

Public Agencies' Authority to Impose Generally Applicable Fees as Conditions of Development Confirmed

01.26.2023

ATTORNEYS

Travis Kaya

A generally applicable traffic impact mitigation fee, imposed on all new development within the jurisdiction, is not an unconstitutional taking, and does not violate the California Mitigation Fee Act.

In *Sheetz v. County of El Dorado*, the County conditioned approval of a building permit for a single-family home on payment of a traffic impact mitigation fee. As is common with such fees, the County's traffic impact mitigation fee program finances the construction of new roads and the widening of existing roads by collecting mitigation fees from developers. In setting the fee, the County did not make any "individualized determinations" as to the traffic impacts of any particular project. Rather, it set fees based on the total estimated costs for road construction and widening, proportioned based on the geographic area of a project and the type of project.

The homeowner argued that the fee violates the takings clause of the U.S. Constitution. Under the *Nollan/Dolan* test articulated by the U.S. Supreme Court, the government may not condition land use approvals on the dedication of private property for public use or payment of money unless there is an "essential nexus" and "rough proportionality" between the dedicated property and a legitimate governmental interest. As noted by the California court of appeal in this case, however, the *Nollan/Dolan* test does not apply to "legislatively authorized" fee programs, such as El Dorado County's, that are "generally applicable" to all new developments within the jurisdiction. The court noted, in particular, that the fee was not an ad hoc fee imposed on the homeowner on an "individual and discretionary" basis.

The court also held that the fee did not violate the California Mitigation Fee Act because the County could show that a "reasonable relationship" existed between the fee charged and the burden posed by the plaintiff's development of a single family home in the proposed geographic area within the County.

This case upheld a widely-imposed type of mitigation fee, and the court made clear that public agencies may impose these "generally applicable" mitigation fees without making individualized findings for each project on which the fees are assessed.

If you have any questions or would like further information regarding this case, please contact **Travis Kaya** or any member of our **Municipal and Public Agency Law Department**.