

HERE TODAY

- 1 EXACTIONS:
AN INTRODUCTION**
- 2 HOW PROP 13
AFFECTED USE OF EXACTIONS**
- 3 DEVELOPER
PUSHBACK**
- 4 LEGAL BASIS
FOR EXACTIONS**
- 5 THE NOLLAN
CASE**
- 6 BEYOND NOLLAN:
DOLAN AND EHRLICH**

FIRST & LAST QUESTION

WORTH 1%
OF TOTAL GRADE

WRITE YOUR FULL NAME
AND ANSWER ON A SMALL PIECE
OF PAPER AND **LEAVE IT UP FRONT.**

WHAT BEST DEFINES AN EXEMPTION IN CEQA?

A

A broad-ranging document meant to provide lots of information to the public and decision makers about the environmental effects of a big project.

B

Projects that do not have a significant effect on the environment, a determination that that would null the CEQA process.

C

An assessment to determine if the project may produce “significant” environmental effects.

D

a discussion of how a project either directly or indirectly fosters other growth, removes obstacles to growth, affects public services and facilities, or triggers other activities with significant environmental impacts.

EXACTIONS: AN INTRODUCTION



■ Exactions

- **Costs or requirements** a local government places onto a developer in order for the development to be approved.
- Process of identifying what solutions/costs (or “mitigations”) are **exactly proportional** to the damage (or “impact”) a project has on the surrounding community.



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EXACTIONS ARE USED TO CREATE:



EXACTIONS: AN INTRODUCTION



FIRE STATIONS

EXACTIONS: AN INTRODUCTION



SCHOOLS

EXACTIONS: AN INTRODUCTION



**ON-SITE
IMPROVEMENTS**

EXACTIONS: AN INTRODUCTION



**OFF-SITE
IMPROVEMENTS**

EXACTIONS: AN INTRODUCTION



PARKS

EXACTIONS: AN INTRODUCTION



**AFFORDABLE
HOUSING**

EXACTIONS: AN INTRODUCTION



Funding

**CASH TO SUPPORT
THESE**

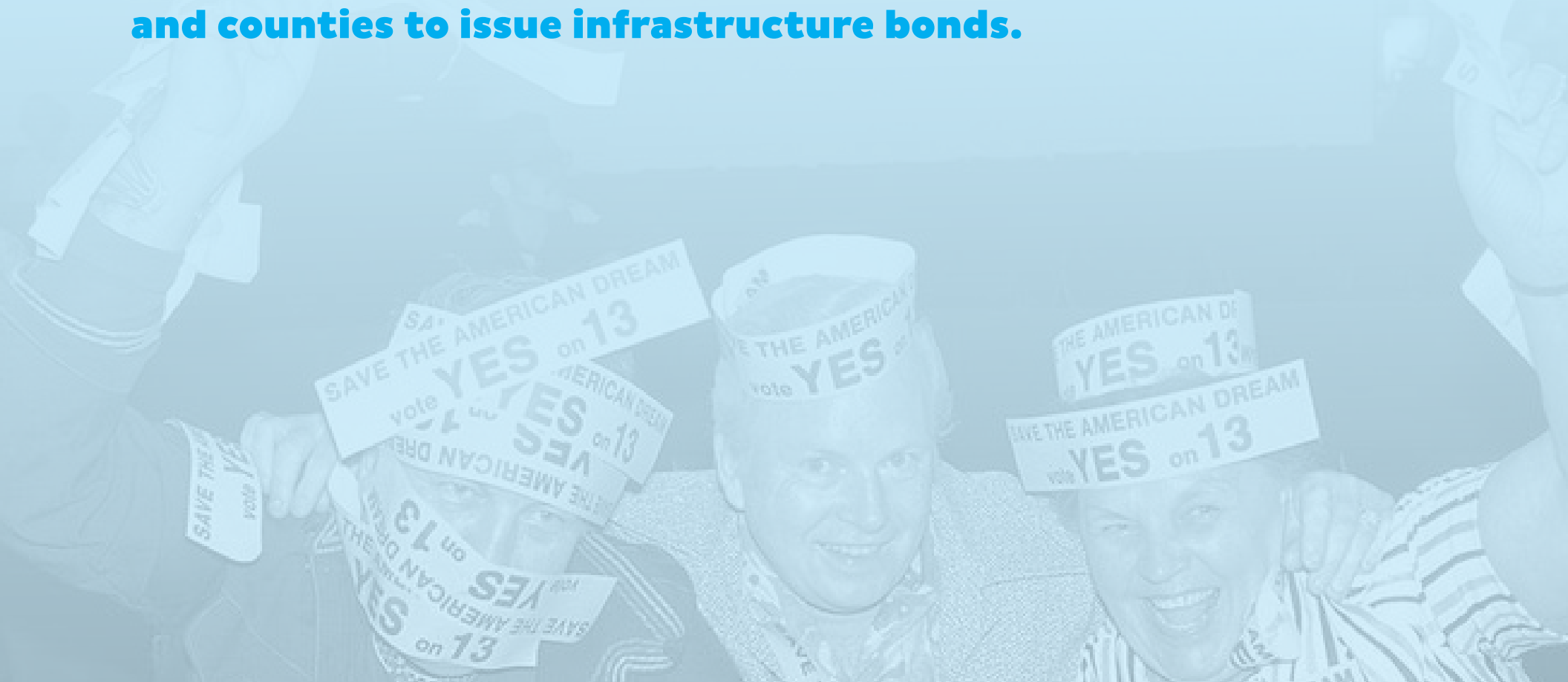
HOW PROP 13 AFFECTED USE OF EXACTIONS

- **The concept of exacting concessions from developers in exchange for permission to build is generations old, but since the passage of Prop 13 in 1978, it has become a major instrument of planning policy in California.**



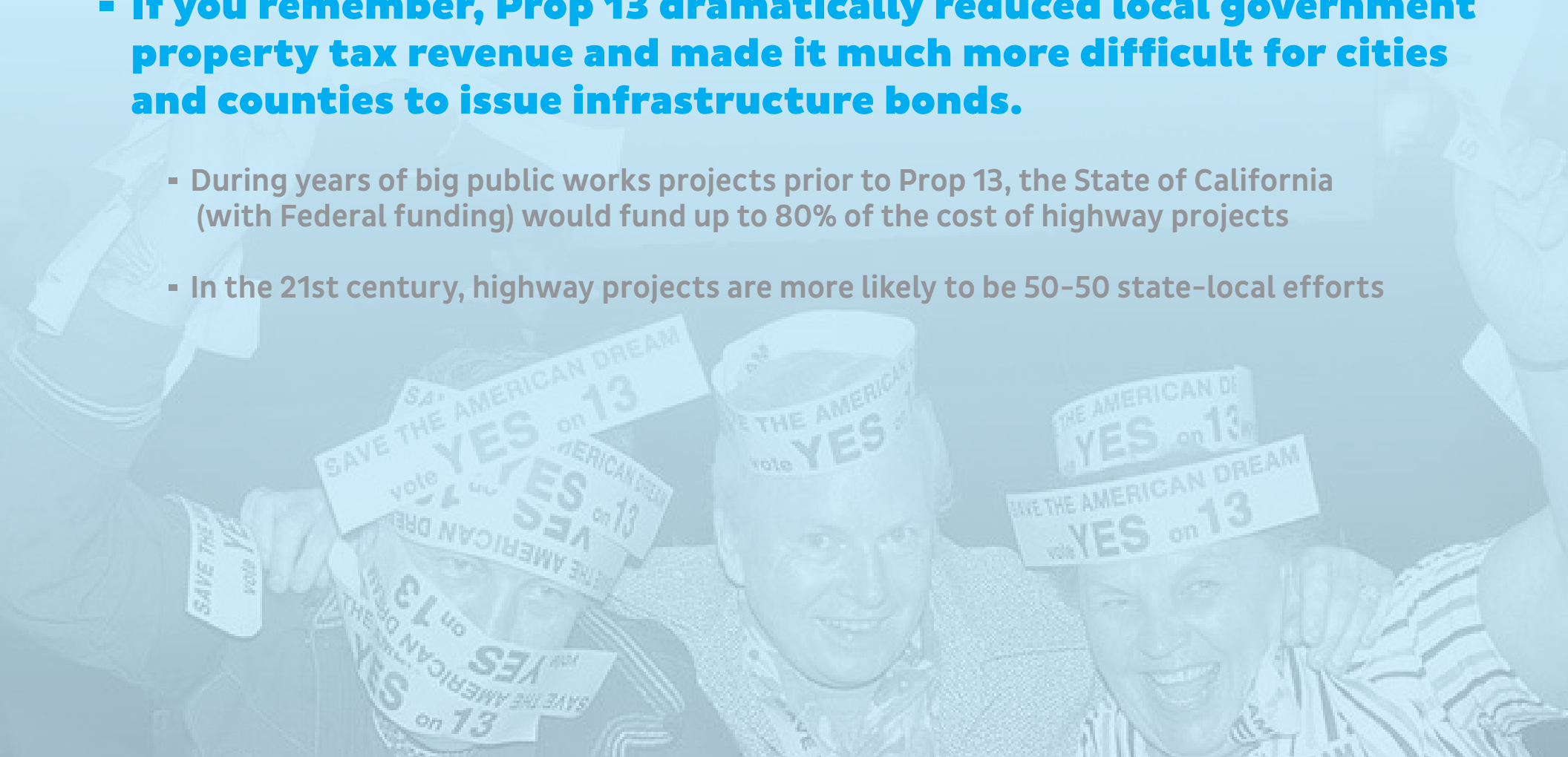
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- **If you remember, Prop 13 dramatically reduced local government property tax revenue and made it much more difficult for cities and counties to issue infrastructure bonds.**
- During years of big public works projects prior to Prop 13, the State of California (with Federal funding) would fund up to 80% of the cost of highway projects
- In the 21st century, highway projects are more likely to be 50-50 state-local efforts



HOW PROP 13 AFFECTED USE OF EXACTIONS

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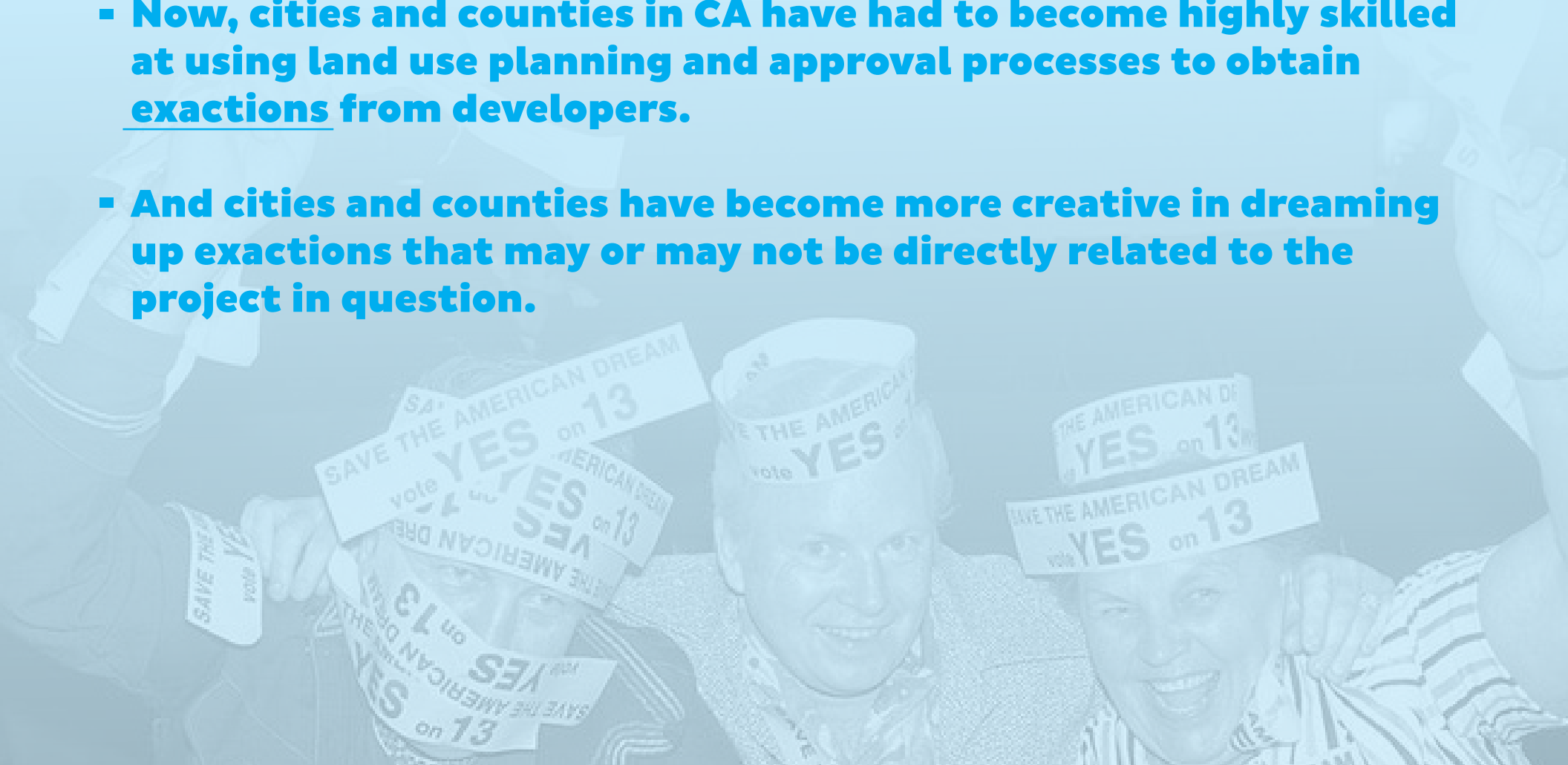
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- **Now, cities and counties in CA have had to become highly skilled at using land use planning and approval processes to obtain exactions from developers.**
- **And cities and counties have become more creative in dreaming up exactions that may or may not be directly related to the project in question.**



DEVELOPER PUSHBACK

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FORECLOSURE

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- **Some city councils, boards of supervisors and even school district boards reduced fees in hopes of spurring development and generating construction jobs during the Great Recession.**
- **The willingness of some local governments to slash fees in order to induce development suggests the fees are not always based on hard-and-fast calculations.**

LEGAL BASIS FOR EXACTIONS

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- **Petterson v. City of Naperville, 137 N.E.2d 371 (1956)**

A landmark case that determined that a “taking” did not occur if a city requires developers to provide curbs, gutters, and storm sewers.

Basically means that exactions are a legitimate form of police power.

LEGAL BASIS FOR EXACTIONS

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DEVELOPMENT

NEXUS

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- **Quimby Fees – A type of development fee that was first created in the 1960’s, authorizing both the dedication of land & payment of in-lieu fees for parks as part of the Quimby Act (CA Government Code § 66477).**

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 - A fee that is charged to developers and then spent on affordable housing preservation or production through existing housing program.
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 - Linkage fees—which top \$5 per square foot in some cities—regained popularity during the late 1990s, when job growth soared, while housing production remained slow.
- **Fees and exactions:**
 - 1) can considerably add to the cost of new development**
 - 2) has very little uniformity in amount due to the varying levels and types of public facilities provided and because of the local political climate**

THE NOLLAN CASE



- **Nollan v. California Coastal Commission, 483 U.S. 825 (1987)**
- **A landmark case on the law of exactions involving a dispute between the California Coastal Commission and the Nollan family, which owned a small piece of beachfront property near Ventura, CA.**



The Nollans!

THE NOLLAN CASE

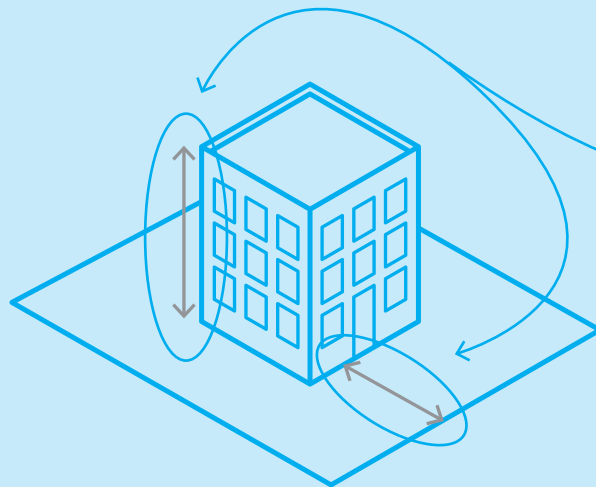
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- **The Nollans wanted to tear down their house & replace it with a 2 story house that would have the same “footprint” on the ground.**
- **The Coastal Commission, which has land use authority over beachfront areas, agreed to approve the new house, but only if the Nollans would grant an easement permitting public access along the beach in front of their house. The Nollans built their house anyway (the access issue did not affect site or construction plans) and sued the Coastal Commission.**

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- **One of the CCC's major goals is to maximize public access to the beach, and so the CCC had required public access easements in exchange for many coastal development permits.**
- **The Nollans argued there was no reasonable relationship, or “nexus,” between the construction of a taller house and access along the beachfront.**



How are these even related?!
Where's the nexus??

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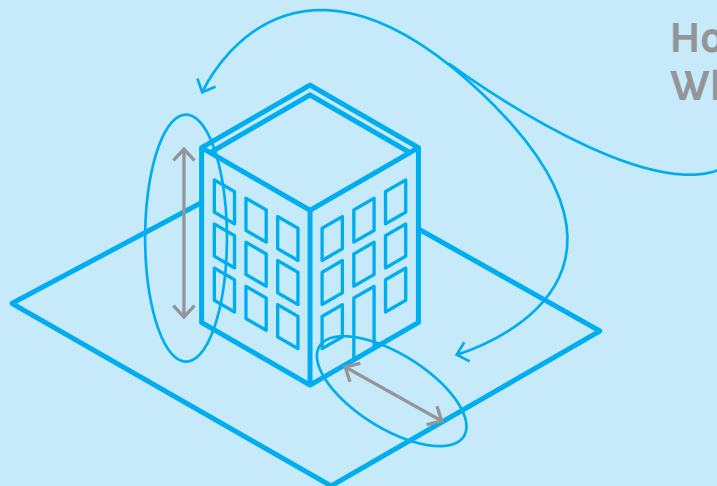


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- **Nollan v. California Coastal Commission, 483 U.S. 825 (1987)**
- **The case was appealed up to the US Supreme Court, and surprisingly, the Court ruled that a requirement by the CCC was a taking in violation of the Takings Clause of the Fifth Amendment, as incorporated against the states by the Fourteenth Amendment.**



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Cities must separate fee revenue from other city funds, and refund fees if they are not spent within five years for the purposes originally identified.



THE NOLLAN CASE

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 - Example) A nexus consultant might estimate the number of vehicle trips a new project will create and translate that number into the cost to build additional roadways and other transportation infrastructure, thereby devising a traffic mitigation fee for each development project.



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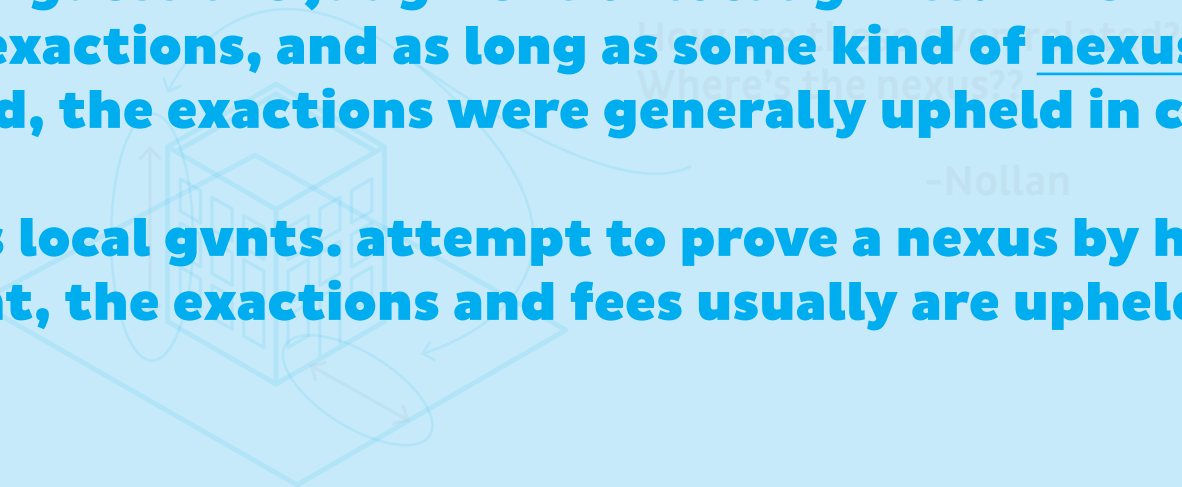
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- **As long as local gvnts. attempt to prove a nexus by hiring a nexus consultant, the exactions and fees usually are upheld in court.**



THE NOLLAN CASE



https://www.youtube.com/watch?v=XLDr_oV-ky4

BEYOND NOLLAN: DOLAN AND EHRLICH

- **During the 1990s, the legal trend in the field of exactions began to build on Nollan and AB 1600, requiring more accountability and a strong direct relationship between exactions and the projects in question.**

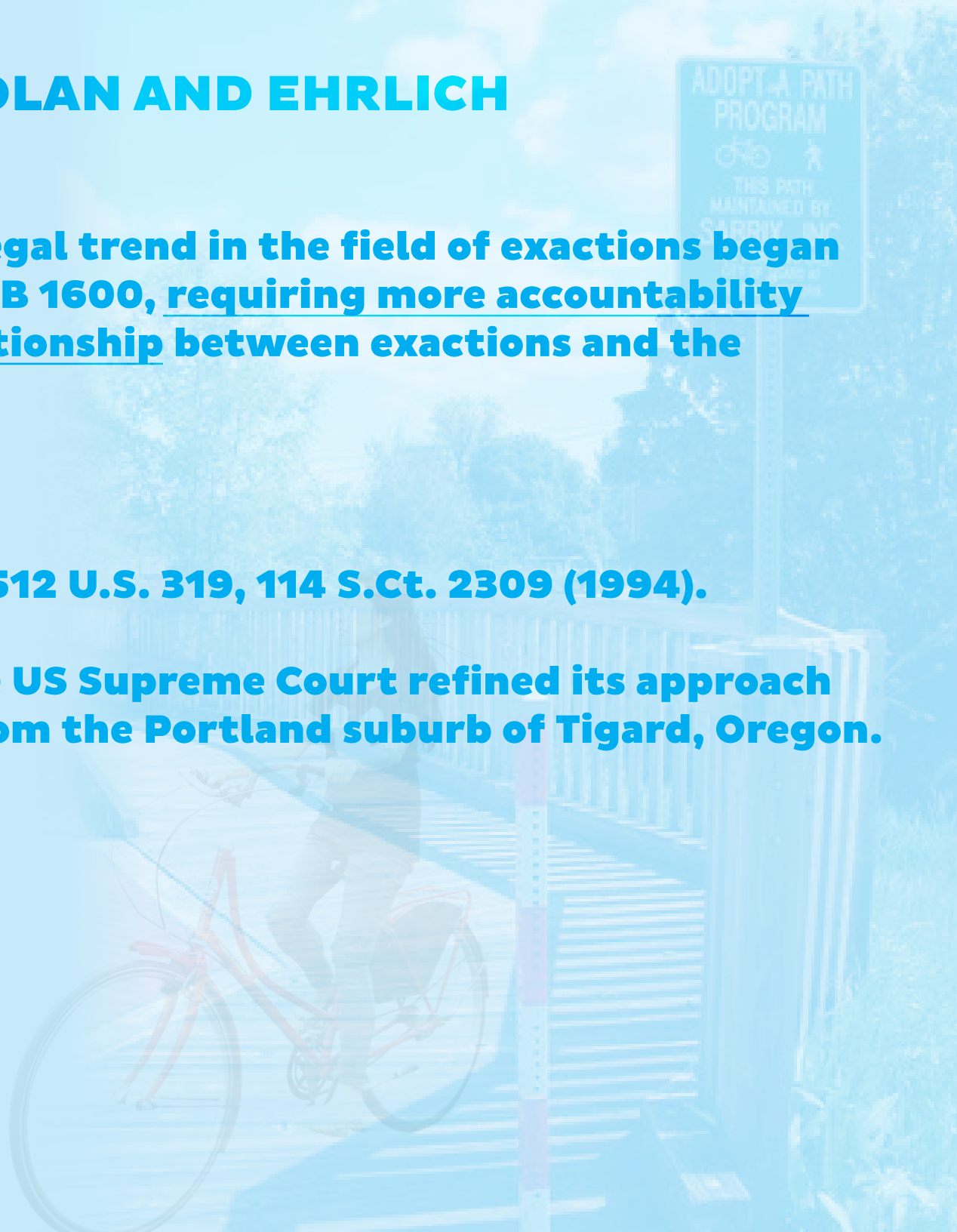
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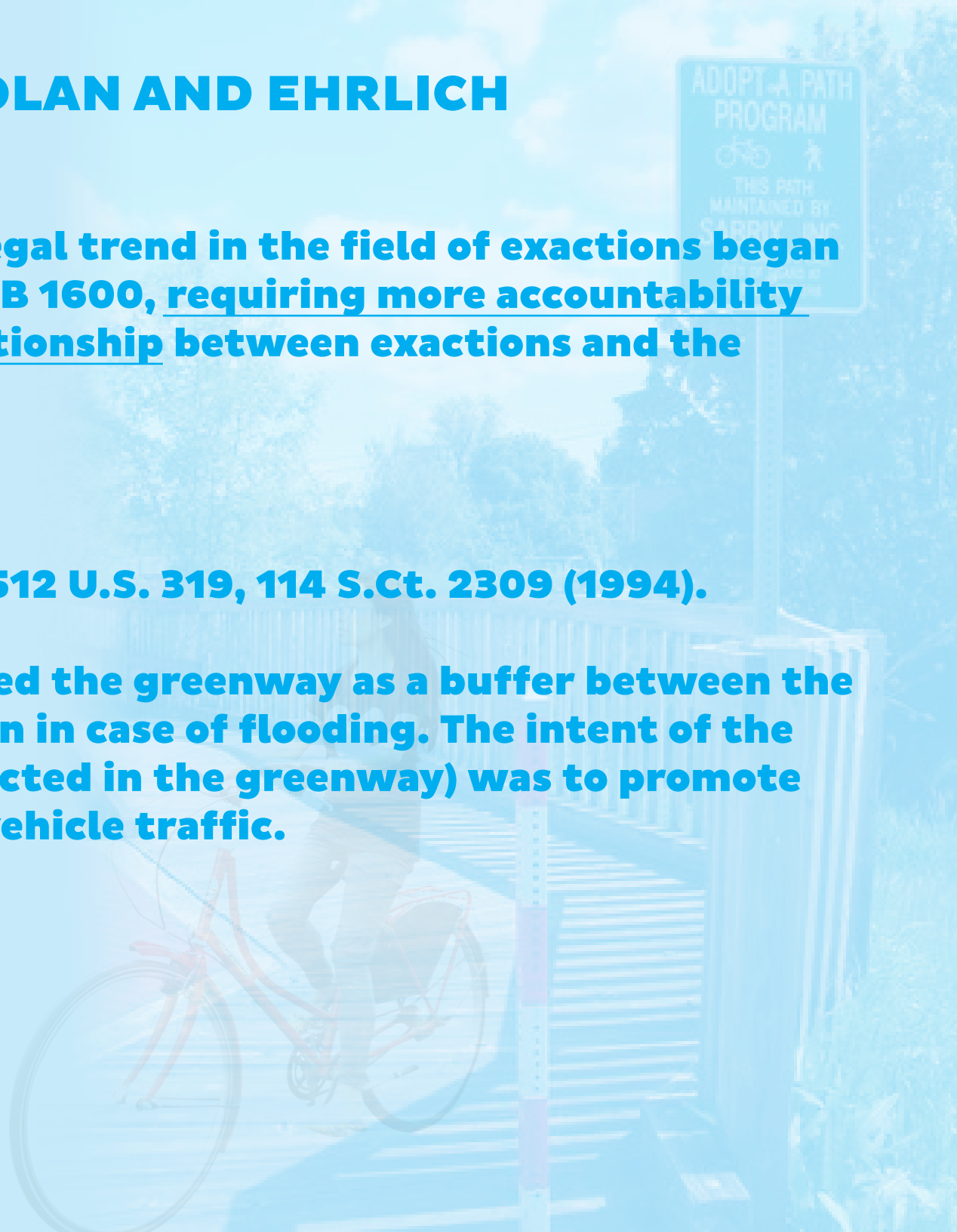
Dolan, owner of a downtown appliance store, sought city permission to build a larger store and expand the parking lot, which was located partly in the floodplain of Fanno Creek

As a condition of approval, Tigard required Dolan to dedicate approximately 10% of her property to the city for a bike path & public greenway.


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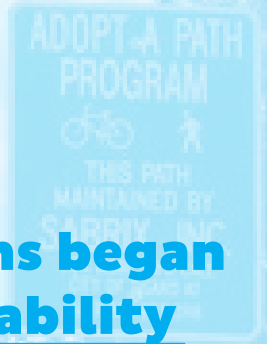
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The City of Tigard wanted the greenway as a buffer between the creek and the downtown in case of flooding. The intent of the bike path (to be constructed in the greenway) was to promote bicycle use and reduce vehicle traffic.



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The court found that Tigard didn't have a strong relationship between the additional traffic the store would cause and the need for the bike path.

The court laid down a new and important rule: not only must local governments show a nexus between the project and the exaction, but the exaction must have a "rough proportionality" to the impact the project is creating.



BEYOND NOLLAN: DOLAN AND EHRLICH



- **Rough Porportionality**

No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development

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ROUGH PORPORTIONALITY

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In other words, the Nollan and Dolan cases, taken together, implies that an indirect connection was sufficient, to a requirement demanding both an “essential nexus” and “rough proportionality”

DEVELOPMENT

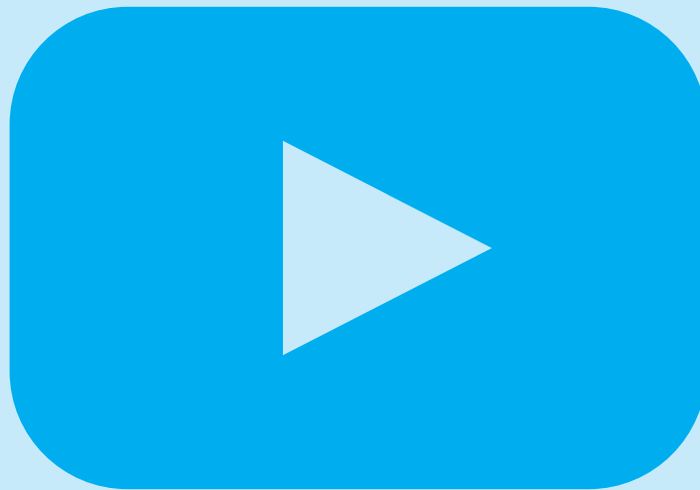
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BEYOND NOLLAN: DOLAN AND EHRLICH



<https://www.youtube.com/watch?v=jcN7MFEHiqA>

BEYOND NOLLAN: DOLAN AND EHRLICH

Richard K. Ehrlich

Businessman

A photograph of Richard K. Ehrlich, a man with grey hair and a beard, wearing a dark blue suit and tie, standing next to a woman with long brown hair wearing a black sleeveless top. They are both smiling and looking towards the camera. A blue oval graphic is overlaid on the woman's face.

**CITY
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In 1988, Ehrlich decided to try to build condominiums on a piece of land he owned in Culver City.

BEYOND NOLLAN: DOLAN AND EHRLICH

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Businessman



**CITY
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Ehrlich had owned the property for several years, but he had a hard time making profitable use of it.

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A private tennis club located on the site had gone out of business years before.

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**CITY
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He later approached the City about developing the site into an office building, but then abandoned the idea.

BEYOND NOLLAN: DOLAN AND EHRLICH

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**CITY
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When Ehrlich applied for a zone change and general plan amendment for the condos, the city imposed a \$280,000 “recreation fee”.

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**CITY
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The money was meant to mitigate the community's loss of the tennis courts, even though the club was private and had been closed for years.

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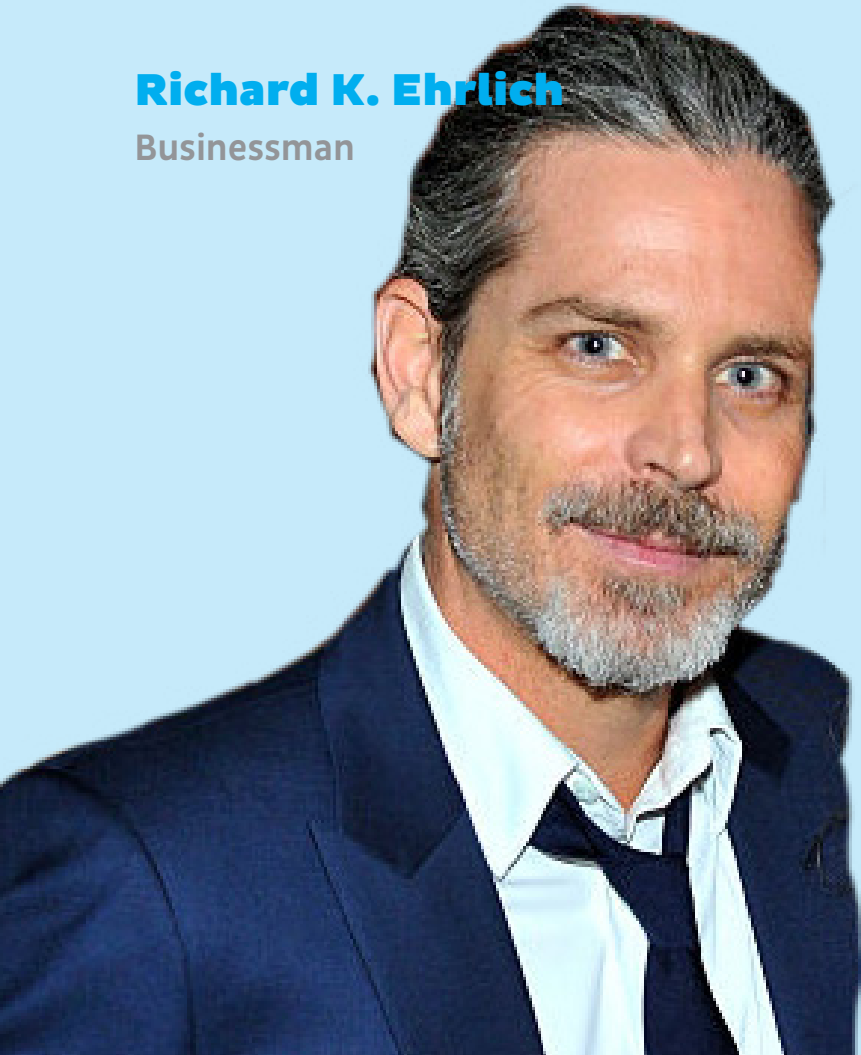
The CA Supreme Court determined that it was reasonable to place conditions onto a residential development by Culver City regarding:

- 1) the payment of \$280,000 to be used for public recreational facilities
- 2) the payment of \$32,000 for the City's Art and Public Places Program

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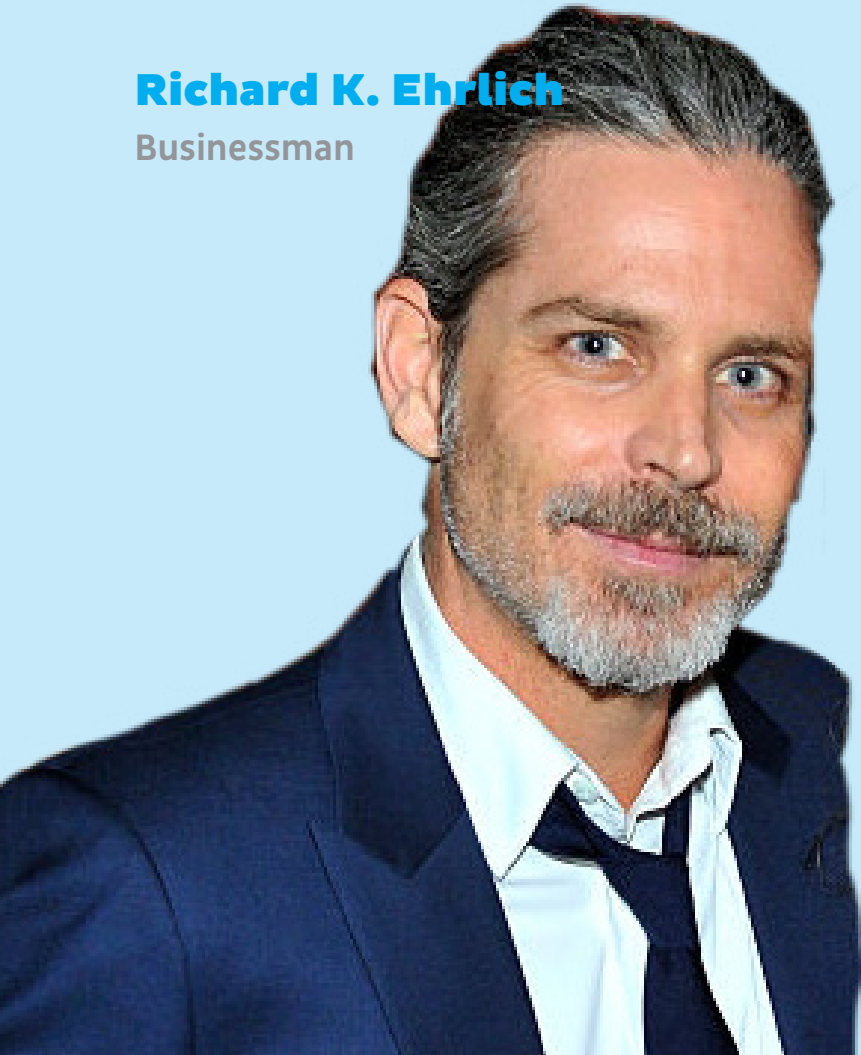


Ehrlich sued the city, claiming that the recreation fee was so unfair that it amounted to an unconstitutional taking of his property.

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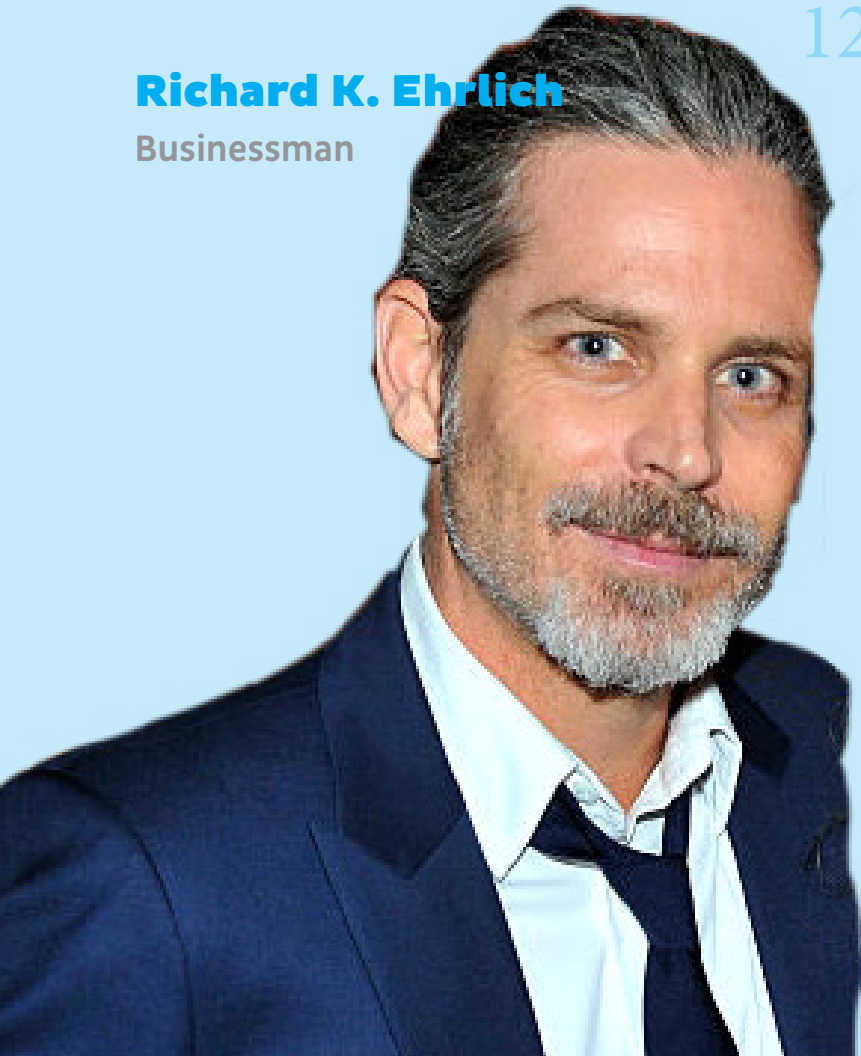
He argued that this was in violation of the 5th & 14th Amendments of the US Constitution and CA Constitution.

BEYOND NOLLAN: DOLAN AND EHRlich

Ehrlich v. City of Culver City,
12 Cal. 4th 854 (1996)

Richard K. Ehrlich

Businessman



Six years later, the California Supreme Court did not agree.

BEYOND NOLLAN: DOLAN AND EHRLICH

Ehrlich v. City of Culver City,
12 Cal. 4th 854 (1996)

Richard K. Ehrlich

Businessman



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CITY**

The court concluded that “the city has met its burden of demonstrating the required connection or nexus between the rezoning and the imposition of a monetary exaction to be expended in support of recreational purposes as a means of mitigating that loss.”



BEYOND NOLLAN: DOLAN AND EHRLICH

Ehrlich v. City of Culver City,
12 Cal. 4th 854 (1996)

Richard K. Ehrlich

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The court upheld that although the facility was private, it was a public loss because it removed a recreational opportunity.



BEYOND NOLLAN: DOLAN AND EHRLICH

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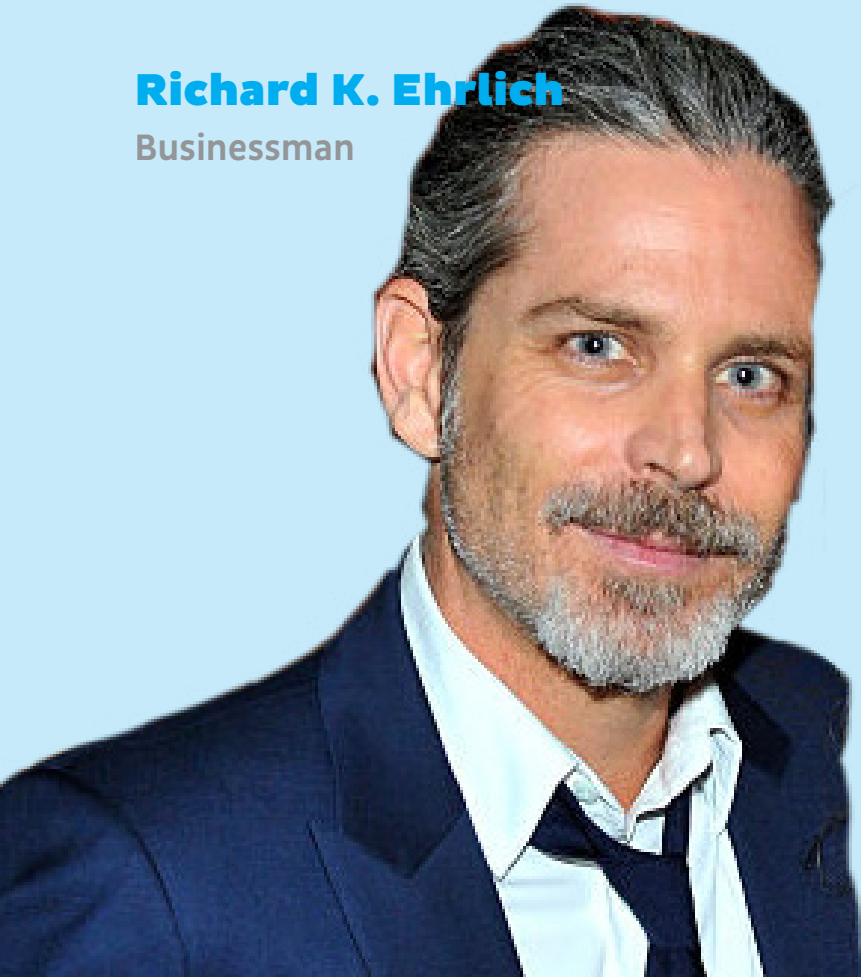
Also determined that stricter rough proportionality/essential nexus tests should be used when exactions are imposed on a single developer as a result of the expected impact of a single development project.



BEYOND NOLLAN: DOLAN AND EHRLICH

Richard K. Ehrlich

Businessman



It became easier for local govts to impose exactions if they are part of a policy contained in their general plans, and its exactions do not require a direct nexus, nor even the rough proportionality required by Dolan.

BEYOND NOLLAN: DOLAN AND EHRLICH

(NEXUS)

REASONABLE RELATIONSHIP VS. ROUGH PROPORTIONALITY

If the exaction is:	Then use:
A general plan policy imposed on all developers	Reasonable relationship test
Imposed on a single developer or a project	Rough proportionality/ Essential nexus test

BEYOND NOLLAN: DOLAN AND EHRLICH

The Ehrlich case remains a legal cornerstone, and Culver City's recreation fee on the Ehrlich property is only one example of the lengths to which local governments in California are willing to go to impose "exactions."



TAKING EXACTIONS TO NEW LEVELS

- **When housing prices spiked during the '00s, about 1/3 of CA cities and counties implemented what are called “inclusionary housing” requirements or “inclusionary zoning”.**



TAKING EXACTIONS TO NEW LEVELS

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- **Inclusionary Zoning**

A policy that establishes a new zoning where housing developers are required to set aside a certain amount of new units—typically 10% to 15%—for low or moderate income households.

TAKING EXACTIONS TO NEW LEVELS

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- **Inclusionary Zoning**

A policy that establishes a new zoning where housing developers are required to set aside a certain amount of new units—typically 10% to 15%—for low or moderate income households.

Most cities or counties with inclusionary housing requirements permitted the payment of in-lieu fees if developers did not want to provide the actual units.

TAKING EXACTIONS TO NEW LEVELS

- **Inclusionary housing proponents argue that:**

- Helps to prevent or slow the dislocation caused by gentrification
- Helps maintain both economic and racial diversity
- Increased housing choices for families earning below the area median income (AMI)
- This also increases low-income families access to opportunities such as, good schools, comprehensive transit systems, and safe streets



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- **Developers, have fought inclusionary housing policies in court, but results have been mixed.**



TAKING EXACTIONS TO NEW LEVELS



- **How does it work for rental units?**
- **If the new housing units are going to be rentals, the local government may not be able to impose inclusionary requirements.**

TAKING EXACTIONS TO NEW LEVELS



GEOFF PALMER

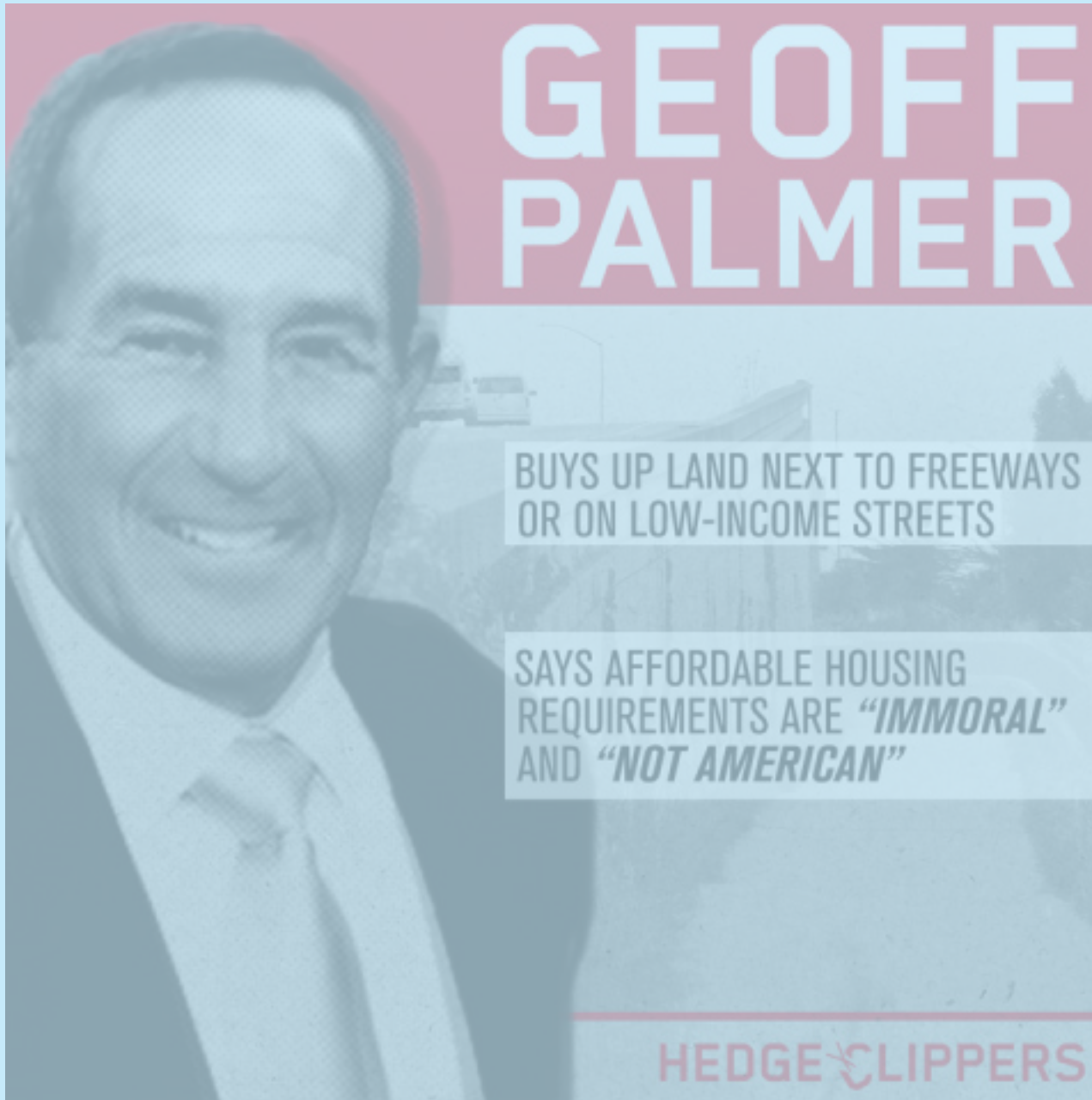
BUYS UP LAND NEXT TO FREEWAYS
OR ON LOW-INCOME STREETS

SAYS AFFORDABLE HOUSING
REQUIREMENTS ARE “IMMORAL”
AND “NOT AMERICAN”

HEDGE CLIPPERS

- **How does it work for rental units?**
- **If the new housing units are going to be rentals, the local government may not be able to impose inclusionary requirements.**
- **But the obstacle is not Nollan/Dolan or any other standard for exactions**

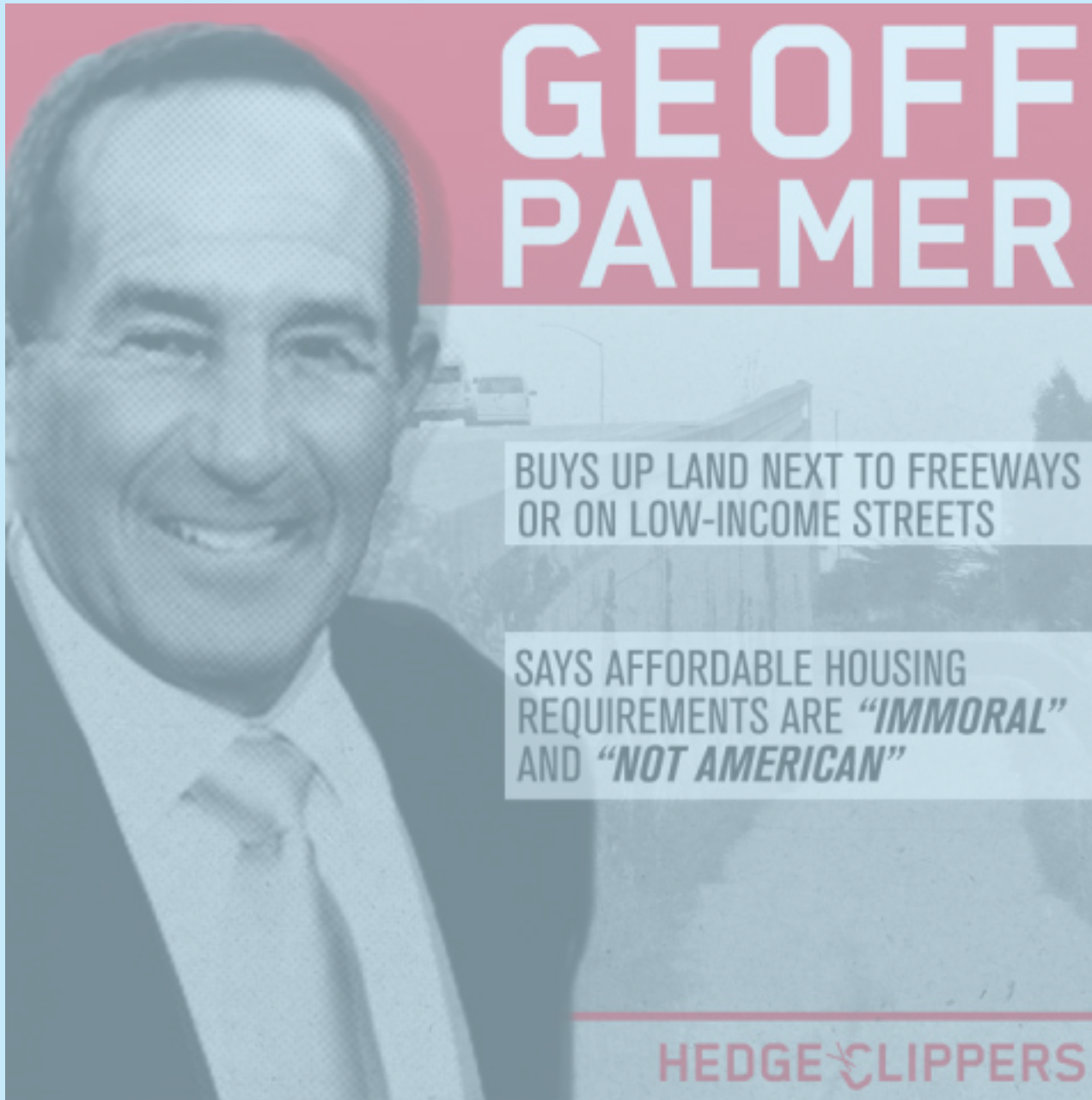
TAKING EXACTIONS TO NEW LEVELS




- The obstacle is a state law called the Costa-Hawkins Rental Housing Act, which prevents local gvnts from setting rental rates for vacant units.

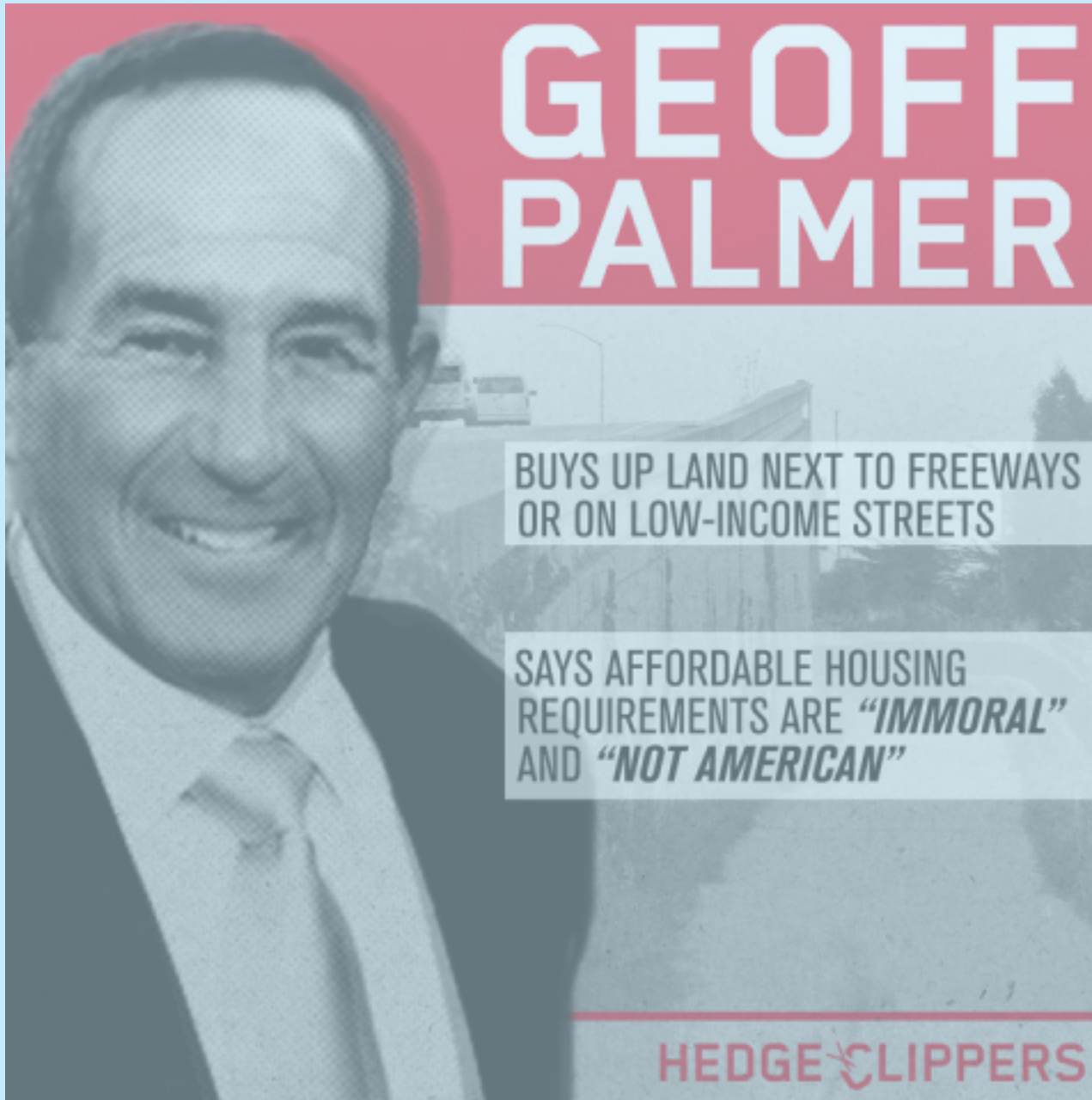


TAKING EXACTIONS TO NEW LEVELS



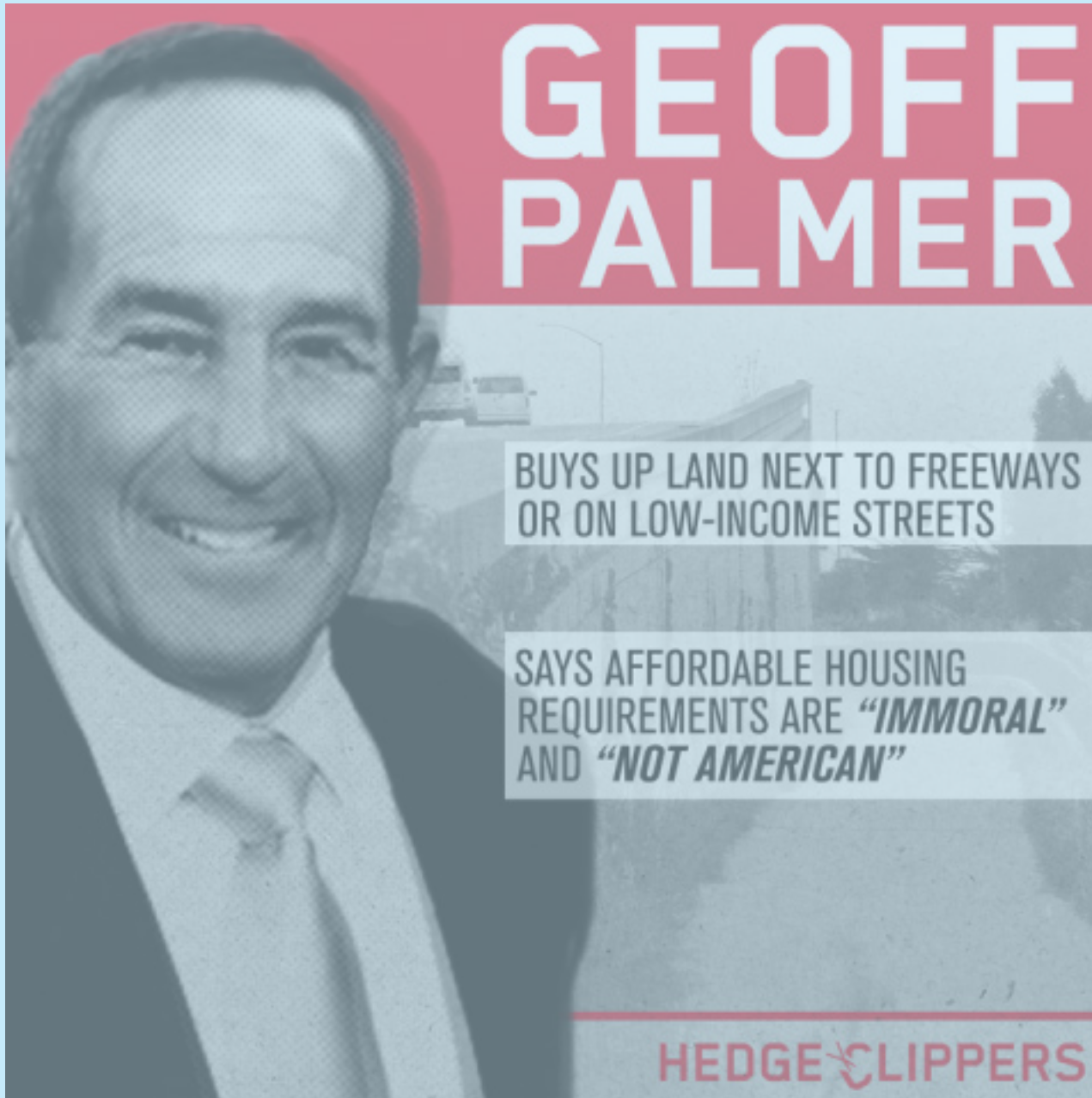
- The obstacle is a state law called the Costa-Hawkins Rental Housing Act, which prevents local govts from setting rental rates for vacant units. 
- Because of Costa-Hawkins, the CA court ruled the City of Los Angeles could not require Palmer, the real-estate developer of a 350-unit apartment complex either to set aside 60 units for low-income households or to pay a \$6.7 million in-lieu fee.

TAKING EXACTIONS TO NEW LEVELS



- Although the City's inclusionary housing requirement was contained in a specific plan, the req. was superceded by CA law.

TAKING EXACTIONS TO NEW LEVELS



- Although the City's inclusionary housing requirement was contained in a specific plan, the req. was superceded by CA law.
- This ruling ended up cutting off local gvnts' ability to apply inclusionary policies to rental housing, effectively banning a rent control policy in new rental units.



Orsini

Apartment
1000 North
Hollywood Blvd

Cherry Ave

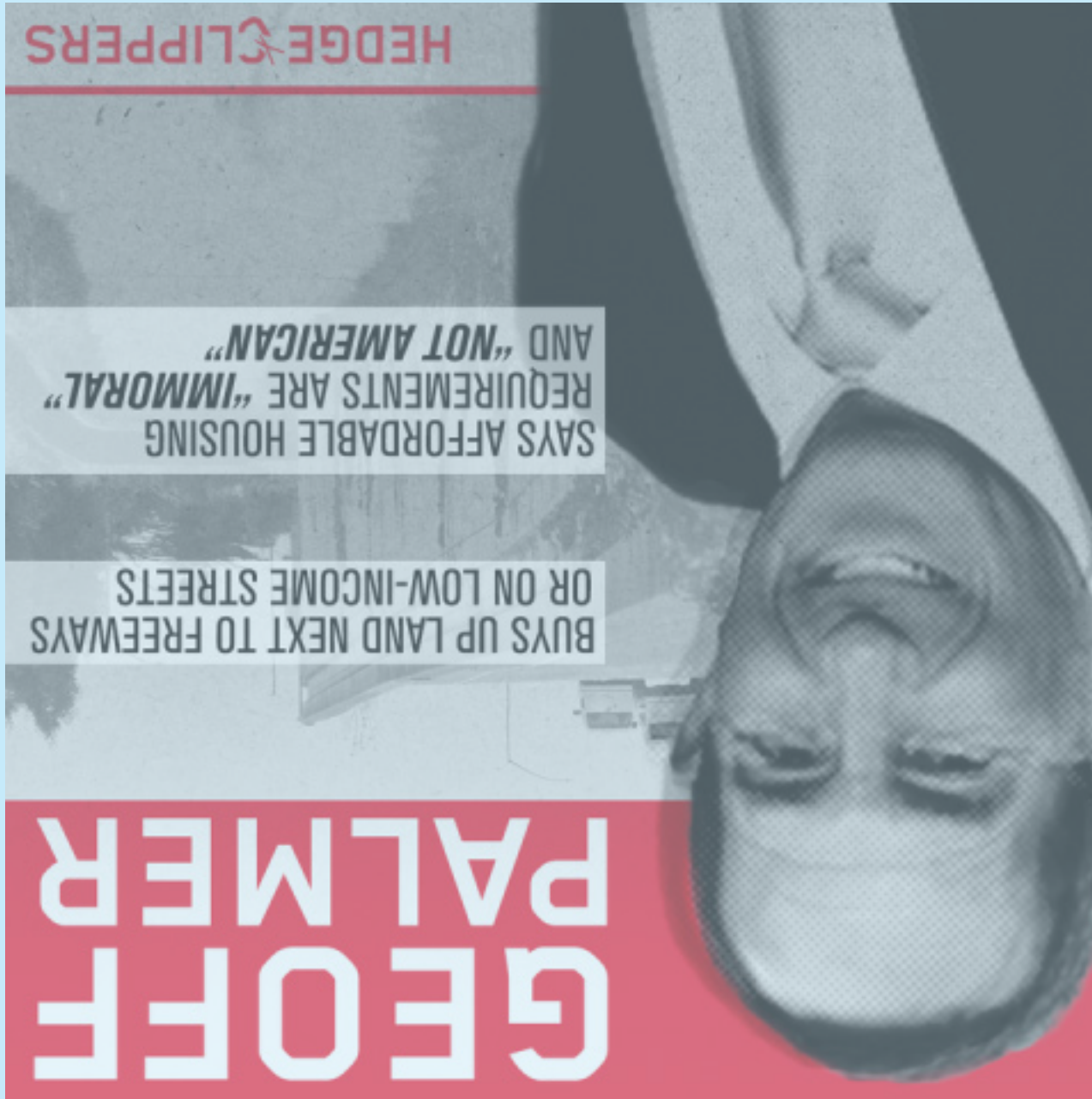
Cherry Ave
N Blvd

TAKING EXACTIONS TO NEW LEVELS



- **AB 1505 – “The Palmer Fix”**

2015 ruling of the CA Supreme Court in Building Industry Association v. City of San Jose, which strongly upheld the ability of local governments to adopt inclusionary housing ordinances

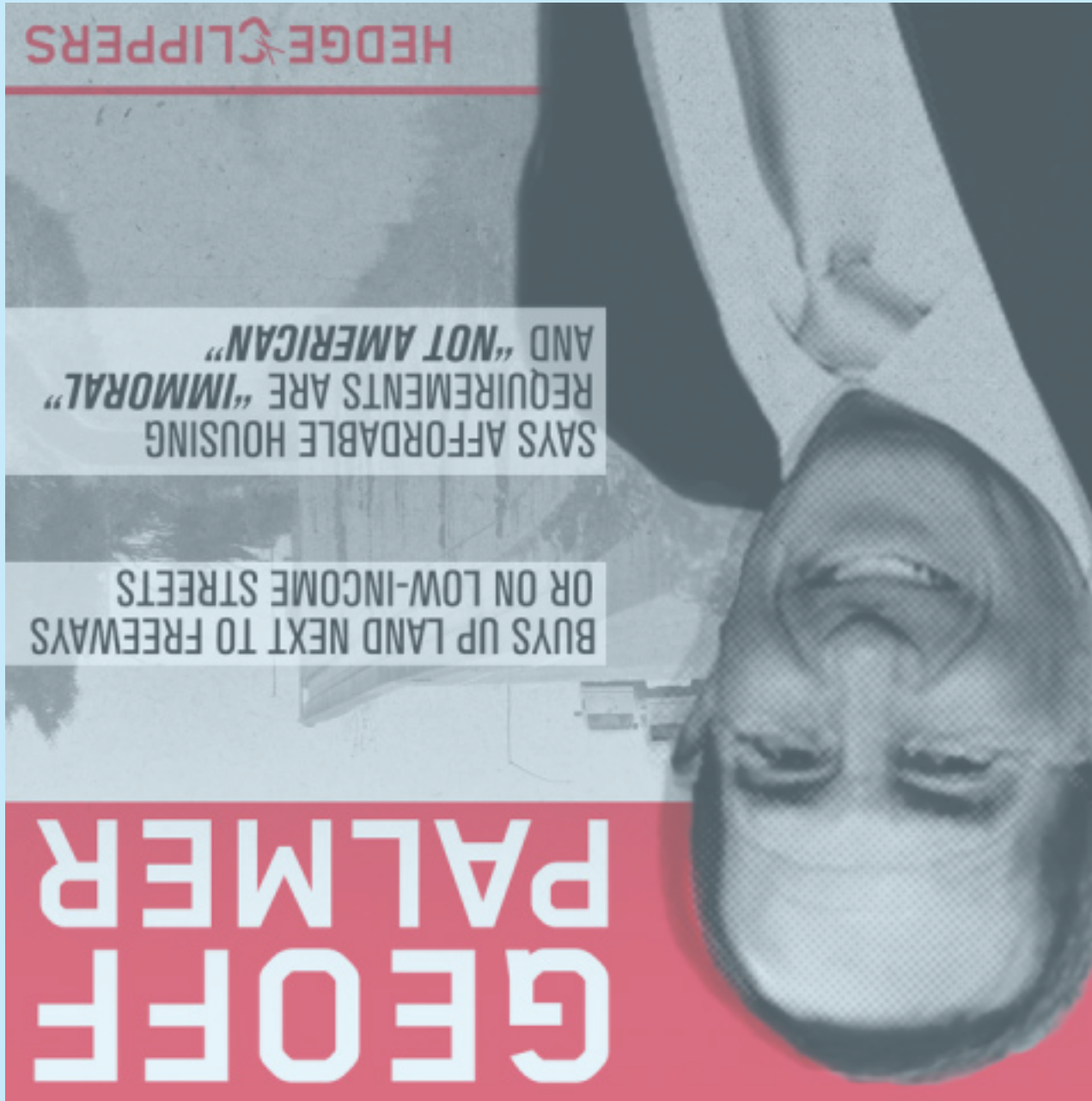


TAKING EXACTIONS TO NEW LEVELS



- **AB 1505 – “The Palmer Fix”**

The court found that the objectives of increasing affordable housing and locating affordable housing in mixed income developments are unquestionably constitutionally allowed.

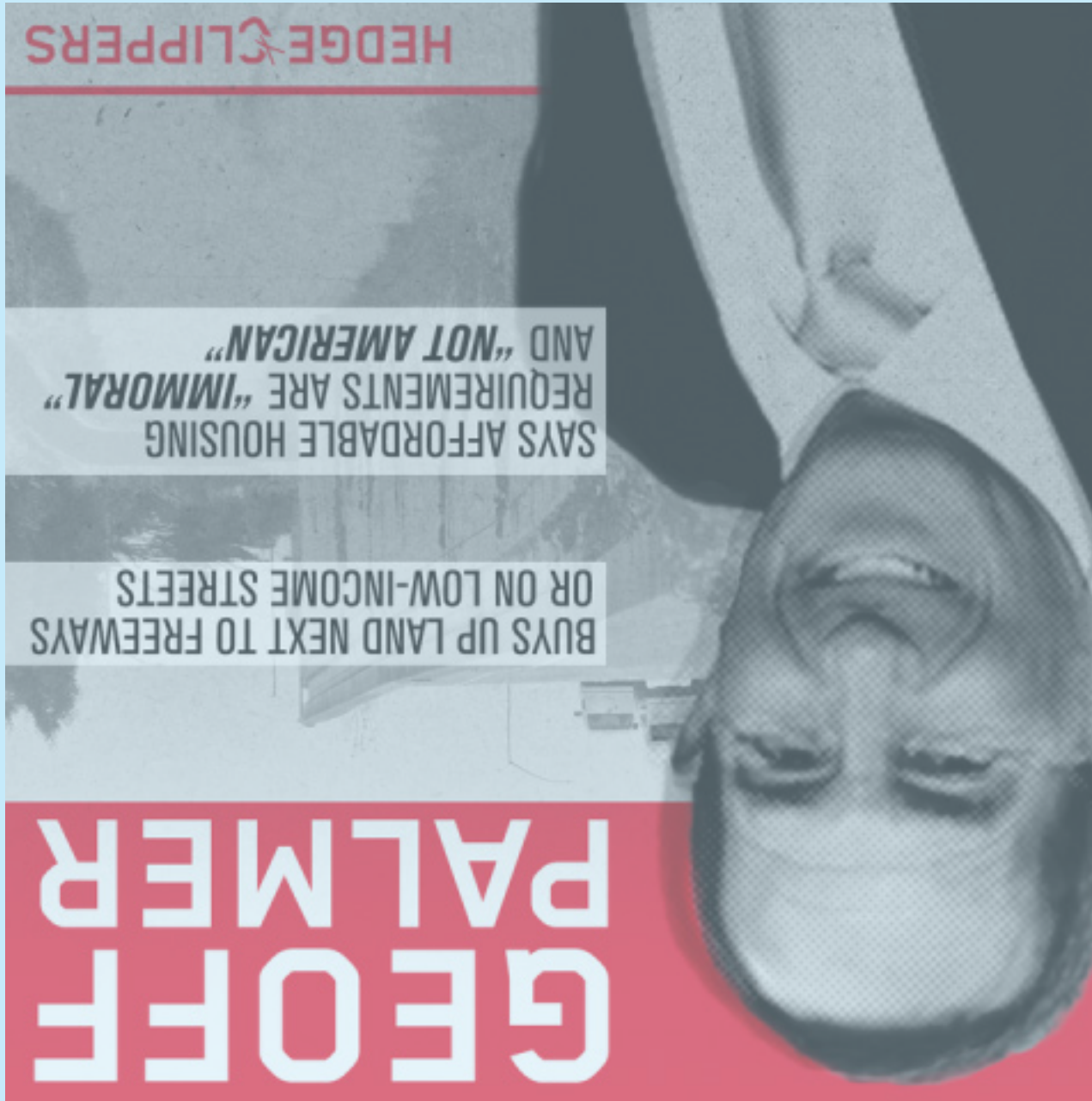


TAKING EXACTIONS TO NEW LEVELS



- **AB 1505 – “The Palmer Fix”**

AB 1505 also requires local gvnts to provide alternate means of compliance that may include in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.



ASSIGNMENTS

1

**READ
CHAPTER 16 & 17**

2

**CONTINUE READING THE DEATH AND LIFE
OF GREAT AMERICAN CITIES**