

U.S. Supreme Court Revisits the Right of Local Government to Exact Permit Conditions from Developers

The U.S. Supreme Court (SCOTUS) has again rejected a state's narrow interpretation of the constitutional limits on government's ability to impose development conditions. A unanimous SCOTUS ruled on April 12 in favor of the property owner in *Sheetz v. El Dorado County*, in which the petitioner was required to pay a \$23,420 county traffic-impact fee to place a mobile home on a lot he owned in Placerville, California. To address traffic congestion, the county required developers to pay a traffic-impact fee as a condition of receiving a building permit, with the amount determined according to a predetermined (non-individualized) rate schedule. Sheetz challenged that fee as an unlawful government exaction of money under the Constitution's Takings Clause and SCOTUS's derivative Nollan/Dolan test. To review:

- The U.S. Constitution prohibits the taking of private property by government entities without just compensation, and (but) under the government's legitimate police power, it may withhold or put conditions on building permits.
- The Nollan case established that conditions to development permits, such as a dedication or impact fee, must have an essential nexus to the government's legitimate land-use interest to ensure the government is acting to further its stated purpose and not using its permitting monopoly to extort private property without just compensation.¹
- The Dolan case followed Nollan and additionally required that a permit condition be roughly proportional to the nature and extent of the impact of the proposed development.²

Sheetz also argued that Nollan and Dolan required the county to make an individualized determination that the fee imposed on him was necessary to offset traffic congestion attributable to his specific project, challenging the county's predetermined fee schedule.

The California Supreme Court rejected all of Sheetz's claims and asserted that the limitations of Nollan/Dolan apply only to permit conditions imposed on an individual and discretionary basis, not to generally applicable conditions such as fees imposed on a broad class of property owners. That state and several others have held that legislative action is not subject to the Nollan/Dolan test; only ad hoc administrative actions are.

SCOTUS rejected that limitation outright, holding that legislative actions were no less subject to the Nollan/Dolan factors than administrative actions. In this way, SCOTUS has greatly expanded the categories of permit conditions subject to the essential nexus and rough proportionality requirements.

SCOTUS did not rule on the validity of the fee imposed on Sheetz but remanded the case to state court for the determinations under Nollan/Dolan. Notably, SCOTUS also did not reach Sheetz's further assertion that a permit condition imposed on a class of properties must be tailored with the same degree of specificity as one that targets a particular development, essentially requiring an individualized determination in each case.

This and several other important clarifications await future cases before SCOTUS, which currently appears on a course to reaffirm, strengthen, and expand property rights.

¹ *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987) Concluded that a beachfront easement for use by people already on the public beaches constituted an unlawful taking because the dedication did not bear a logical nexus to the harm the California Coastal Commission sought to address by the easement condition imposed on the building permit – reduced public beach access.



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² *Dolan v. City of Tigard*, 512 U.S. 374 (1994) Held that a municipality cannot require developers to dedicate part of their property as a condition of obtaining a permit unless the municipality makes an individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.
