Impact Fees in California

In this episode, [M. Nolan Gray] chats with William Steichen and Trevor Stockinger, two of the coauthors on a brand new California YIMBY [report]: **[The Impact of Fees: Rethinking Local revenues for More Multifamily Housing]**.

Over the past semester, Will, Trevor, and four others served as California YIMBY Research Fellows as part of their work toward a graduate degree.

Nolan Gray: So Will and Trevor, thanks for joining the Abundance Podcast.

Will Steichen: Happy to be here.

Trevor Stockinger: Thanks, Nolan. Yeah, glad to be here.

Nolan Gray: So let's talk about an incredibly sexy topic, impact fee. I think most listeners probably know they're a little bit of a problem in California that maybe they heard about the recent Supreme Court decision, which we can discuss, but a thousand feet, why care about impact fees? I mean, isn't this totally reasonable? New development comes with costs. We should internalize those costs and require the developer to pay for the extra infrastructure. What's the problem with that?

Trevor Stockinger: Yeah, so Nolan, I think you set out the rationale for using impact fees, and in California in particular, where we have Proposition 13 restricting the ability of local governments to use property tax, they are a form of revenue that may be necessary. I think the problem is that like a lot of land use ordinances and zoning, impact fees can be used to exclude, can shut down growth. You can imagine a world, and they do exist today where you raise impact fees so high that your intention is not to collect revenue, but rather to just ensure that a certain type of person is in your community or ensure that there is no development in your community at all. And given the housing crisis in California, that's a real issue we should be looking at.

Will Steichen: I think the one thing I'd add to that is just that they make housing more expensive and that is not helping our housing crisis.

Nolan Gray: Yeah, absolutely. So let's talk about a couple of details here. I didn't realize this until you all started working on this: California impact fees are a lot higher than even the next state, almost double. The typical impact fee in California I think is double that of other Mountain West states that are kind of charging these fees. Why is that? Why are impact fees in California so unusually high?

Trevor Stockinger: So a few things. I believe it's about double that of Oregon, which is the next state, and it's about triple the national average for impact fees on a per-unit basis for multifamily housing. I think as I said in the last answer, I think one of the big reasons is that local governments are looking for ways to raise revenue and in a traditional model, in a traditional world, we would have property taxes to do that. In some states, local governments have control over their property taxes entirely. So they can set the base, they can set the rate, and they're raising revenue on an average cost basis that way and able to fund projects and public capital.

In California, you don't have that ability because of Proposition 13. So there's a lot more focus on generating revenue from other sources. Fees generally in California are very high, not just development impact fees, but just user fees overall for government services. We've also found tangentially to this report that one of the reasons, for example, California has auto malls was one of the first places to have auto malls because local governments wanted sales tax revenue, and that was really what was dominating over a property tax regime.

Nolan Gray: Right. So the idea here is that because California jurisdictions can't charge property taxes like jurisdictions in most of the country, they have to turn to other sources of revenue. So sales tax, right? Local governments in California can collect sales taxes. That's a major source of revenue and that's why they like selling cars, right? That's why the strip of between the Expo Line and Downtown Culver will always be parking lots or car dealerships even though that makes absolutely no sense from a landing's perspective.

But the point about fees is interesting that this is kind of a general feature of California public finances that we just charge really, really high fees. And again, I think getting back to the core theory, it's like, "Well, this is justifiable if it's like that fee is necessary to cover the marginal cost of what you are asking to do or what you're asking the city government to do." But these fees end up going far beyond that and are used for just generating revenue. That's right. I mean, my understanding was that there are pretty strict constitutional limits on this, so you're not supposed to be using impact fees for general revenue. So how does that work?

Will Steichen: Well, so we spoke with a lot of different cities and there are constraints on what they're supposed to be using them for, but whether those constraints are followed or not is a whole different story. In a lot of cities that we spoke to, their budgets are earmarked pretty heavily towards things like police and schools and they have very little opportunity to be discretionary with how they use their budgets. So they end up using these fees really to start funding operational programs and items that are not legal for them to pay for. However, we had multiple interviews that hinted that these fees are important to their operating budgets.

Nolan Gray: Yeah. Well, so let's talk about this from the city's perspective. What did you all find in a typical city? What percent of their revenue is being generated from impact fees?

Will Steichen: Yeah, so on average, I think it's 2.6% of a city's revenue comes from impact fees, but that varies drastically. So there are cities that collect up to 16% of their revenue and that can be up to $87 million annually that one city collects in impact fees. But on the other end, some cities collect virtually nothing. So the way that cities use impact fees varies drastically. When we came into this project, I think we thought cities would have a pretty consistent feeling about how they utilize impact fees, but early on we realized that from one city to the next, it's drastically different.

Nolan Gray: I think it was such a great finding because coming into this, this was work as part of California YIMBY Education Fund, but also part of your capstone project at UCLA. So this is not a strict policy document. We're trying to just learn about what's going on with impact fees and exactly to your point, Will, it blew me away just how much variation there was. So exactly to your point, Rancho Cordova is raising 16% of their local revenue from these impact fees, and then Fresno is generating 1.64%.

And so from an armchair theory perspective, I was like, okay, well, maybe all the pro-growth cities generate tons of revenue from this and maybe all the anti-growth cities don't really generate any revenue from this. But on the top, you've got Rancho Cordova, and then Mountain View, which doesn't build a lot, generating 13%. And then at the bottom, you've got very pro-growth, like Fresno, as well as generating almost nothing as well as our Moss Beach, which somewhat infamously is charging a $150,000 per unit housing impact fee. So the sheer variation in just how much these fees matter to local revenue was really surprising to me.

Trevor Stockinger: And just to sort of jump off of that, if you were to look internally at what is being tagged with an impact fee -- are we charging a new development for new parks or public schools or capital improvements to police -- varies drastically too. So there are prior studies -- for example, in Irvine, almost all of its impact fees are related to parks, whereas most other jurisdictions use impact fees in different ways than that. They distribute them in different ways.

Nolan Gray: Well, let's talk about a little bit for a minute here. Parks' impact fees are pretty wild. I mean, as I understand it's rooted in the Quimby Act, which lets them say like... Do you want to explain that because it's kind of an interesting little area of impact fee law?

Trevor Stockinger: Yeah, so I mean we've started this discussion and haven't fully defined our terms. So just to be clear, for those who are listening and may not know what impact fees exactly are, usually what happens is a developer decides it wants to build new construction and it can be residential or commercial, and the local governments will go to the developer and say, "Well, wait a minute, we believe that your new development is going to impose certain costs on public capital in the city. That could be parks, that could be schools, that could be roads. And they will then charge the developer. They will try to calculate and at least the way it's supposed to work, they'll try to calculate the marginal burdens that this new development will have on the public capital and charge the developer for that. Now, there are quite a few statutes that govern this.

The main statute is the California Mitigation Fee Act that provides some legal standards on what fees might look like and we can get into those. And then Quimby, in particular, deals with parks and not only deals with impact fees, but also the setting aside of land for parks that can be done "in lieu of" -- you can either have the land dedication or in lieu fees -- and then there's some education code statutes that also deal with impact fees when they're particular to a public school district. In all cases, however, or almost all cases I should say, and there's a little bit of reform happening here, the city has to show that the fee is reasonably related to the impact, both that the development is going to raise... It can't be just some arbitrary thing. You have to show that development is really going to impact the roads and you have to show the amount you're charging is really the amount that, at least close to, the amount that the development will impact roads by.

Will Steichen: One other point I want to just add to that because I think it's important context is things like parks, they're public spaces that entire communities get to use where these impact fees are only assessed on new development. So it's new residents and new developments that are paying for these parks that the entire community is getting to use. So there's attention there, and that's the opportunity that we took or the view that we approached this from.

Nolan Gray: Yeah. That's a great point. And Trevor, I want to get back to some of the rules regulating what cities can and can't do when we talk about reform in a minute. But Will, let's turn to that. So on the flip side of this, what are cities collecting? What's the typical fee for some of these new developments? As you all found, of course, it varies a lot, but generally speaking, what are we talking about for an impact fee, both for single-family and multifamily?

Will Steichen: Yeah, so Trevor, correct me if I'm wrong, but I believe the average impact fee in California is around $20,000. But as you mentioned, Nolan, that varies drastically. So there are cities that are charging over $100,000 for a single-family unit and $60,000 to $70,000 for a multifamily unit. So a four-unit building assessed $60,000 on every single unit, you're looking at $240,000 tacked on to that cost to do that development.

Nolan Gray: Of the cities you all profiled, it was Livermore -- because we're going to name names -- Livermore, Fremont, and Palo Alto. I mean all three are charging over $75,000 just in impact fees and to the point you all have raised, there are a whole bunch of other fees that are being assessed, but this is just purely the impact fee. And then Livermore is charging over $100,000. One of the things you all studied was the relative fees for multifamily versus single-family. One of the concerns historically has been that jurisdiction would occasionally charge higher fees for multifamily on a per unit basis than they would on single family. What did you find on that?

Trevor Stockinger: Yeah, so one of the interesting findings, this was raised by the Terner Center a few years ago, and then we reconfirmed it with our data, is that although it looks like single-family units may be charged less than multifamily units on a per unit basis, for example, Livermore is at $100,000 for single and $60,000 for multifamily, or the average is $21,000 in California for multifamily, but $37,000 for single family. When you look at it on a square footage basis, almost uniformly, the multifamily is charged more on a square foot basis.

Now we've heard responses from people who have read a report that says, "Well, why is it right to look at it on a square footage basis?" Because you might have the same number of people living in a single family house as a two-bedroom apartment, something along those lines. But when developers are looking at this or when even buyers are thinking about the cost of property as a practical matter, they're looking at it on a square footage basis. So you are incentivizing certain kinds of construction, which is single-family construction over multifamily construction. And across the board, multifamily is typically more affordable than single family. It also is more efficient in most uses of public capital, and it is more efficient when you have multifamily.

Nolan Gray: Yeah, I mean it's such a topsy-turvy outcome too. I mean I would assume that too, for the most part, multifamilies are probably mostly being built in an infill context where they are already benefiting from some existing infrastructure, which would presumably lessen its, I think, reasonable core impact fee, let's call it that, right? The actual real marginal required infrastructure of public services. Whereas a single family, you would think, okay, it's probably going to be on a new green field and requiring new streets and sewer broadly makes sense for the fees to be higher. Just again, even before we turn to the equity issue of just what impact fees are supposed to be doing in a perfect world, right?

Trevor Stockinger: Yeah, I think that's right. And I think just thinking about my own experience of how much water I use in an apartment I lived in previously versus the house I live in now, it's clear that in the house I live in now, I'm using more water. So that's where we're at with that. I don't know, Will, if you have anything to add to it.

Nolan Gray: Yeah, well, so I mean let's talk about the equity piece of this. Will, you were starting to get at this, I mean of course there it's inherently a little bit of a problem if a multifamily unit, which is going to be inherently more affordable, is paying a higher impact fee. But I think there's also something that is concerning just even to the idea of, well, we're generating revenue off the backs of the more recent arrivals. And Will, do you want to talk a little about some of the equity considerations there that you all get into?

Will Steichen: Yeah, absolutely. So let's use Livermore as the example where they're charging $100,000 for single-family and $60,000 for multifamily. That's going to new residents that are moving into these cities. And if you look at the amount of revenue that those cities collect from those huge impact fees, if you look at the population of that city, and let's go back to the park example where everyone in that community has access and can utilize that service. If you were to divide that revenue from impact fees just from those small groups of new residents across the entire community, Livermore, it would be $42 annually that would be spread out to each household, not even person, each household. So we're talking a few dollars a month to pay for all of this infrastructure that is acting as a barrier to development and making housing more expensive for new residents. So it's really that distributional equity and putting the onus on new residents and new development to pay for these things that really oftentimes a lot of the whole community is accessing and can be paid for in more efficient and much smaller barrier ways.

Trevor Stockinger: And just to add to that, in California, because we have Proposition 13 and we can only change the tax base mostly at the time of sale, imagine a world where you are an existing resident and you have had your home for 20 years and you're paying low property taxes and you also were in a community where at the time of purchase there were no impact fees. And now that shifts and you have new residents moving in, they're not only paying more property taxes because the tax base on their house will be higher or their apartment will be higher, they're paying higher rent, but they're also paying for the marginal costs of public capital and the old existing residents never had to pay that. So there's a lot of these issues and if we add to that, the fact that lower-income families are looking for property now, they tend to be people of color, it just exacerbates a lot of the equity issues in society that we have overall right now.

Nolan Gray: Yeah, that's a really good point. I mean it's taking the massive, massive equity issues of Prop 13, which says if you're a household that owned your home in the late 1970s or your parents owned their home in the late 1970s because you can inherit your property tax bill, you pay virtually nothing despite having this incredibly valuable asset, whereas the new arrivals are going to pay not only this much, much higher property tax bill, they're also going to pay a giant impact fee. And then of course, even just set aside all the things that I'm going to talk about next, just the equity concerns there are inherent, but then also the profile of a California homeowner is changing. So there is kind of a pretty intense sort of, it's a transfer from older, much wealthier, whiter homeowners from younger, less affluent, tend to be more diverse people who are buying a home in California in 2024, I mean it's kind of an AFFH train wreck, Affirmatively Furthering Fair Housing, like how does this policy persist?

Trevor Stockinger: And you see that, just talk one step further is all these means that local governments almost have to use to raise revenue at this point, these fees, sales tax, they're traditionally what would be considered a more regressive form of taxation because when we think of regressive in the way I'm going to speak about it, we think about paying a larger portion of your income for the same good or service. So when everyone goes out and needs to buy eggs for a lower-income family, the tax on those eggs means more to them than for a wealthier family. And that's the same with development impact fees and a lot of the way these fees are structured.

Nolan Gray: There's a lot of great data in the report. I'd encourage folks to go check it out. A lot of good charts. We like charts. I always say all of our reports have to be a little bit like picture books. But so you all also did a lot of interviews both with cities and developers and let's maybe start with cities. I'm curious to know what you all learned from those interviews that maybe couldn't be gleaned necessarily purely from the data.

Will Steichen: From the cities, it was really the perspective of how cities think about these impact fees, their reliance on them, and so on. So a few of the things we learned is that cities changed their land-use decisions based on revenue. I talked with one city manager who was very happy to say that they had a plot of land that was zoned for 1,100 homes and they realized that that would be a burden and the impact fees that they would have to assess weren't going to work. So they just changed the zoning to industrial and they were very happy about that. It wasn't something that they thought was a problem. So that was one big piece.

Another is just how NIMBYism is in full force still in 2024 and that neighborhood advocacy groups and school groups and all of these different local communities really play a big impact in the development that's happening or the lack of the development that's happening and that impact fees are popular to those people because they feel like if they're going to be development, at least it's being paid for. So it's a very easy politically popular item to that group of people.

Nolan Gray: And Trevor, we're returning to a point that you made earlier. I mean a lot of times jurisdictions are clearly using this to generate a lot of revenue, revenue far in excess of what could probably be justified on an actual legal basis of the marginal cost of the project, but they're still generating revenue. There are a lot of jurisdictions that seem to just be straight up using them just as another mechanism to block housing, maybe in response to other state interventions that have like SB 9 or ADU law or the things that, or AB 2011, they've tried to make it easier to build housing. The state policymakers took away the zoning lever. Maybe they took away the discretionary review lever and it's like, "Well, we can still pull this giant lever," which is assessing an insane impact fee. What did you see to that effect?

Trevor Stockinger: Yeah, I mean one of the good examples of this, and you raised it earlier, is Hermosa Beach. So they haven't met their RHNA affordable housing development requirements ever and in order to now supposedly comply, they have rezoned their commercial district to allow apartments, but then they are using something they deem a land recapture fee and they're trying to, what they view as recapture the value of land of rezoning from commercial to residential. It's $104 a square foot for apartments that are five units or more.

So that means that if you were to build five a thousand square foot apartments, you're adding half a million dollars onto the cost of that development, which there are law professors and other commentators who have pointed out that, "Boy, this looks a heck of a lot like you're trying to make it so expensive, you're never going to allow for affordable housing building." And yet the lip service is we're doing this to fund affordable housing, that's where the fees are supposed to go. We talked about the interviews from the city official's side. From the developer side, we also heard several developers just call out Livermore, call out Danville as just having such high fees that it's very difficult to pencil out a project. And one of the developers we interviewed said they tried and they've tried multiple times and they just can't do it.

Nolan Gray: Getting into this and this whole set up of some of the conversation on interventions, another thing that was surprising to me to learn is not only is it like, "Well, there's a high impact fee, we can't afford it, so we're just not building there." But also it's just totally ambiguous what the fee even is often. Do you want to talk a little bit about that? I didn't realize that was even a factor.

Trevor Stockinger: So several things make it ambiguous, and we can get into some of the reforms that are coming about to try to address this, but AB 1483 was promulgated in 2019 to try to make fee schedules be disclosed. At that time, there was a survey and about 50% of local jurisdictions were not complying. There was a subsequent reform in 2021, AB 602, which required direct linking of fee schedules, and when we surveyed the 60 jurisdictions, we found maybe 24% were not complying at all, and another 30% on top of that just had the fee schedules buried. So the fee schedule of impact fees, just listing what the fees will be if you want to build is just a base level necessary item. But when you take into account that cities also will change the fee schedule, add to them, reduce them, and provide credits. When you just look, sometimes cities have fee calculators --

that's becoming very popular now -- but the fee calculators are deviating from it. So it's just very hard to find out what these fees are at all, and that is what developers really are concerned about. There is very little transparency and if there is no transparency, a developer will not want to build there because they are also concerned. The other issue you have is that fees have historically, and there's reform to change this, been assessed at the end of when the construction is done. So you can imagine a world where the developer planned on a certain amount of costs and they just go up after the two years of construction is done.

Nolan Gray: Let's go ahead and dive into some of that then. In recent years, there have been efforts to try to require that impact fees need to follow a schedule and they need to be posted online. You all did some research on the rate of compliance, what'd you find?

Trevor Stockinger: We looked at 60 jurisdictions. The jurisdictions were selected initially by SPUR who had done this a few years ago, and it was an attempt to have them balanced across different types of cities. They looked at it, as I said, and found that about less than 50% were complying with fee schedule disclosures. We looked at it, we found about six 76% were complying with disclosing fee schedules. Some were very hard to find, others were very old. We saw fee schedules, I think, from Davis from 2009, maybe there are a few others that were quite old, clearly not set aside comprehensively, and not up to date.

AB 602 requires a direct link to the fee schedules now and was attempting to reinforce this disclosure requirement. It also requires disclosure of what's known as nexus studies, which we can get into later. However, these nexus studies are fiscal impact studies that are meant to justify that the fee is reasonably related to the impact. And AB 602 requires disclosure of these From 2018 forward. We found that only 33% of the jurisdictions were disclosing nexus studies. So you have very low compliance rates. AB 602 also required that actual development fees charged to a development after it's been permitted, be disclosed. Not a single jurisdiction was complying with that. Not one. So you like charts? We had two charts for three things because we couldn't even chart the last one. Just be a hundred percent.

Nolan Gray: That was another remarkable thing to me is the extent to which jurisdictions are just straight-up not complying with some of the laws passed in recent years. We will talk about some of your clever potential reforms for fixing that. There is a bill in session this year, AB 2144, which will beef up some of the transparency and reporting requirements, not in any way touching what impacts fees can be charged, but again, just saying, "Guys, let's just at least say what they are and how we calculated them." So I didn't want to drive right into essential nexus and Nollan-Dolan and stuff, but I think the listener or the viewer is warmed up now. We're good to go. So let's talk a little bit about the legal basis for some of these rules. And I'm sure that anyone with even a passing familiarity with California development has encountered a nexus study. What's going on there and what'd you find on those?

Trevor Stockinger: The impact fees are subject to US constitutional limits, and there's a basic test that they have to comply with, and that is what you alluded to, the essential nexus and rough proportionality requirements. So effectively you have to show that the impact has an essential nexus with the fee or vice versa. It's reasonably related in some way and the fee is roughly proportionate to the impact. So the amount is about the same and the Supreme Court said this doesn't have to be precise, but it has to be in the ballpark. The California courts in interpreting the Mitigation Fee Act have said that under that act we're applying effectively the same standards. Now, the trick is that there are two ways to assess fees.

One is that the local government can go in and say, "Okay, I'm going to look at this new development. I'm going to individually assess what the particular impacts are and I'm going to specifically set a fee for that new developer." Those are often called ad hoc fees. On the other hand, you have a lot of jurisdictions that set fee schedules as we've alluded to, and those are just sort of categories of land uses. Maybe it's a residential multifamily residential single of various sizes and commercial, and then they just provide an average fee. So that's a more generalized way of setting fees. Interestingly, California never applied the essential nexus and rough proportionality tests to fee schedules, so it was a lot easier. They were much more deferential to governments. Just last month, the Supreme Court ruled that that distinction is invalid and that all fees, whether under a fee schedule or individually determined, have to meet the essential nexus and rough proportionality test.

That's a pretty quick overview, but that means that there will need to be time during which the California courts hash out what the new test will be and how it will be applied or the legislation needs to get involved. And I think pretty clearly what we're going to see is that you're going to need a lot more compliance on the fee schedule side and they should become much stricter in the way they're used. The way you normally justify these is through what we said was a nexus study. So it's kind of a complicated fiscal impact analysis. There are a lot of calculations involved. Often you do something like project your growth, project what public capital you'll need, and then calculate how much on average each new development will cost to public capital if you're going to fund it in that way. I'll stop here, but we can get into some of the just inherent problems with those kinds of fiscal analysis.

Nolan Gray: That's a great summary of a complicated area of law. And the recent decision you're discussing is the Sheetz v County of El Dorado.

Trevor Stockinger: Sorry, I didn't mention the name.

Nolan Gray: It's timely because I think it's motivating a lot of conversations around impact fees in Sacramento this year. Just for those who don't know, the County of El Dorado charged an unusually high transportation impact fee. I think it was $23,000 - $24,000 for a gentleman who wanted to put a manufactured home on his property. It was otherwise fully compliant with the zoning. They alleged that it was going to cost $24,000 in traffic upgrades for him to do this. They updated this under, as they call it, a legislative exaction. It's subject to a reasonableness standard, not this Nollan-Dolan standard of an essential nexus, and rough proportionality. The Supreme Court basically said no, it's subject to that. And then punted on all the other detailed questions as I understand. So I mean that's an important point to flag certainly for policymakers and staffers in Sacramento, that this is probably an area where the state legislation is going to have to be updated to reflect this new standard.

Trevor Stockinger: I would think so. The Mitigation Fee Act does state for fee schedules that there has to be a reasonable relationship, it's just that the courts have always been very deferential and what that means "without deference" will need to be hashed out. Other states never made this distinction. So when you look at the implementing ordinances and the fee schedules in those states, for example, there were two decisions from other states cited in the Sheetz decision that I took a look at. The ordinances are just much more particularized. You have much more particular fee schedules, properties are exempted from fees, you have fee credit schemes that are set out -- you just don't have as much discretion happening. And then also key, which is something that Will brought up earlier, is that in these ordinances, you are tying the fee much more closely to the regional or the local or neighborhood impact. So if you're charging a traffic impact fee, it can't be used across town. It has to be used for the streets in that area that are reasonably thought to be impacted by the new development.

Nolan Gray: And we'll get back to you, I promise. As I said, Trevor's the attorney on the team. So some of these questions I think you're covering here. So I mean one of the concerns I think I have is right... Okay, great. I guess these legislative exactions now they'll have to do nexus studies, but I think you all surveyed a few of these nexus studies and you weren't especially inspired by what you found. Could you talk about that a little bit? To what extent are these nexus studies accurately assessing the marginal impact of new developments and charging I think we would call fair fees?

Trevor Stockinger: Yeah, sure. So there are several criticisms of these types of fiscal impact analyses that have come out over the years, and as I'm going to critique them, I don't mean to say that people aren't working hard to get the numbers right. It's just that when you look at these fiscal analyses, they look very mathematically precise. You go through and you try to project the cost of new parks and policing, et cetera, and you sign at a number and you try to do calculations on what the population will be, and there are industry standards for how many new trips per household will be on the road. So there's a lot of numbers that are there, but at the end of the day, the real issue is that there's just a lot of assumptions underlying this. And so one example would be the way we just use accounting or attribution methods.

So you raised this earlier, Nolan and Will, but for example, we have thought at least a common traditional viewpoint is that residential land use itself is more expensive than commercial land use. One of the reasons we say that is because we say, well, commercial land use, retail land use, brings in sales tax and residential land use does not. In fact, it's much more likely that the people living there will use public services, the number one being public schools. But that's purely because you accounted for sales tax a hundred percent going to retail. If you said, "Oh, well, the people living in these new residences will be paying some of that sales tax," then you might come up with a different answer. And so you have these issues happening within these fiscal impact analyses and they are opaque. And if we look at the way historically that in the US we have viewed apartments, which is very negative, you can imagine that some of the assumptions underlying this, whether it's deliberate or not, embody some of those biases.

So you might just inflate a number because you believe that people living in apartments will raise policing costs, something along those lines. These impact fees... So that's a little bit of a long explanation. We looked at four newer nexus study analyses to just test whether, A) they were complying with some of the new reforms. For example, residential impact fees are supposed to be calculated on a proportionate square foot basis. So we just wanted to test if these newer nexus studies were doing that. Of the four, we only found one that was actually reporting and going to charge fees on a proportionate square foot basis. We looked at other issues like are they charging only for marginal burdens on a new development or are they charging the development potentially more?

And so we saw evidence that they might be charging more. For example, one of the nexus studies we looked at was for traffic impacts, and one of the projects that was being funded was to use significantly new technology that was linking lights to newer electric cars with self-driving abilities, that were going to reduce traffic. And all of the value of that technology change was being assigned to offset the new development traffic impacts. I just find it hard to believe that that technology was not also benefiting the existing residents and the existing users of roads. So a little bit of a long explanation, but hope that we can follow it. Yeah.

Nolan Gray: Yeah. The other absurd example you see a lot is the housing affordability impact fee often assessed against homes that are inherently more affordable than the existing median structure, especially if it's multifamily. The other process thing I wanted to talk about is the sequencing when impact fees are assessed. So again, even before we talk about the total size of impact fees or maybe even when they're disclosed, why does it matter when impact fees are assessed and what do we know about how they're assessed today?

Will Steichen: Yeah, so we spoke with a lot of developers about this and how it affected them in the timing. So it matters because developers have to get investors upfront to build a home. If they're assessed an impact fee when they're submitting their plans, which was the case for many cities, that's hundreds of thousands of dollars potentially before a project even begins that they're having to pull from an investor. So it's just that added barrier and it makes doing a development harder and finding investors harder. So from every single developer we spoke with, they much preferred that impact fees be assessed at the certificate of occupancy. Obviously, they want to be able to calculate these fees and understand what these fees are from the get-go, but being able to get through the development process and having those fees assessed at a later date made it pencil much easier for them and it just opened up more opportunities for development.

Nolan Gray: Yeah, I mean, I guess the idea there is that the developer at the point that they have a Certificate of Occupancy, they can then sell the unit and immediately start generating revenue and then pay off that fee. Is that the idea?

Will Steichen: Exactly. They no longer have to finance this fee for the entire development process. As you said, they can pass it through.

Nolan Gray: Right. Okay. And there is legislation currently active. We're recording this in the middle of May and the legislature is fickle, so we have no idea what's going to pass and not pass. But as of mid-May, SB 937, I believe, would shift these impact fees to once a certificate of occupancy is issued. So we're tracking that.

Will Steichen: I think the one thing I'd add, Nolan, to that is cities obviously feel the opposite. They want their money as soon as possible, and that was something we heard consistently from cities. Many of them, if they're working with developers that they have good experience with and the developers worked with the city often, the city might be willing to adjust when they assess those fees. But by and large, they prefer to assess those fees as early as possible. So there is a tension there between what developers want and what cities want.

Nolan Gray: Well, I guess it could make sense that if certain upgrades actually do need to be made commensurate to the development, it might be reasonable to need to charge a fee earlier. But I think as you all suggested, so many of these things, the parks, right? The parks aren't being purchased immediately and don't need to be purchased immediately. The payment into a school capital fund that might result in a new school 5, 10 years down the road doesn't need to be assessed immediately, et cetera, et cetera. If there's a real health and safety basis for things like, "Okay, we have to upgrade the sewer before the people move in," that might make more sense at an earlier stage than some of the fees that are being assessed, right?

Will Steichen: Yeah, you're exactly right. I mean things like water runoff, that was one that we heard consistently from every city that those were fees or costs that they had to pay for upfront before a development could begin. So yeah, you're absolutely right. There's a nuance there between when fees should be charged and what costs are coming and what that timeline is.

Nolan Gray: So big picture question here, and then we'll go to a lightning round and cleanse our palate. So one of the big questions that I had, and we had this conversation about a thousand times, but I am genuinely curious to hear where you all land on this is so what happens if we limit the impact fees that can be assessed? So one concern is, well, obviously as you all have said so far, they're inequitable. They directly increase the cost of housing. They're often untethered from marginal impacts. But one concern is, well, if we take away impact fees or reduce impact fees, this reduces the incentive for local governments to permit new housing. And so for example, a jurisdiction like Sunnyvale. Sunnyvale charges incredibly high impact fees that probably can't be justified on any reasonable basis, but they also permit a lot of housing. And in a universe where we've taken away impact fees, is Sunnyvale permitting less housing or is the typical jurisdiction permitting less housing? Where did you all end up on that? What do you think about that?

Will Steichen: Cities rely on these fees. The reliance varies radically. So we need to understand that removing impact fees with no other source of revenue, without trying to come up with another way for cities to pay for these things, is not going to have good consequences. Just cutting it out and saying, "Sorry, figure it out." They're going to find another way to create barriers to housing and fund these projects, or they're just not going to do anything. So it's really important for us to limit these impact fees, but also understand that cities need to pay for these publicly provided goods and they need to have ways to do that.

So one of the things that we were excited about is through the legislator currently and Californians are going to vote on it in November, is the ACA 1, which starts to chip away at Prop 13, and it gives cities the ability to vote on raising property taxes to pay for a bond that pays for housing, all of the pieces that impact fees pay for currently. So all of the infrastructure and things like that, instead of having the new residents pay for this infrastructure, as we mentioned earlier, can be spread out to the entire community. So really understand that just removing these impact fees is not an approach that we recommend. There are huge pitfalls to that and cities need to have this source of revenue. So coupling that restriction or limiting of impact fees with another way for cities to bring in revenue is key.

Nolan Gray: Yeah, that's great. Thanks. And we'll chat about, I think, some of your clever solutions for getting us to a better place here in a second. Want to do a lightning round? So you all are both coming out of the UCLA MPP program, so I'm going to do a few as a UCLA PhD student, I'm going to do a few UCLA questions. Favorite place to get lunch in Westwood?

Trevor Stockinger: Oh, I like Northern Cafe, personally. Really good northern Chinese food. And as someone who's lived in Beijing, I appreciate that.

Will Steichen: This is terrible, but I never get down to Westwood. I go to Lu Valle and that's it. From the public affairs building to the coffee shop right next door.

Nolan Gray: Oh, come on. Is there anything on campus, Will?

Will Steichen: Literally Lu Valle, the coffee shop. That's my life. It's pretty bad.

Trevor Stockinger: Hey, Will, you And I have gone for drinks at Barney's.

Will Steichen: That's true.

Trevor Stockinger: That was pretty good.

Will Steichen: One time. Now West Hollywood, I can give you West Hollywood spots.

Nolan Gray: Very good. Yeah. What do you have on West Hollywood? Where are you going to lunch?

Will Steichen: Astro Burger, Santa Monica and Gardner Street, $5 BLTs. It's the best.

Nolan Gray: I am writing that down. Okay, great. What's the best class you took at UCLA?

Will Steichen: I took Paavo Monkkonen's housing policy class, and it just blew my mind. Every week we studied a different country and how they approach housing and up until that point, all of the examples of housing policy I'd looked at have been in the US. And to be frank, the US has had some pretty terrible housing policies. So it just really opened my mind to what other options are out there and how we can approach the problems we have.

Trevor Stockinger: I'll limit my response to -- I'm also getting a Master's in Social Welfare besides a Master's in Public Policy -- I'll limit mine to the public policy courses. Through public policy work, I took a great course out of law school on housing segregation and discrimination, that I would recommend to anyone, that provided a history of our housing policies and whether they be discriminatory or during the good times when we were trying to dismantle that. That was really helpful and I wrote a very interesting paper on Section 8 housing vouchers, the fact that we have 19 public housing authorities in LA County, and that they have just radically different success rates than actually housing individuals.

Nolan Gray: Who taught that class?

Trevor Stockinger: Rick Sanders, Professor Sanders.

Nolan Gray: Great. Cool. Yeah, there are a lot of cool classes over in the law school. Best place to work on campus.

Will Steichen: Never worked on campus.

Nolan Gray: You're in and out. Oh, man. Okay. Sorry, Will.

Trevor Stockinger: It's interesting. I just like sitting outside sometimes. I mean, I think the sculpture garden is really beautiful, so maybe that's not the greatest workplace, but I do my best to stay outside when I'm on campus.

Nolan Gray: Yeah, absolutely. The rooftop patio too, in Luskin's pretty good as well.

Trevor Stockinger: Yeah.

Nolan Gray: Pretty nice. See, when I really need to work, I'm just in the stacks at the grad student library. It's brutal. I can't have a window. I need to have bad cell service.

Trevor Stockinger: I used to work on the first floor there and now I've started to move upstairs into the stacks when you've really got to get some work done, but sometimes you need that break and there's still Wi-Fi and all outside, so I like to do that.

Will Steichen: I apologize. I misunderstood. I was thinking about an actual job. As far as doing school work, the computer lab in the Luskin building, there are no windows. It's super depressing, but it is very easy to lock in and get a lot done.

Nolan Gray: Will, I hear you -- when I was doing my... I did my Master's in City Planning at Rutgers and it had a nice, well-lit, but windowless and supremely boring computer lab, and there's just something about a computer lab and using a computer that's not your own, that actually kind of makes you lock in. Maybe we will bring a psychologist next week to explain that. Cool. Let's step out, and talk a little bit more about LA. Favorite LA book? Can be a novel or nonfiction.

Will Steichen: I'm sort of partial. One of the classes I took was Zev Yaroslavsky's leaders class where every week he brings in a different LA leader. So he wrote a book recently and it's from his perspective in LA politics for 40 years and all of the crap that's gone down. So I just found it absolutely fascinating to have this really unique perspective navigating through all of the tumultuous times LA has gone through since the '70s. So I would highly recommend that book, I just bought in right away.

Trevor Stockinger: Yeah, it's interesting when you asked that question, who immediately came to mind, although not necessarily a specific book, is Thomas Pynchon who's written several books, fictional accounts, most recent, well, most recent one on LA was Inherent Vice, which isn't one of his best, but I just enjoy his writing, so I'm going to go with that. And I do think it captures a certain LA zeitgeist.

Nolan Gray: That's great. So I'm rereading City of Quartz right now, and I don't know if it's my favorite, but the prose -- it's just so biting, and the chapter on the home voter or the homeowner sort of NIMBY uprisings in the '70s and '80s. There's just such good material. That said, my favorite novel, I really love Day of the Locust. Nathanael West. Definitely worth reading. Most underrated neighborhood in Los Angeles?

Will Steichen: So I'm a skateboarder, so I spend a lot of time over in Rosemead. There are a bunch of skate parks, a bunch of skate spots, and a big skate community over there. And yeah, I just love it. I could spend weekends just cruising around.

Trevor Stockinger: Nolan, maybe you should go and then I'll come back to me on that one.

Nolan Gray: I was just looking up Rosemead. That's cool. Max Dobler, one of our policy managers, is a former downhill skateboarder and skateboarder photographer, so I'll have to get you two connected. I'm forever a Palms defender.

I'm in Palms. I think most UCLA grad students are aware of Palms, but whenever I say I live in Palms, even people within LA don't know about it. It's a pocket of relatively affordable apartments in the middle of West LA that's within an easy commuting distance of Culver and UCLA. And I think it's underrated. It's got all the challenges that every LA neighborhood has, but it's like you're within walking distance of bars and really good restaurants and great transit. That's got to count for something. Maybe I'm just justifying my own lifestyle decisions.

Trevor Stockinger: No, I mean, I'm over in Venice, which may be one of the overrated neighborhoods of Los Angeles or something. I mean, I love it here, but it doesn't fall into underrated. But I like Palms too. I mean, getting out more in that direction. There's a lot of fun stuff over there. I was just thinking as someone who lives on the West side, I think maybe it's not underrated, but it always feels worth it to me to go to San Gabriel Valley to eat and just enjoy. And you'll spend a day out there. So it's a long trek and I think a lot of folks in Venice or Palms would just be like, "What are you doing?" But I always enjoy going out there, so that'll be my add-on to that.

Nolan Gray: All right. I'll ask one more very LA question, then we'll jump back into impact fees. What are you all watching right now on TV?

Trevor Stockinger: I'm watching Franklin on Apple TV+. Great. I thought I would not like it. And I watched the first couple of episodes and it is a really, really terrific show. The other thing I'm watching, which is just garbage from the 2000s, is an Australian show called Kath & Kim, and it's just sort of fun. It's about a mother and daughter in Australia doing nonsensical things.

Nolan Gray: Very good. I like that you have a dual-track of TV. That's good.

Trevor Stockinger: Yeah, I have to have a dual track.

Will Steichen: A little embarrassing, but I was never into it, and now I'm fully bought in is RuPaul's Drag Race. It is the most entertaining show I've ever seen. And yeah, I had never seen it until probably six months ago, and now I've watched six seasons.

Nolan Gray: Very good. Yeah, I don't actually know that I've ever seen an entire episode. I think I've seen it in the background, but all right, Will, for you, I will go check it out and I'm going to blame you. I just finished watching Fallout, which I was obsessed with the video games back in the day, and it captures the tone of the show of the games really well, and it goes from horrifying violence to incredible levity in a 1950s sitcom-style tone. It nails it, but I just started Ripley last night on Netflix and oh my gosh, that is so good. Neo-noir kind of tone. Highly, highly recommended.

Okay, that's the LA shop talk. Let's get back to the important things here, impact fees. So I think most people know if they haven't read your report, they know, but they'll certainly know after reading through the first few portions of your report that the situation's not working with impact fees. You all sketch out, I think, some potential reforms here. Let's first maybe talk about what the options are for impact fee reform and what you characterize as the major possibilities in this policy space.

Trevor Stockinger: Just to summarize three options. One is just to eliminate impact fees, pretty straightforward. The other is to cap impact fees, and we can get into details of that. And both of them, as Will said earlier, we never wanted to advocate for a pure elimination or pure cap because you really do need replacement revenue coming from somewhere. So we pair those with ACA 1 or just more generally looking for other reforms that will lead to more revenue. And then the third one is sort of a reform that I'll call would empower more private attorney generals, which is just sort of more private enforcement to ensure that the impact fees that are charged are actually linked to the impacts in the way that the Supreme Court and the California courts or California statutes require, and there are ways to incentivize that litigation. Those are the three.

Nolan Gray: Sure. So I think the first one that listeners should have a clear sense of why that's a problem. There are a lot of jurisdictions that raise a lot of revenue from this, and we don't know what would happen if you got a lot of jurisdictions that might respond by just dramatically scaling back permitting. But let's talk about this second piece a little bit more about alternative sources of revenue. We've talked about ACA 1, which would increase the bonding authority for jurisdictions to just finance more of this required infrastructure. What are some other things that the state could potentially do to fill some of this gap and improve the fiscal situation for cities to make it to where they're not totally dependent on charging these insane impact fees?

Trevor Stockinger: One of the other statutes that's up, and I haven't looked at it in detail, but it's related, is ACA 13. I don't know if you looked at that, Nolan, but my understanding is it's effectively sort of doing the opposite. It's saying, "We're going to raise the voting requirements to stop taxes." It's saying, "We're going to lower barriers by taking away some power from the voters." Whether that goes through, we'll see. And I mean fundamentally, I think our view coming out of this was the view of a lot of folks, which is just that we really need additional reform to Proposition 13 and we need to sit down and have a real world conversation about what it does to the state's finances. And that is such a third rail in California. We recognize that, but at some point, it really needs to happen because it's driving a lot of what's going on here.

Nolan Gray: Yeah, I mean it's so much of our work is in the shadow of Prop 13. Trying to figure out like, "Okay, how do we work around this thing?" that everybody knows is kind of broken, but that you're not allowed to touch. An interesting part of your recommendations was the private enforcement piece that you discussed. So we know that a lot of cities have passed laws requiring transparency, requiring nexus studies and fees to be posted, and they just don't get posted. As I understand, I mean, the state could potentially enforce that or maybe not. In any case, what's your vision for allowing for maybe more private right of action here?

Trevor Stockinger: Yeah, so I'm an antitrust lawyer by training and profession, and the Cartwright Act in California and the federal Sherman Act have this idea of a private attorney general that we believe these laws are important enough that we are incentivizing individuals to bring cases. We do that in California as well with something called PAGA, Private Attorney General Act, in the labor context where we believe it's important enough to enforce labor laws that we allow employees to bring lawsuits and we incentivize that. We also do that with CEQA, I believe now. So I was just sort of thinking about whether we bring these regimes into enforcement of impact fees.

If we believe it's important, if we are in a crisis and we want to respond to that crisis, maybe we need to start thinking about that means of really incentivizing individuals to bring these lawsuits because we could enforce the Mitigation Fee Act and some of these constitutional requirements by having government agencies bring suits, but that costs money and there's always going to be a trade-off there.

So what happens currently is that a developer who gets hit with fees or a homeowner can bring a lawsuit, and the upside to that lawsuit is you just get the feedback at the end of the day. And that's not a very good incentive for bringing a lawsuit because they are expensive. It's also not a very good disincentive for a local government to not just charge a high impact fee because the cost is so low. They might as well put in a huge fee schedule and then just wait for litigation because they're going to be able to settle it out easily usually because the attorney's fees are so high.

So the suggestion is that we reform and we provide some fee-shifting and cost-shifting to allow individuals who bring these lawsuits to recover their attorney's fees. And then going further than that, the suggestion was to provide an automatic trebling of the return of the fees. So a tripling of it, which is what you do under the Cartwright Act in California, and you're effectively saying, "Well, for every dollar of impact fee that was not justified, that the court finds was not properly justified, we're going to give the plaintiff $3." That should offset the costs and better incentivize litigation and disincentivize the use of impact fees that are not justified.

Nolan Gray: And we do this in a lot of other areas of even California planning law, a lot of citizen enforcement. I mean, this is kind of the whole basis of CEQA for better or worse, that it's very, very, very easy for almost anybody in the state to initiate litigation if they think anything has been done wrong. But I mean, I think this point is important just to unpack it a little bit more because exactly to your point, especially smaller developers, smaller developers doing smaller projects, you're not going to launch litigation to fix a city that's not complying with state impact fee laws.

If you're a small local developer who might not have attorneys or planners on retainer, you're building a small project where the returns are already raised or tight, you just don't have the time to go through months of legal process. And especially for many of our smaller builders or general contractors who might be immigrants or English might not be their first language on top of all the other hurdles that we throw on these projects saying, "Oh, by the way, you have to go through this lawsuit that's going to take months and months and cost you a lot of money that you might lose." And even if you do win it, you only get what you were supposed to get. It's just a bad deal. Right?

Trevor Stockinger: That's right. And even someone could say, "Well, there was a plaintiff in Sheetz who brought a lawsuit," but in those kinds of impact litigations, typically the plaintiff is someone else who is driving that litigation. Someone else was driving the Sheetz litigation who wanted to challenge this distinction and that plaintiff was chosen because they had a good story behind them. So the kinds of reforms I'm suggesting here are not meant to bring more impact litigation like that. It's meant to empower, like you said, individual small developers, and residents who are making small changes and might get hit by the impact fees, really empowering them to bring lawsuits. Now, I get it, people don't necessarily like lawsuits, but it is a way to try to incentivize or disincentivize behaviors. Go ahead.

Nolan Gray: Well, I mean, when a city's breaking the law, yeah, I like lawsuits. Everybody has an example of some frivolous lawsuit they don't like, but okay, if a jurisdiction systematically just does not comply with state housing law, okay, yeah, sorry, it's pretty crystal clear what your obligations were. Question for the two of you here as we wrap up, I'm curious, what did you change your mind about throughout doing this research and writing this report?

Will Steichen: I think for me, it's not necessarily changed my mind, but one of the big revelations is that impact fees don't only make new housing more expensive, they make all housing more expensive. We found several studies that new housing goes up essentially one-to-one for every impact fee, but existing housing goes up. In one study, it was 83%, or not 83%, but 83 cents on the dollar. So not only is our new residents having to pay for all of these or new homes, new developments, having to pay for all these publicly provided goods, it's simply just making housing less affordable for everyone, whether it's a new house or an old house.

And so that was a really big understanding for me because going into this, I thought impact fees only affect new development. We need new development, but it's usually wealthy people and all that. I didn't care too much about it. Once it made sense to me that this is affecting the entire housing market, including all of the existing stock, that shifted how important it is to me and how changing how we assess impact fees or lowering impact fees can potentially have a very big effect.

Trevor Stockinger: I think that was an interesting finding, Will -- the increase in the existing house prices and it really shows how incumbent homeowners are incentivized to use these. For me, I almost came away a little bit with the opposite. I had expected there to be almost no justification for impact fees. And I think there are some, I do think it does potentially when used properly remove political barriers. Usually, that argument though is when it's offsetting property tax, we have a trade-off between two things, property tax or impact fees. In California, no trade-off. So a lot of the studies, and a lot of the writing on this are in settings that are just not California-specific, but I did walk away feeling more sympathetic to the other side. I don't think that sways my viewpoint, but just more sympathetic and also more sympathetic for the city official who has a different set of interests than the NIMBY homeowners.

So if you are a city official, and Will gave this example earlier, who truly wants to make their city great and their voters have earmarked almost all of the money coming in, all the other revenue to policing in schools, and you want your city to be great, then what choice do you have but to use impact fees or some other maybe even less desirable revenue source. But in that way, the voters aren't being stuck with their choice, right? If the city official was not bailing them out or the staff, they would've earmarked away a lot of the other great services that they wanted in the community. So anyway, I guess I'm oddly more sympathetic to some of the counterarguments, but at the end of the day, I think a lot of the qualitative evidence of how we view apartments historically over time, really needs to address these equability issues. You can see it harming our housing market.

Nolan Gray: Well, and that's I think a reasonable point, and it's key to if we're going to move beyond this framework, you have to understand why cities have become dependent on these, and we don't do ourselves any benefit from a policy reform perspective by ignoring the perspective of the folks who are charging these fees. So I think it's a great report on many margins, but it's also very balanced and very reasonable, and I think it's got a deft assessment of what's politically possible. Of course, there are a few other authors. So Trevor and Will here, who have been my guests, are two of the authors. Shelby, Arias, George, and Bubba also were some of the other authors there. So they all, I think, contributed really, really important aspects to this work. Trevor and Will volunteered to join the podcast.

Trevor Stockinger: That's right.

Nolan Gray: I appreciate you all joining. So you all are wrapping up MPP, I believe you're both graduating this year, is that correct?

Trevor Stockinger: That's correct.

Will Steichen: Yep.

Nolan Gray: So what's next? Anything exciting to share or type of work that you're hoping to get into?

Will Steichen: Well, I'm wrapping up a year at the city of West Hollywood where I've been working on the city's strategic initiatives, improving our services for people experiencing homelessness and things like that. There's a possibility I'll continue with the city, but I'm interviewing for a position with the state at the Housing and Community Development Department. So we'll see what happens there.

Trevor Stockinger: That's great, Will. I wasn't aware of that. And they put out the template we talked about in our report, so that's great.

Will Steichen: I know your website very well.

Trevor Stockinger: So I came into this program wanting to work with the homeless community somewhat directly, but also doing policy advocacy. So I haven't quite figured out my path forward yet, but I think I'm looking for a job that is at the policy level or policy implementation level but is linked closely to the homeless community or communities that are related to it, like formerly incarcerated folks, that kind of thing. Something like actually working at some place like LAHSA or the newer entity, LACAHSA, which is doing homelessness prevention and housing might be interesting to me.

Nolan Gray: Fantastic. Trevor, I just created a stack of papers for Donald Shoup's parking class, and they were all about vehicular homelessness among students. So very top of mind, and I'm excited to see the amazing work that you do in that field. And same to you, Will. Well, whoever brings you all on will be very lucky. As I said, we will be hosting the report on our website. The link will be in the show notes. And thanks so much for joining the Abundance Podcast, Trevor and Will.

Will Steichen: Thanks, Nolan.

Trevor Stockinger: Thank you, Nolan, for having us.