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## U.S. Supreme Court Holds that Legislatively-Adopted Development Impact Fees Must be Related and Proportional to Development Impacts

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**Written by:**

Harold Freiman  
Partner  
Walnut Creek

Scott Cross  
Partner  
Fresno

Jennifer P. Thompson  
Senior Counsel  
San Luis Obispo

In its recent holding in *Sheetz v. County of El Dorado* (2024) \_\_\_ S.Ct. \_\_\_ [2024 WL 1588707], the United States Supreme Court held that legislatively-adopted development impact fees are subject to constitutional scrutiny under the Takings Clause.

As a condition of receiving a residential building permit, George Sheetz was required by the County of El Dorado (County) to pay a \$23,420.00 traffic impact fee. The fee amount was assessed according to a fee schedule adopted by the board of supervisors that imposed fees according to the type of development and its location within the County. Sheetz paid the fee under protest and obtained the permit. Sheetz sought relief in California state court, claiming the conditioning of the building permit on the payment of a traffic impact fee constituted an unlawful “exaction” of money in violation of the Takings Clause of the United States Constitution.

**Background – “*Nollan/Dolan Test*”**

Two previous U.S. Supreme Court cases, *Nollan v. California Coastal Commission* (1983) 483 U.S. 825, and *Dolan v. City of Tigard* (1994) 512 U.S. 374, together give rise to what is commonly known as the “*Nollan/Dolan test*,” which provides that development exactions, including impact fees, must have an “essential nexus” to the development project in question and must be imposed in a manner that is “roughly proportional” to the impact caused by the new development.

California courts and the Ninth Circuit have long interpreted the *Nollan/Dolan* essential nexus and rough proportionality requirements to be inapplicable to impact fees that had been adopted by the agency’s legislative body, and thus were deemed to be legislatively imposed.

When deciding Sheetz’s State court challenge, the lower courts continued to hold that the *Nollan/Dolan* test applies only to fees imposed administratively “on an individual and discretionary basis.” Because the traffic impact fee in question was imposed as a legislative act on all development of the same type

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and in the same area of the County, the lower courts found that it was not subject to the *Nollan/Dolan* test. Sheetz then appealed to the U.S. Supreme Court.

## The Mitigation Fee Act and Current Practice

California cities and counties commonly adopt legislatively approved development impact fees pursuant to the Mitigation Fee Act, which requires a nexus study to show that the adopted fees have a relationship to the impacts of new development. Under this method of adopting impact fees, cities and counties adopt a fee schedule and typically impose the fees as a condition of approval to projects based upon the type of development (e.g., commercial, residential, or industrial).

### *Sheetz v. County of El Dorado* Holds that Legislatively Adopted Development Fees are Subject to the Takings Clause and the *Nollan/Dolan* Test

Since the decisions in *Nollan* and *Dolan*, various state courts have reached different conclusions on the question of whether the Takings Clause recognizes a distinction between land use permit conditions imposed via legislative acts, such as by ordinance or resolution adopting an impact fee schedule, and administrative acts, such as individually imposed impact fees based upon a particular project's impact. The Supreme Court granted review to resolve this split.

In its holding in *Sheetz v. County of El Dorado*, the Court determined the Takings Clause "does not single out legislative acts for special treatment." As the Court stated, "[T]he essential question is not . . . whether the government action at issue comes garbed as a regulation (or statute, or ordinance, or miscellaneous decree). It is whether the government has physically taken property for itself or someone else." Thus, the core holding in *Sheetz v. County of El Dorado* is that legislatively-adopted impact fees are subject to the *Nollan/Dolan* test.

### *Sheetz v. County of El Dorado* Does Not Prohibit Legislatively-Adopted Impact Fee Schedules

The Court remanded the case back to the California courts to apply the analysis as to the impact fee in question. It remains to be seen whether the State court, applying *Nollan/Dolan*, will uphold the County's impact fee schedule as applied to Sheetz's project. In fact, the U.S. Supreme Court expressly left open the question of whether the *Nollan/Dolan* test operates differently when an alleged taking affects a "class of properties" rather than "a particular development." The California courts will now need to decide whether the specific process used by the County resulted in constitutionally permissible impact fees imposed on Sheetz's project.

## Takeaways

Importantly, this ruling does not prohibit the common practice of California cities and counties imposing impact fees on new development in accordance with a fee schedule adopted by the legislative body on classes or types of development or on an individualized ad hoc basis for a specific parcel. Rather, public agencies imposing impact fees should continue to closely review and evaluate

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the sufficiency of their nexus and rough proportionality determinations whenever they impose impact fees on projects to ensure that the fees imposed satisfy the requirements of the Takings Clause and *Nollan/Dolan*. We will continue to monitor this case on remand to see how the courts ultimately apply the *Nollan/Dolan* test to project class-based impact fees.

For California school districts, this case is not likely to affect their current methodology of imposing school impact fees, which relies on fee justification studies and needs analysis to establish the necessary nexus.

If you have any questions about *Sheetz v. County of El Dorado* or need guidance related to development impact fees, please contact the authors of this Client News Brief or any attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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