

Legislatively Enacted Traffic Impact Fee Survives Constitutional Challenge

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A legislatively enacted and nexus-based traffic impact fee has been upheld against a constitutional challenge under the Fifth Amendment's Takings Clause.

In *Sheetz v. County of El Dorado*, a landowner applied for a County building permit to construct a small, prefabricated home on his property. As a condition of granting the permit, the County required the landowner to pay the County's traffic impact fee determined by a rate schedule previously approved by the Board of Supervisors. The landowner challenged the fee as an unlawful "exaction" of money under the Takings Clause of the U.S. Constitution. Last year, the U.S. Supreme Court sided with the landowner and ruled that the Takings Clause contains no exception for permit conditions imposed by legislation. The case was sent back to California courts for further consideration.

The California Court of Appeal has now ruled that the County's imposition of the traffic impact fee on the landowner did not constitute an unconstitutional taking. The Court analyzed the fee using the *Nollan/Dolan* essential nexus and rough proportionality tests. It concluded that the County established that the traffic impact fee is used to finance public roadway improvements that are necessitated by increased traffic attributable to population and job growth from new development. Additionally, it concluded that the County established a record of existing traffic flow, expected impact over a 20-year period, and estimated resources needed to complete necessary infrastructure projects to accommodate new traffic patterns.

This case resolves a question left unanswered by the U.S. Supreme Court: does a legislatively enacted fee imposed as a permit condition on a class of properties have to be tailored with the same degree of specificity as an ad hoc fee that targets a particular development? The California Court of Appeal has answered "yes," but it is unlikely that the litigation will stop here. Therefore, public agencies should continue to evaluate the nexus studies prepared in support of their development impact fees to confirm that they satisfy the requirements of *Nollan/Dolan*.

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If you have any questions about how this case may affect your agency, please contact **Nicholas Ghirelli, Annette Brennan, or your RWG attorney.**