mitigation Fee Act fees exacted on the prototypical multifamily and single-family projects, as identified through research and interviews with staff at each case study locality. Non-residential impact fees, and impact fees restricted to certain parts of a locality may not be represented.
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- <sup>75</sup> McNeill, J., & Dollery, B. (2003). Calculating developer charges for urban infrastructure: a feasible method for applying marginal cost pricing. *Engineering Economist*, 48(3), 218–240. Retrieved from <https://doi.org/10.1080/00137910308965063>
- <sup>76</sup> Burge, G. S., Trosper, T. L., Nelson, A. C., Juergensmeyer, J. C., & Nicholas, J. C. (2013). Can Development Impact Fees Help Mitigate Urban Sprawl? *Journal of the American Planning Association*, 79(3), 235–248. Retrieved from <https://doi.org/10.1080/01944363.2014.901116>
- <sup>77</sup> Planners address this concern in a number of ways beyond neighborhoods-specific fees. A typical practice is to reimburse developers that build sections of needed infrastructure, and provide fee credits for infrastructure already in place. Finally, jurisdictions often rely on other financing methods for greenfield developments, such as community facilities districts (CFDs), also known as Mello-Roos CFDs.
- <sup>78</sup> Western Riverside Council of Governments. (2018, November 21). Episode 2: The One About TUMF [Audio podcast]. *WRCOGcast*. Retrieved from <http://www.wrcog.cog.ca.us/283/WRCOGCast>.
- <sup>79</sup> City of Sacramento. (2016). *Approving the Nexus Study and Supplemental Environmental Impact Report and Adopting the Voluntary I-5 Subregional Corridor Mitigation Fee Program* (Noticed 03/25/2016). Sacramento, CA: Public Works Department. Retrieved from [http://sacramento.granicus.com/MetaViewer.php?view\\_id=22&clip\\_id=3787&meta\\_id=464424](http://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=3787&meta_id=464424)
- <sup>80</sup> It should be noted that RHNA allocations may not be a perfect reflection of housing needs; the allocation process has been criticized as influenced by local politics, with some wealthy enclaves exiting the process with relatively few units.

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- <sup>81</sup> City of Sacramento. (2016). *Approving the Nexus Study and Supplemental Environmental Impact Report and Adopting the Voluntary I-5 Subregional Corridor Mitigation Fee Program* (Noticed 03/25/2016). Sacramento, CA: Public Works Department. Retrieved from [http://sacramento.granicus.com/MetaViewer.php?view\\_id=22&clip\\_id=3787&meta\\_id=464424](http://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=3787&meta_id=464424)
- <sup>82</sup> Willdan Financial Services. (2014). *County of Riverside Development Impact Fee Study Update Final Report*.
- <sup>83</sup> (2011). *City of Fremont General Plan: Parks and Recreation*. Retrieved from <https://www.fremont.gov/DocumentCenter/View/4672/08-Parks-and-Recreation?bidId=>
- <sup>84</sup> Fees are also allowed to increase by annually at the rate of inflation.
- <sup>85</sup> Cal. Gov. Code § 66477.
- <sup>86</sup> While Fremont's parks fees are significantly higher than those in the rest of the sample, it's important to note that the city has a strong housing market, and is currently meeting its RHNA allocation for market rate housing. The city set its parks level of service standard through an outreach process as part of its General Plan Update that identified parks as the community's highest priority.
- <sup>87</sup> For this figure we calculate the total cost of all parks fees exacted by the case study jurisdiction. Fremont's parks fee is assessed on a per bedroom basis, so we averaged the fees on a 3 bedroom and a 4 bedroom home, since our prototypical development consists of both types. Fremont's parks fee was originally set equal to the maximum fee amount established in 2015, and adjusted by the Construction Cost Index (CCI) in subsequent years. Therefore, we adjusted the maximum fee amount by CCI to ensure comparability. Similarly, we adjusted Los Angeles' maximum fee amount by inflation to provide a reasonable comparison to the current fee value (base year 2017).
- <sup>88</sup> Economic and Planning Systems, Inc. (2016). *Final Report: 2016 Park Impact Fee Nexus Study Update*.
- <sup>89</sup> New Economics and Advisory. (2016). *City of Sacramento Park Impact Fee Nexus Study Update: Public Review Draft Report*.
- <sup>90</sup> Some cities will also include this more qualitative approach in addition to a more robust analysis.
- <sup>91</sup> Hill, E. G. (2000). *Reconsidering AB 8: Exploring Alternative Ways to Allocate Property Taxes*. California Legislative Analyst's Office. Retrieved from <https://lao.ca.gov/Publications/Detail/657>
- <sup>92</sup> Two cities we spoke to noted that they task their own finance departments to develop feasibility analyses, however we did not assess these analyses.
- <sup>93</sup> This requirement should include methodological standards for feasibility studies. These standards should be informed by existing research on feasibility study best practices. Policy makers could look to the summary of findings from a day-long convening of experts on inclusionary housing ordinance feasibility studies, hosted by Grounded Solutions Network, the Turner Center, and the Lincoln Institute of Land Policy. Best practices in feasibility studies include the use of static proformas and the potential for online tools to increase the transparency and accessibility of feasibility studies. Interviews for this report also highlighted the importance of including a variety of prototypical projects in a feasibility study, and ensuring that those prototypes are representative of typical projects for the jurisdiction.
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<sup>130</sup> Zuk, M., & Chapple, K. (2015). *Case studies on gentrification and displacement in the San Francisco Bay Area*. Berkeley, CA: Center for Community Innovation. Retrieved from [https://www.urbandisplacement.org/sites/default/files/images/case\\_studies\\_on\\_gentrification\\_and\\_displacement\\_full\\_report.pdf](https://www.urbandisplacement.org/sites/default/files/images/case_studies_on_gentrification_and_displacement_full_report.pdf)

<sup>131</sup> These proportions are intended to reflect the differences between the scale of local fee revenue and CIP budgets only. Fee revenue is typically spend over a series of years on long-term infrastructure projects.

<sup>132</sup> Reid, C. K., Galante, C., & Weinstein-Carnes, A. F. (2016). *Borrowing Innovation, Achieving Affordability: What We Can Learn From Massachusetts Chapter 40B* (No. 1). Berkeley, CA: Turner Center for Housing Innovation. Retrieved from [http://turnercenter.berkeley.edu/uploads/California\\_40B\\_Working\\_Paper.pdf](http://turnercenter.berkeley.edu/uploads/California_40B_Working_Paper.pdf)