

US Supreme Court Decision Invites Scrutiny of Legislatively Imposed Impact Fees

The unanimous opinion holds that development impact fees established through the legislative process are subject to constitutional scrutiny as potential regulatory takings.

Key Points:

- In *Sheetz v. County of El Dorado*,¹ the US Supreme Court held that a legislatively mandated traffic impact fee imposed as a condition of approval for a building permit was subject to constitutional scrutiny as a potential regulatory taking under the Fifth Amendment. The Court determined that no “legislative exemption” applies to ordinary takings rules as compared to conditions imposed on an individual and discretionary basis.
- As the Supreme Court’s opinion likely expands the universe of local government actions that may be challenged as a regulatory taking, on remand the California Court of Appeal (and other courts in future litigation) will have to consider whether legislatively imposed fees assessed through formulas or schedules based on the type of proposed development will survive constitutional scrutiny.

Background

The Takings Clause of the Fifth Amendment to the US Constitution allows the government to take private property for a public purpose so long as it provides “just compensation” to the property owner.² The Takings Clause coexists with state and local governments’ police power to regulate land use.³ Past Takings Clause jurisprudence recognizes that a land use regulation “reasonably necessary to the effectuation of a substantial government purpose” is not a taking unless it diminishes too much of the property’s value or frustrates the owner’s investment-backed expectations.⁴

However, in other cases the Court has recognized that government action to withhold or condition a land use permit for reasons unrelated to legitimate land use interests may amount to “extortion” — thus implicating the Takings Clause.⁵ Whether the government’s imposition of a permit condition rises to the level of a taking implicates a two-part test modeled on the “unconstitutional conditions” doctrine.⁶ That test — established in *Nollan v. California Coastal Commission*⁷ and *Dolan v. City of Tigard*⁸ — allows the government to condition approval of a land use permit on a landowner’s agreement to dedicate a portion of their property to the public so long as the condition (1) has an “essential nexus” to the government’s land use interest and (2) is “roughly proportional” to the development’s impact on that interest.⁹ While the *Nollan/Dolan* test does not require a “precise mathematical calculation,” the government must make an

“individualized determination that the required dedication is related both in nature and extent” to the impact of the proposed development.¹⁰ In *Koontz v. St. Johns River Water Management District*, the Supreme Court extended the *Nollan/Dolan* test to apply to conditions requiring a landowner to pay a monetary exaction in lieu of relinquishing property.¹¹

Sheetz’s Challenge to Local Traffic Impact Mitigation Fee

In 2016, George Sheetz sued El Dorado County, challenging the legality of a \$23,420 impact fee imposed by the County as a condition to obtain a permit to build a manufactured home on his property in Placerville, California.¹² El Dorado County’s General Plan includes a requirement that, as a condition to receiving a building permit, new development must pay for road improvements needed to mitigate the traffic impacts from such development, with the fee amount determined by a rate schedule which accounts for the type of development (e.g., commercial or residential) and its location within the County.¹³ The fee imposed on individual developers under this schedule is not based on the cost specifically attributable to the traffic impacts from the particular project.¹⁴ Sheetz paid the fee under protest, obtained the building permit, and requested a refund from the County, to which it did not respond.¹⁵ Sheetz sought relief in state court, claiming, among other things, that the fee constituted an unlawful exaction and that under *Nollan/Dolan*, the County was required to make an individualized determination that the fee imposed on him was necessary to offset traffic congestion attributable to his particular project.¹⁶

The trial court ruled against Sheetz, and the Third District California Court of Appeal affirmed that ruling, finding that *Nollan/Dolan* scrutiny applies only to permit conditions imposed on an ad hoc basis by administrators, not to legislatively prescribed development fees generally applicable to a broad class of property owners.¹⁷ In the California appellate court’s October 2022 opinion, the court relied on California Supreme Court precedent holding that *Nollan/Dolan* scrutiny applies to development fees imposed “on an individual and discretionary basis,” rather than “generally or ministerially.”¹⁸ The court held that the traffic impact fee imposed on Sheetz was only subject to the “reasonable relationship” test embodied in California’s Mitigation Fee Act,¹⁹ and affirmed the trial court ruling that the fee complied with that law.²⁰

After the California Supreme Court declined to review the appellate court’s decision, Sheetz sought review in the US Supreme Court, which granted *certiorari* on September 29, 2023.²¹

The Supreme Court’s Decision

The Supreme Court vacated the California Court of Appeal’s ruling in a unanimous decision authored by Justice Barrett. The Court focused on constitutional text, the history of the exercise of eminent domain power, and the Court’s Takings Clause jurisprudence (both physical and regulatory takings cases) to support its finding that no “legislative exemption” applies to ordinary takings rules, and that the scope of state power to take private property without just compensation does not vary depending on the branch of government effecting the taking.²²

The Court also noted that the County, during oral argument, agreed that conditions placed on issuance of a building permit are not exempt from *Nollan/Dolan* scrutiny just because a legislative body imposed them.²³ However, the Court noted that state courts should consider in the first instance the question of whether a permit condition imposed on a class of properties through legislation must be tailored with the same degree of specificity as a permit condition targeted to a particular development.²⁴ The California Court of Appeal did not reach this question since it concluded legislative permit conditions were categorically exempt from *Nollan/Dolan*, and therefore did not conduct the *Nollan/Dolan* analysis.²⁵

Justices Sotomayor, Gorsuch, and Kavanaugh authored concurring opinions, all of which reflected that the Court's opinion resolved a limited question. Justice Sotomayor's concurrence confirmed that the threshold question of "whether the traffic impact fee would be a compensable taking if imposed outside the permitting context and therefore could trigger *Nollan/Dolan* scrutiny."²⁶ Justice Gorsuch's concurrence took the position that "nothing in *Nollan*, *Dolan*, or today's decision supports distinguishing between government actions against the many and the few any more than it supports distinguishing between legislative and administrative actions."²⁷ Recognizing that future litigation over impact fees is likely, Justice Kavanaugh's concurrence clarified that the opinion did not "address or prohibit the common government practice of imposing permit conditions, such as impact fees, on new developments through reasonable formulas or schedules that assess the impact of classes of development rather than the impact of specific parcels of property."²⁸

Implications for Legislatively Imposed Impact Fees

As Justice Kavanaugh's concurrence highlights, while the Court confirmed that impact fees are subject to *Nollan/Dolan* scrutiny, the Court did not decide whether such fees are unconstitutional, or "whether a permit condition that is imposed on a class of properties, like an impact fee, must be tailored with the same degree of specificity as a permit condition that targets a particular development."²⁹

In future litigation, including on remand in this case, state courts will need to determine whether and how legislatively imposed impact fees charged to classes of development (rather than specific properties) survive *Nollan/Dolan* scrutiny.

In this case, the California Court of Appeal had determined that the County's traffic impact fee was only subject to the "reasonable relationship" test embodied in California's Mitigation Fee Act, which requires that development impact fees bear a "reasonable relationship" between the impact of the project and the need for public improvements.³⁰ Since January 1, 2023, California public agencies have been required to prepare a written nexus study before adopting a development impact fee (in order to demonstrate the reasonable relationship); prior to that date, nexus studies were typically prepared by agencies, but not compulsory.³¹ The Supreme Court's opinion calls into question the Mitigation Fee Act's "reasonable relationship" test, and agencies will need to rethink how they conduct nexus studies, and whether current statutory requirements for nexus studies suffice for the fees to survive *Nollan/Dolan* scrutiny. The decision also invites future litigation across California challenging legislatively imposed development impact fees under the Mitigation Fee Act, arguing that they are an unconstitutional exaction.

The *Sheetz* decision has the potential to significantly delay permitting timelines to the extent that localities must take an individual, tailored approach to evaluating permit fees imposed via legislation, such as traffic impact fees. Latham & Watkins will closely monitor developments in this area of the law.

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Endnotes

¹ *Sheetz v. County of El Dorado*, 2024 S.O.S. 22-1074 (US Supreme Court, filed Apr. 12, 2024).

² *Sheetz*, 2024 S.O.S. 22-1074, at 4.

³ *Id.*

⁴ *Sheetz*, 2024 S.O.S. 22-1074, at 4-5 (citing *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 123, 127 (1978)).

⁵ *Sheetz*, 2024 S.O.S. 22-1074, at 6 (citing *Nolan*, 483 U.S. at 837).

⁶ Under the "unconstitutional conditions" doctrine, the government may not ask a person to give up a constitutional right (e.g., the right to receive just compensation when property is taken for a public use) in exchange for a discretionary benefit conferred by the government if the benefit sought has little or no relationship to the property. *Dolan v. City of Tigard*, 514 U.S. 374 (1994).

⁷ *Nollan v. California Coastal Commission*, 483 U.S. 825, 837 (1983).

⁸ *Dolan v. City of Tigard*, 514 U.S. 374 (1994).

⁹ *Sheetz*, 2024 S.O.S. 22-1074, at 6.

¹⁰ *Dolan*, 514 U.S. at 391.

¹¹ *Koontz v. St. Johns River Water Management Dist.*, 570 U.S. 595, 605 (2013).

¹² *Sheetz*, 2024 S.O.S. 22-1074, at 3.

¹³ *Id.*, at 2.

¹⁴ *Id.*, at 2.

¹⁵ *Id.*, at 3.

¹⁶ *Id.*

¹⁷ *Sheetz v. County of El Dorado*, 84 Cal.App.5th 394, 407 (Cal. Ct. App. 2022).

¹⁸ *Sheetz*, 84 Cal.App.5th at 406-407.

¹⁹ Cal. Gov. Code, § 66000 *et seq.*

²⁰ *Sheetz*, 84 Cal.App.5th at 410.

²¹ *Sheetz v. Cnty. of El Dorado*, No. 22-1074, 2023 U.S. LEXIS 2954 (September 29, 2023).

²² *Sheetz*, 2024 S.O.S. 22-1074, at 7 ("So far as the Constitution's text is concerned, permit conditions imposed by the legislature and other branches stand on equal footing.")

²³ *Sheetz*, 2024 S.O.S. 22-1074, at 10.

²⁴ *Sheetz*, 2024 S.O.S. 22-1074, at 11.

²⁵ *Id.*

²⁶ *Sheetz*, 2024 S.O.S. 22-1074, Sotomayor, J., concurring., at 1-2.

²⁷ *Sheetz*, 2024 S.O.S. 22-1074, Gorsuch, J., concurring., at 3.

²⁸ *Sheetz*, 2024 S.O.S. 22-1074, Kavanaugh, J., concurring., at 1.

²⁹ *Id.*

³⁰ Cal. Gov. Code, § 66001(a); see *Boatworks, LLC v. City of Alameda*, 35 Cal.App.5th 290, 301 (2019).

³¹ Cal. Gov. Code, § 66016.5.