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What *Sheetz v. County Of El Dorado* Means For Development Fees And Other Regulatory Programs

By

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I. Introduction And Summary.

In *Sheetz v. County Of El Dorado* (2024) 601 U.S. 267 ("*Sheetz*"), the United States Supreme Court held that the Takings Clause in the Fifth Amendment to the U.S. Constitution "prohibits legislatures and agencies alike from imposing unconstitutional conditions on land-use permits." (*Id*. at p. 279.) Thus, such conditions are not exempt from hightened scrutiny under *Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825 ("*Nollan*"), and *Dolan v. City of Tigard* (1994) 512 U.S. 374 ("*Dolan*"), just because a legislature imposed them. (*Id*. at pp. 276-280.) However, the Court did not resolve a number of other issues regarding the application of "essential nexus" in *Nollan* and "rough proportionality" test in *Dolan* (collectively, the "*Nollan/Dolan*" test) to development impact fees.

In its Opinion on remand, the California Court of Appeal initially found for petitioner George Sheetz on the "predicate" or "antecedent" question of whether the *Nollan/Dolan* test governs impact fees that are imposed on classes of development based on general fee schedules. The Court of Appeal then held that the County of El Dorado's Traffic Impact Mitigation ("TIM") fee satisfied the *Nollan/Dolan* test. The California Supreme Court denied review, but ordered the Opinion by the Court of Appeal not to be published. Sheetz filed a new Petition For Writ Of Certiorari on February 9, 2026, which is still being briefed as of this City Attorneys Department Annual Conference.

Since the Opinion is no longer published, litigants in the California courts may still raise the "predicate" question of whether *Nollan/Dolan* governs generally-applied development impact fees. It is anticipated that the application of the "essential nexus" test regulatory fees and programs will be increasingly contested. Also, there is still uncertainty as to how to apply the "rough proportionality" test in *Dolan* to general fee schedules that are legislatively imposed on classes of development. And litigants may continue to dispute whether compliance with the California Mitigation Fee Act's "reasonable relationship" test (Govt. Code § 66001, subd. (a)) will satisfy the "rough proportionality" test in *Dolan*. This paper recommends strategies as to how local agencies should formulate and impose impact fees that satisfy the *Nollan/Dolan* test.

II. Background And Procedural History Of *Sheetz v. County Of El Dorado*.

A. The County of El Dorado adopted a transportation impact fee on new development, which George Sheetz paid and then challenged.

In recent decades, the County of El Dorado has experienced significant population growth, and with it an increase in new development. To account for the new demand on public services, the County's Board of Supervisors adopted a General Plan, which is a legislative act. To address traffic congestion, the General Plan requires developers to pay a traffic impact fee as a condition of receiving a building permit. The County uses proceeds from these fees to fund improvements to its road system. The fee amount is determined by a rate schedule, which takes into account the type of development (commercial, residential, and so on) and its location within the County. The amount is not based on the cost specifically attributable to the particular project on which the fee is imposed.

George Sheetz owns property in the center of the County near Highway 50, which the General Plan classifies as “Low Density Residential.” Sheetz and his wife applied for a permit to build a modest prefabricated house on the parcel, with plans to raise their grandson there. As a condition of receiving the permit, the County required Sheetz to pay a traffic impact fee of $23,420, as dictated by the General Plan's rate schedule. Sheetz paid the fee under protest and obtained the permit.

B. Sheetz presented writ of mandamus claims under the Fifth Amendment to the U.S. Constitution and the Mitigation Fee Act in the California state courts.

Sheetz brought a petition for writ of mandamus in the Superior Court of El Dorado County. He claimed that conditioning 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 Fifth Amendment to the United States Constitution. In Sheetz’s view, the U.S. Supreme Court decisions in *Nollan* and *Dolan* required the County to make an individualized determination that the fee amount was necessary to offset traffic congestion attributable to his specific development. The County’s predetermined fee schedule, Sheetz argued, failed to meet that requirement. Sheetz also brought a claim under California’s Mitigation Fee Act (Gov. Code §66000 et seq.) (“MFA”), arguing that the TIM fee failed to satisfy both of the “reasonable relationship” tests in subdivisions (a) and (b) of section 66001 of the Government Code.

The Superior Court rejected Sheetz’s claims under Fifth Amendment and under the MFA, and the California Court of Appeal, Third Appellate District, affirmed. On the Fifth Amendment claim, the Court of Appeal relied on precedent from the California Supreme Court and asserted that the *Nollan/Dolan* test applies only to permit conditions imposed “ ‘on an individual and discretionary basis.’ ” (*Sheetz v. County of El Dorado* (2022) 84 Cal.App.5th 394, 406 (quoting *San Remo Hotel L. P. v. City and Cty. of San Francisco* (2002) 27 Cal.4th 643, 666-670).) Fees imposed on “a broad class of property owners through legislative action,” it said, need not satisfy the *Nollan/Dolan* test. (*Id*. at p. 407.) Sheetz’s petition for rehearing was denied and the California Supreme Court denied review.

C. The United States Supreme Court granted certiorari and reversed as to the application of *Nollan/Dolan* to legislative exactions.

Because state courts reached different conclusions on the question whether the Takings Clause recognizes a distinction between legislative and administrative conditions on land-use permits, the United States Supreme Court granted Sheetz's petition for writ of certiorari in order to resolve the split. (*Sheetz v. County of El Dorado, California* (2024) 601 U.S. 267, 273 & fn. 3 ("*Sheetz*") [collecting cases].) The Supreme Court reversed the Court of Appeal opinion, holding that the *Nollan/Dolan* test applies to legislative and administrative conditions on building permits. In other words, the Court determined that permit conditions are not exempt from scrutiny under *Nollan* and *Dolan* just because a legislature imposed them. (*Id.* at pp. 276-280.) The Supreme Court vacated the federal takings portion of the prior Court of Appeal opinion and remanded the matter for further proceedings not inconsistent with its opinion. (*Id.* at p. 280.)

In its decision, the Supreme Court in *Sheetz* explicitly did not resolve several key issues that were extensively argued by the parties and numerous amicus curiae. First, the Court did not address the "important threshold question to any application of *Nollan/Dolan* scrutiny: whether the permit condition would be a compensable taking if imposed outside the permitting context." (*Sheetz, supra.* 601 U.S. at pp. 280-281 (conc. opn. of Sotomayor, J.).) As explained by Justice Sotomayor:

> "A predicate for any unconstitutional conditions claim is that the government could not have constitutionally ordered the person asserting the claim to do what it attempted to pressure that person into doing." [Citation.] In the takings context, *Nollan/Dolan* scrutiny therefore applies only when the condition at issue would have been a compensable taking if imposed outside the permitting process. [*Id*. at p. 281 (conc. opn. of Sotomayor, J.).]

Second, the Supreme Court declined to decide whether " 'a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development.' " (*Sheetz, supra,* at p. 284 (conc. opn. of Kavanaugh, J.).) As noted by Justice Kavanaugh:

> [T]oday's decision does 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. Moreover, as is apparent from the fact that today's decision expressly leaves the question open, no prior decision of this Court has addressed or prohibited that longstanding government practice. Both Nollan and Dolan considered permit conditions tailored to specific parcels of property. [Citations.] Those decisions had no occasion to address permit conditions, such as impact fees, that are imposed on permit applicants based on reasonable formulas or schedules that assess the impact of classes of development. [*Ibid.*]

Third, the Supreme Court did not decide whether compliance with the "reasonable relationship" test in the MFA (Govt. Code §66001, subd. (a)) satisfied the *Nollan/Dolan* test. Fourth the Court did not answer the ultimate issue of whether the County's TIM fee survived the heightened scrutiny of the *Nollan/Dolan* test.

D. The California Court Of Appeal's Opinion (no longer published) held that the County's TIM fee satisfied the *Nollan/Dolan* test.

After the Supreme Court issued the remittitur and remanded the case back to the Court of Appeal, the parties submitted supplemental briefing on the remaining issues in the case, and the court granted various private and public entities permission to file amicus briefing. Briefing was completed in November 2024, and the Court of Appeal issued its Opinion on the remaining issues on July 29, 2025 ("Opinion"). (*See Sheetz v. County of El Dorado* (No. C093682, July 29, 2025) *previously published at* 113 Cal.App.5th 113, 335 Cal.Rptr.3d 316, 2025 Daily Journal D.A.R. 7085, *ordered not to be published*, 2025 Cal.LEXIS 7549 (Nov. 12, 2025).)[1] The Court of Appeal affirmatively held for Sheetz on the predicate question – that is, the heightened scrutiny of the *Nollan/Dolan* test did apply to the TIM fee. (Opinion, at 17-19.) Applying the *Nollan/Dolan* test, the Court of Appeal then concluded that "the TIM fee does not constitute an unlawful taking without just compensation in violation of the Fifth Amendment. Under the circumstances presented, the impact fee withstands the heightened scrutiny of the *Nollan/Dolan* test." (Opinion, at 20-21 (335 Cal.Rptr.3d at p. 333.) The Court of Appeal denied rehearing on August 18, 2025.

The California Supreme Court denied review and, pursuant to California Rules of Court, rule 8.1125(c)(2), ordered the Opinion by the Court of Appeal not to be published.

E. Sheetz files a new (and still pending) Petition for Writ of Certiorari.

On February 9, 2026, Sheetz filed a Petition for a Writ of Certiorari with the United States Supreme Court that challenged only the "rough proportionality" holding by the Court of Appeal in the Opinion. Briefing on that Petition is ongoing as of this City Attorneys Department Annual Conference.

III. What *Sheetz* Means For Development Fees And Other Regulatory Programs.

A. The takings analysis under *Nollan/Dolan* no longer distinguishes between fees imposed by the legislative body and those imposed *ad hoc* by administrative agencies.

In *Sheetz,* the United States Supreme Court unanimously held that permit conditions are not exempt from scrutiny under *Nollan* and *Dolan* just because a legislature imposed them. (601 U.S. at pp. 276-280.) In so concluding, the Court found that the Takings Clause applies equally to legislators

[1] In the Opinion, the Court of Appeal provided an extensive primer on federal takings law, including the *Nollan/Dolan* decisions. (Opinion, at 9-14 (335 Cal.Rptr.3d at pp. 326-329).)

and administrators, which means that it "prohibits legislatures and agencies alike from imposing unconstitutional conditions on land-use permits." (*Id*. at p. 279.)

B. The Opinion By the Court Of Appeal (on remand from the U.S. Supreme Court) may not be cited or relied on.

Because the California Supreme Court ordered the Opinion by the Court of Appeal not to be published, the Opinion "must not be cited or relied on by a court or a party in any other action." (Cal. Rules of Court, rule 8.1115(a).)[2] Indeed, attorneys could be sanctioned for citing the Opinion in court pleadings. (*See e.g., Alicia T. v. County of Los Angeles* (1990) 222 Cal.App.3d 869, 884-886.) Even though no reason was provided by the California Supreme Court for that order, it constituted an exercise of the Court's role in deciding "the evolution and scope of this state's decisional law," and it means that the Opinion is not "entitled to the precedential value of the stare decisis doctrine." (*Schmier v. Supreme Court* (2000) 78 Cal.App.4th 703, 709-710.)

Nevertheless, both the Opinion, as well as the arguments in the pending Petition for Writ of Certiorari filed by Sheetz in the United States Supreme Court challenging that Opinion, discussed below, are instructive for City staffs, officials and counsel regarding the adoption of development impact fees and other regulatory programs going forward.

C. The antecedent / predicate question – i.e., whether *Nollan/Dolan* applies to development impact fees – is unsettled and may still be argued.

In the Opinion, the Court of Appeal directly addressed "the threshold or antecedent question Justice Sotomayor identified in her concurring opinion in this case." (Opinion, at 15 (335 Cal.Rptr.3d at 330).) The Court of Appeal explained:

> In the land-use regulation context, the requirements of *Nollan* and *Dolan* apply only when the permit condition at issue (e.g., easement, impact fee) would have been a compensable taking if imposed by the government outside the permitting process. (*See Sheetz, supra,* 601 U.S. at pp. 280-281 (conc. opn. of Sotomayor, J.), *citing Koontz, supra,* 570 U.S. at p. 612; *see also California Building* [*Industry Assn. v. City of San Jose* (2015)] 61 Cal.4th [435,] 459-460.) As recognized by the Supreme Court in *Koontz*: "A predicate for any unconstitutional conditions claim is that the

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[2] Those rules also restrict the ability of courts in other states to rely on the depublished Opinion by the Court of Appeal. For example, a recent majority opinion of the Court of Appeals for New York in *Coalition for Fairness in SoHo and NoHo, Inc. v. City of New York* (N.Y., No. 112, Jan. 13, 2026) ___ N.E.3d ___, 2026 WL 88133, following the example of other New York cases, rejected the dissent's reliance on the analysis of the predicate question in the Opinion because "[t]he California Rules of Court expressly prohibit courts or parties, in other actions, from relying on or citing to an unpublished opinion," and because the authority cited by the dissent "does not provide support for this Court to disregard California's rules." (Id. at ___ & fn. 5, 2026 WL 88133 at *7 & fn. 5.) Other courts have held the same. (*See e.g., Liberty Surplus Ins. Corp. v. Ledesma and Meyer Const. Co., Inc*., 834 F.3d 998, 1002 (9th Cir. 2016)[recognizing that a California decision that was ordered not to be published is not "controlling" and does not provide "clear guidance" on the issue considered]; *Moseley v. Metropolitan Life Inc. Co.* (N.D. Cal. 1989) No. C-88-0905 RFP, 1989 WL 211203 at *3 & fn. 6 [defendant citing California case that was ordered not to be published could be "an attempt by defendant to mislead the court."])

> government could not have constitutionally ordered the person asserting the claim to do what it attempted to pressure that person into doing." (*Koontz*, at p. 612.) [Opinion, at 15 (335 Cal.Rptr.3d at p. 330).]

In its briefing on the predicate question, the County argued that *Nollan/Dolan* should not apply to the TIM fee because the TIM fee is similar to, and functionally equivalent to, taxes and assessments, which the Supreme Court has held "are not takings." (*Koontz, supra,* 570 U.S. at 615.) That argument tracked the position of Justice Mosk that "[m]any development fees bear a close resemblance to the excise taxes, assessment fees and user fees discussed above. They are perhaps best characterized as a special assessment placed on developing property, calculated according to preestablished legislative formulae based on square footage or per unit of development." (*Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854*,* 896 (conc. opn. of Mosk, J.) ("*Ehrlich*").) The County also pointed to the comments by the Chief Justice during Oral Argument in *Sheetz* that the County is "not taking any particular property interest," and that

> It's just use to which the land is --is being put. You can argue it's the value of the land, but, you know --and even in the other cases where we're talking about money, it's usually money in a particular pot, whether it's, you know, in the legal fees case or those sorts of situations. I don't think there's another case under *Nollan* and *Dolan* and *Koontz* where what's involved is simply value as opposed to a concrete, identifiable property interest. [Transcript of Oral Argument, *Sheetz v. County of El Dorado* (U.S. Supreme Ct., No. 22-1074, Jan. 9, 2024) 2024 WL 250550, https://www.supremecourt.gov/oral_arguments/argument_transcripts/2023/22-1074_n758.pdf. ("Tr. Oral Arg.") at 6:25-7:12.]

Justice Jackson similarly stated: "We have very clear, very well-established legal principles as to what qualifies as a taking. And whatever this is, I think we can say that since it isn't the kind of dedicated property appropriation that occurs in *Nollan*, *Dolan*, and *Koontz*, that it's not a taking, so this particular formula doesn't apply." (*Id.* at 70:13-20.)

The Court of Appeal ruled against the County on that issue and held that "that *Koontz* 'controls' the 'predicate taking question.'" (Opinion, at 17 (335 Cal.Rptr.3d at p. 331).) The Court of Appeal concluded that "the TIM fee is a monetary exaction that must satisfy the 'essential nexus' and 'rough proportionality' requirements of *Nollan* and *Dolan* to withstand a constitutional challenge under the takings clause." (Opinion, at 18 (335 Cal.Rptr.3d at p. 331).) The court explained: "[U]under *Koontz*, the challenged fee (monetary exaction) implicates the 'unconstitutional-conditions' test the Supreme Court established in *Nollan* and *Dolan*, which governs the validity of land-use conditions (e.g., impact fees) the government imposes for the approval of a building permit." (Opinion, at 19 (335 Cal.Rptr.3d at p. 332).)

However, by ordering the Opinion not to be published, the California Supreme Court removed the only precedential case in California that expressly addressed that predicate question, which had been left unresolved by the United States Supreme Court in *Sheetz*. For example, the majority on the Court of Appeals of New York explicitly refused to follow the Opinion regarding the predicate question because the Opinion was ordered not to be published (see footnote 1, *supra*).

Thus, going forward, the predicate question is still unresolved. The Court of Appeal held that, "while *Koontz* involved an 'in lieu of' fee –i.,e., an impact fee instead of a dedication of real property—the majority's holding was clearly not limited to those precise fees or monetary exactions." (Opinion, at 18 (335 Cal.Rptr.3d at p. 331).) Several courts in other states have concluded, like the Court of Appeal in the Opinion, that *Koontz* was not limited to "in lieu of" fees. (*See e.g., Anderson Creek Partners, LP v. County of Harnett* (2022) 876 S.E.2d 476, 495-497; *Charter Township of Canton v. 44650, Inc.* (2023) 12 N.W.3d 56, 75.) However, litigants in California may currently still attempt to persuade the courts in California to take an approach on the predicate question that is contrary to the Opinion and the decisions in those other state courts. For example, citation may be made to the very recent decision by the Court of Appeals for New York in *Coalition For Fairness, supra,* ___ N.E.2d at ___, 2026 WL 88133, which held that the unconstitutional conditions doctrine under *Nollan/Dolan* did not apply to a one-time arts fund fee charged to occupants of certain buildings designated as "Joint Living-Work Quarters for Artists" who sought to convert their units to unrestricted residential use. There, the court "[did] not read *Koontz* to imply that the simple condition of paying money in relation to a land-use permit requires application of *Nollan/Dolan* scrutiny." (*Id*., ___ N.E.2d at ___, 2026 WL 88133 at *7.) The New York court concluded that "the [United States] Supreme Court's holding in *Koontz* applies only to monetary conditions which are offered as an alternative to, or "in lieu of," a condition that would be a per se taking if imposed directly." (*Ibid*.) In an analysis that contradicts the Opinion in the *Sheetz* case, the New York high court rejected the arguments in a dissenting opinion (which followed the Opinion by the California Court of Appeal), and explicitly limited the application of *Nollan/Dolan* to "in lieu of" fees. (*Id*., ___ at ____, 2026 WL 88133 at *8-*9.)

In short, the "predicate question" is presently unresolved. Since the Opinion is no longer published, litigants may still seek to persuade the California courts that *Nollan/Dolan* does not apply to development impact fees.

D. Application of the "essential nexus" test to regulatory fees and programs will likely become more contested.

In the Opinion, the Court of Appeal held that the TIM fee satisfied the "essential nexus" test in *Nollan*, such that there is "logical connection between the TIM fee and the County's land-use interest (reducing traffic congestion from new development)," and that the "required relationship or link between the challenged permit condition (TIM fee) and the County's legitimate government interest (reducing traffic congestion) is present here." (Opinion, at 19-28 (335 Cal.Rptr.3d at pp. 333-338).) The Court of Appeal explained:

> It is clear to us that the required nexus exists between the County's legitimate interest/regulatory goal of minimizing traffic congestion and the TIM fee, which is imposed on all new development to finance roadway improvements to meet increased traffic needs caused by such development. This case presents a quintessential or classic instance of a government's legitimate exercise of the police power in the land-use context. [Opinion, at 27 (335 Cal.Rptr.3d at pp. 337).)

> [W]e find that the required relationship or link between the challenged permit condition (TIM fee) and the County's legitimate government interest (reducing traffic congestion) is present here. Stated differently, we conclude the *Nollan* component of the *Nollan/Dolan* test has been satisfied because there is an "essential nexus," or logical connection, between the County's regulatory goal or police-power purpose and the challenged impact fee. [Opinion, at 28 (335 Cal.Rptr.3d at 338).]

Sheetz does not contest that finding in his pending Petition for Writ of Certiorari.

However, counsel for property owners have indicated an intent to use the "essential nexus" test to challenge fee programs designed to address public problems, such as the lack of new below-market-rate homes, increasing rents, the high cost of moving, the desire to beautify public spaces, on the ground that such problems are preexisting and not readily attributable to the impacts of new development. (*See e.g.,* Brian Hodges [counsel for Sheetz], "Emerging Issues: Land Use Exactions After *Sheetz v. County Of El Dorado*," 41 No. 3 Prac. Real Est. Law. 48 (May 2025).) Cities need to be aware of the potential of such challenges in the future.

E. The present uncertainly regarding how to apply the "rough proportionality" test in *Dolan* to general fee schedules legislatively imposed on classes of development.

In the Opinion, the Court of Appeal held that the County's TIM fee satisfied the "rough proportionality" test in *Dolan*. (Opinion, at 20, 28-52 (335 Cal.Rptr.3d at pp. 333, 338-353).) In so doing, the Court of Appeal addressed several issues that remain highly disputed between the property bar and counsel for local agencies regarding the application of *Nollan/Dolan* to development fees, as well as other regulations.

One of those issues is whether a local agency may impose a development impact fee on reasonable formulas or schedules that assess the impact of entire class of development rather than the impact of specific parcels of property. The Court of Appeal recognized in the Opinion that within the "rough proportionality" inquiry "is the additional question of whether a permit condition imposed on a class (i.e., type) of development (here single-family residential), must be tailored with the same degree of specificity as a permit condition that only targets a particular development project." (Opinion, at 20 (335 Cal.Rptr.3d at p. 333.) "More specifically, we must decide the question the Supreme Court explicitly declined to answer in this case: whether the takings clause prohibits the longstanding government practice of imposing permit conditions, such as impact fees, on permit applicants based on reasonable formulas or schedules that assess the impact of entire classes of development rather than the impact of specific parcels of property." (Opinion, at 20 (335 Cal.Rptr.3d at p. 333 (citing *Sheetz, supra,* 601 U.S. at p. 284 (conc. opn. of Kavanaugh, J.)).) The Court of Appeal noted that "nothing inherent in the standards articulated in *Nollan* and *Dolan* precludes the government from making the required showing in this matter." (Opinion, at 36 (335 Cal.Rptr.3d at p. 343).) Therefore,

> In the context of a generally applicable impact fee imposed by a legislative body on specific types of new development (e.g., single-family residential, commercial) through formulas or schedules (as here), the *Dolan* standard logically requires a

> reviewing court to determine whether the amount of the fee is sufficiently tailored--i.e., roughly proportional (or proportionally related) in nature and extent--to the overall impact the *specific type of development* has on the government's land-use interest. [Opinion, at 36-3720 (335 Cal.Rptr.3d at p. 343) (emphasis added).]

The Court of Appeal did not accept Sheetz's argument that the challenged TIM fee violates the Takings Clause because it was imposed without regard to the costs specifically attributable to "his particular project." (Opinion, at 37 & fn. 8 (335 Cal.Rptr.3d at p. 343 & fn. 8).)

The Court of Appeal's conclusion is consistent with other state cases that applied *Nollan*/*Dolan* scrutiny to generally imposed impact fee schedules at a programmatic level, and *not* on a parcel-specific, individualized determination. (*See Anderson Creek Partners, L.P. v. County of Harnett* (2022) 876 S.E.2d 476, 500 [assumed that *Nollan*/*Dolan* scrutiny of a generally applicable water and sewage fee would not be individualized]; *Homebuilders Ass'n of Dayton and the Miami Valley v. City of Beavercreek* (2000) 729 N. E. 2d 349, 356-358 ("*Beavercreek*") [examined only the programmatic features of a traffic impact fee and the methodology the city used in enacting it, before holding that the fee complied with *Nollan/Dolan*]. *See also, e.g.*, *Puce v. City of Burnsville* (Minn. 2023) 997 N.W.2d 49, 59 ("[a] city can justify its imposition of a percentage-based formula on a particular class of properties if it can show" that the fee "reflects, or is roughly proportional, to the amount necessary to counter the impact of the expected developments" in the aggregate, not at the "individual property" level); *Zander v. Orange County* (2023) 890 S.E.2d 793, 800-801 [county was permitted to "estimate the total cost of improvements by category" without any property-specific analysis (alteration omitted)]; N. Ill. *Home Builders Ass'n v. County of Du Page* (1995) 649 N.E.2d 384, 391 [upholding ordinance, even though the ordinance did not "consider[] the particular characteristics of a specific development," because "[o]ur review shows that testimony presented at trial established that the fee calculation method used by Du Page County complies with generally accepted traffic engineering practices and that a majority of impact fee ordinances nationwide use averages to predetermine impact fees."])

For his part, Sheetz argued contradictory positions at the U.S. Supreme Court in *Sheetz*. (See Tr. Oral Arg.36:11-24.) On remand, the Court of Appeal explained that Sheetz argued that " 'a fee based on classes of development can survive *Nollan/Dolan* review if … the government establishes (1) the *proposed project's* impacts on the public facility at issue is roughly within the range of impacts ascribed to the class to which the project belongs; and (2) the imposed fee mitigates the identified impacts—and not … impacts attributable to other class of development or other sources.' " (Opinion, at 37 & fn. 8 (335 Cal.Rptr.3d at p. 343 & fn. 8) (emphasis added).) Then the Court of Appeal noted that Sheetz's supplemental brief "also includes a contradictory argument; namely, that the challenges impact fee violates the taking clause because it was imposed without regard to the costs specifically attributable to *his particular project*." (Opinion, at 37 & fn. 8 (335 Cal.Rptr.3d at p. 343 & fn. 8) (emphasis in original).) Amicus curiae briefs submitted in support of Sheetz on remand similarly argued that the amount of the TIM Fee must be "at least roughly proportional to those impacts or needs caused by the *Sheetz home*," that the TIM Fee must be "at least 'roughly proportional' to alleged *development project* [singular] impacts," and that courts should consider "[t]he measure of '*the owner's loss.*'" (Brief of Amici Curiae National Association of Home Builders And California Building Industry Association In Support Of Appellant George Sheetz at

37, 47 & fn. 9 (emphasis added).) Sheetz's pending Petition to the U.S. Supreme Court appears to similarly insist on some degree of parcel-specific analysis in the process of imposing development impact fees.

Another issue that is still disputed is the degree of specificity that is required for standardized fee formulas or schedules. For example, Justice Barrett said:

> [I]t seems kind of like a nightmare to figure out where the lines should be drawn in these categories, and you're trying to -- you're trying to mitigate the potential consequences of that. I mean, when you're deciding how reticulated it has to be, would the lines drawn between various categories be judged on a rational basis level? Because it seems like you're saying, well, you look at whether the category is roughly proportional, but, as Justice Kavanaugh's pointing out, individual parcels within that category may have varying impacts on the traffic. So how do you decide where the lines should be drawn? [Tr. Oral Arg., at 40:16-41:6.]

Where those lines should be drawn is not clear, and appears to be a case-by-case analysis.

F. Litigants may continue to dispute whether the Mitigation Fee Act's "reasonable relationship" test satisfies the "rough proportionality" test in *Dolan*.

The Court of Appeal discussed the "intermediate position" adopted by the Court in *Dolan*, and how that required that the County "show that the challenged permit condition (TIM fee) is roughly proportional to the projected impacts of Sheetz's proposed development project on traffic congestion." (Opinion, at 28-35 (335 Cal.Rptr.3d at pp. 338-342).) To make that showing, the Court of Appeal held that " 'a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development.' " (Opinion, at 35-36 (335 Cal.Rptr.3d at p. 342) (quoting *Sheetz*, 601 U.S. at p. 280).) The court concluded that "the same constitutional rules apply whenever the government seeks to offset the public costs of new development through land-use exactions, regardless of whether the exaction (e.g., impact fee) is generally applicable to a class of permit applicants (as here) or is imposed on an individual basis in connection with a specific development project." (Opinion, at 36 (335 Cal.Rptr.3d at p. 343).)

Then, the Court of Appeal explained that that "it appears that the *Dolan* court essentially adopted a version of the reasonable relationship test" because

> the "rough proportionality" standard established in that case does not mandate a "precise mathematical calculation," but instead requires the government to make "some sort of individualized determination," including "some effort to quantify its findings," showing that the required land-use exaction is "related both in nature and extent to the impact of the proposed development." ([Dolan, 512 U.S.] at pp. 391, 395-396, italics added [the land-use exaction " 'should have some *reasonable relationship* to the needs created by the [development]' "]; *see id.* at pp. 394-395 [concluding that a recreational floodplain easement violated the takings clause

> because the findings upon which the city relied to justify the exaction did not show the required *reasonable relationship* between the easement and the landowner's proposed new development].) [Opinion, at 38 (335 Cal.Rptr.3d at p. 344) (emphasis added).]

Based on that observation, the Court of Appeal explained:

> As we understand it, the *Nollan/Dolan* test is similar to the reasonable relationship standard employed in California to assess the validity of land-use exactions (e.g., impact fees) in the context of individualized (i.e., project-specific) conditions imposed on an ad hoc basis thorough administrative action. (*San Remo* [*Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th [643,] 668 ["individualized development fees warrant a type of review akin to the conditional conveyances at issue in *Nollan* and *Dolan*"]; *see Ehrlich, supra,* 12 Cal.4th at p. 865 (plur. opn. of Arabian, J.) [describing California law as requiring the government to determine how there is a reasonable relationship between: (1) " 'the proposed use of a given exaction and both 'the type of development project' and 'the need for the public facility and the type of development project on which the fee is imposed' "; and (2) " 'the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed' "]; [*Home Builders Assn. of Tulare/Kings Counties, Inc. v.*] *City of Lemoore* [(2010)] 185 Cal.App.4th [554,] 561 [local governments in California have the burden to demonstrate that they used a valid method for imposing the fee in question, one that established a reasonable relationship between the fee charged and the burden posed by the development].) [Opinion, at 38-39 (335 Cal.Rptr.3d at p. 344) (emphasis added).]

The Court of Appeal also noted that the California Supreme Court reached the same conclusion nearly three decades ago in *Ehrlich*. (Opinion, at 39 (335 Cal.Rptr.3d at p. 344) (citing *Ehrlich, supra*, 12 Cal.4th at pp. 859-860, 865-868 (plur. opn. of Arabian, J.) [equating California's reasonable relationship test with *Nollan/Dolan* scrutiny].)

Sheetz disagrees with that position in his pending Petition in the U.S. Supreme Court. He argues that the MFA "reasonable relationship" test for legislative exactions in Government Code section 66001(a) is not the same as "rough proportionality" test, and is too much like the "rational basis" standard that was rejected in *Dolan*.

However, federal courts have applied the "rough proportionality" test in Dolan in essentially the same manner as the California courts have applied the "reasonable relationship" test under the MFA. The Court of Appeals for the Sixth Circuit held that, "[i]n other state court cases, like those the Supreme Court cited positively in *Koontz*, the government generally satisfies the nexus and rough proportionality test with ease by introducing *some evidence* relating to the 'methodology and functioning' of its exactions." (*F.P. Development, LLC v. Charter Township of Canton,* 16 F.4th 198, 207 (6th Cir. 2021) (emphasis added).) In support of that approach, the Sixth Circuit cited *Homebuilders Ass'n of Dayton and the Miami Valley v. City of Beavercreek* (2000) 729 N. E. 2d

349, 357-358 ("*Beavercreek*"), because *Koontz* referred to *Beavercreek* as an example of a court that "applied the standard from *Nollan* and *Dolan* or something like it." *Koontz v. St. Johns River Water Mgmt. Dist*., 570 U.S. 595, 618 (2013). In *Beavercreek*, the city did not conduct any individualized determination of the specific project, but instead established that "the methodology used to determine the need for roadway improvements funded by the impact fee is based on generally accepted traffic engineering practices" based on evidence "that described the methodology used by the City of Beavercreek in enacting the impact fee ordinance," including "a comprehensive plan for creating impact fee districts and addressing the needs within those districts," "a provision that provides for a review and update of its terms on a regular basis to accommodate changes in, *inter alia*, traffic engineering standards, changes in the need for roadway developments, and receipt of additional revenues by the city," "an inventory of existing roadway facilities to determine whether these facilities meet the standards set forth by the ordinance for addressing traffic needs," "the cost of new facilities needed to accommodate new development," and reductions in the cost to be paid by impact fees "by the amount of credits the municipality will receive, and by roadway use not associated with new development." *Beavercreek, supra*, 729 N.E.2d at 357-359. The Sixth Circuit in *F. P. Development* also supported its approach by citing *Hallmark Inns & Resorts, Inc. v. City of Lake Oswego* (2004) 88 P.3d 284, 291 (city's findings "were anything but 'conclusory'" and "were presented in considerable detail, were based on particularized projections, and included attempts to quantify the impact of the development on the city's transportation infrastructure"); and *Sparks v. Douglas Cnty.* (1995) 904 P.2d 738, 745 ("the findings made by the County were more than mere conclusory statements of general impact."]) The Sixth Circuit then discussed case law where the rough proportionality test was *not* met because there was "no evidence" of the fee's impact and how the fee was calculated. (*F.P. Development, supra,* 16 F.4th at 207 (citing *Mira Mar Development Corp. v. City of Coppell* (2013) 421 S.W.3d 74, 94-96, and "*Town of Flower Mound v. Stafford Estates Ltd. P'ship,* 135 S.W.3d 620, 644-45 (Tex. 2004) (holding that the Town's monetary exaction was not roughly proportional because the rationale for it was too abstract and because the town provided no real evidence of impact)."))

In the Opinion, the Court of Appeal explicitly relied on the Sixth Circuit's application of *Dolan*'s "rough proportionality" test and held: "Applying the relevant principles here, we conclude the administrative record includes sufficient evidence establishing that the challenged permit condition (TIM fee) satisfies the *Dolan* standard." (Opinion, at 44 (335 Cal.Rptr.3d at 347-348) (citing *F.P. Dev., supra, 1*6 F.4th at p. 207).)

A similar causation analysis is required by California courts in applying the MFA's reasonable relationship test for legislatively imposed exactions under Government Code section 66001(a). For example, in *Boatworks, LLC v. City of Alameda* (2019) 35 Cal.App.5th 290 (2019), the court stated: 'The [public agency] imposing the fee must therefore show that a valid method was used for arriving at the fee in question, "one which established a reasonable relationship between the fee charged and *the burden posed by the development*." ' " (*Id.* at p. 298 (citation omitted) (emphasis added). In *Boatworks*, the trial and appellate courts held that the City of Alameda failed to show "a reasonable relationship between the fee's use and the burden posed by new development," because "[a] calculation that is based on the cost of buying new land—untethered from whether the City actually plans to do so—is not reasonably related to the *burden* *posed by anticipated new development*." (*Id*. at 300 (emphasis added).) The court required a causal link between the fee and the actual impacts of the development:

> The Development Fee Act allows the City to impose fees that have a reasonable relationship to the *burden* posed by the development. [Citation.] But a fee based in significant part on costs the City will not incur, because it has already acquired ample land at no cost, does not have a "reasonable relationship to the cost of the public facility attributable to the development." [*Id*. at 301(quoting *Home Builders Assn. of Tulare/Kings Counties, Inc. v. City of Lemoore* (2010) 185 Cal.App.4th 554, 562 ("*Lemoore*")) (emphasis in original).

In *Lemoore*, the court similarly held that a fee for fire protection facilities imposed on new development in a certain part of the city was invalid because the evidence in the record demonstrated that "the new development will not burden the current facilities." (185 Cal.App.4th at 571-572.)

Also like the federal courts applying *Dolan*, California courts applying the MFA "reasonable relationship" standard review the sufficiency of the government's data regarding the causation link between the fee imposed and the impacts of the development to be addressed by the fee. In the Opinion, the Court of Appeal relied on *Cresta Bella, LP v. Poway Unified Sch. Dist*. (2013) 218 Cal.App.4th 438. (Opinion, at 43 (335 Cal.Rptr.3d at p. 347).) In *Cresta Bella*, the court invalidated school impact fees because the data before the local agency did not establish "the connection between new construction and an increase in student population." 218 Cal. App. 4th at 451-454. Similarly in *Warmington Old Town Associates v. Tustin Unified School Dist*., 101 Cal. App. 4th 840, 857-867 (2002), the court held that a school district's fee study was insufficient under the reasonable relationship standard in the MFA because the study failed to prove the connection between new construction activity upon which the fee was imposed and an increase in student population. The school district's fee study had concluded: " '[T]he amount of fees to be paid by new residential development in the District is reasonably related to the needs of the community for school facilities generated by that development, and does not exceed that development's share of the cost of the facilities.' " *Id*. at 858-859. The court disagreed because the study did not estimate "the impact of new construction in the redevelopment context," and gave "no consideration to whether those newly constructed replacement homes in fact generate additional numbers of students over and above those who occupied the previous homes at the site." *Id*. at 859.

Federal courts applying the "rough proportionality" standard in *Dolan* have even cited to California cases that were applying the "reasonably related" test under the MFA. For example, in *Tap House Real Est., LLC v. City of Rochester* (D. Minn. July 19, 2024) No. 22-cv-492 (ECT/DTS), 2024 WL 3470824 at *8, 2024 U.S. Dist. LEXIS 127318, the District Court relied on the Sixth Circuit's approach in *F.P. Development*, and then reinforced that approach by citing the California case of *City of San Marcos v. Loma San Marcos*, LLC (2015) 234 Cal.App.4th 1045, 1063-1064, for the premise: "[W]e see no impropriety in the methodology that was used to generate traffic projections, which by their nature are approximations." The court in *City of San Marcos* applied the same standard in determining compliance with both the MFA and the takings clause in the Fifth Amendment to the United States Constitution, namely, that a fee must be based on the local agency's "'reasoned analysis designed to establish the *requisite connection* between the amount of the fee imposed and the burden created.'" *Id.* at 1064 (quoting *Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, 235). Notably, the court in *Cresta Bella,* discussed above, also cited that same analysis in *Shapell*. (218 Cal.App.4th at p. 447.)

G. Both The methodology and evidence supporting the causal link between a fee and the impacts of the new development should be included in the record before the legislative body adopts a fee.

Like in *Beavercreek*, discussed above, the Court of Appeal on remand from the Supreme Court in *Sheetz* outlined the evidence in the record that supported its holding that the TIM fee imposed by the County of El Dorado satisfied the "rough proportionality" test in *Dolan*. The Court of Appeal explained:

> In establishing the fee schedules for each class (i.e., type) of new development in a particular geographic zone, the County identified the existing level of traffic flow on public roadway segments, assessed the degree to which projected population and employment growth from new development would impact that flow of traffic on those roadway segments over a 20-year period, and estimated the resources needed to complete infrastructure projects that would accommodate the new traffic patterns from new development to ensure compliance with the traffic flow standards set forth in the General Plan. The amount of the fee imposed on a specific type of development was based on a travel demand forecasting model, which determined the traffic contribution (vehicle trips) from each type of new development in a particular geographical zone as to each roadway segment that was projected to have a traffic flow that did not meet the standards established in the General Plan. The administrative record reflects that the County considered the relevant factors and demonstrated a rational connection between those factors and the TIM fee. The record contains detailed analyses in the form of expert technical reports (e.g., traffic studies) quantifying the traffic impacts from each type of new development in the County's eight geographical zones. In other words, the record establishes a factually sustainable proportionality between the effects of new development on traffic congestion and the amount of the challenged impact fee. [Opinion at 46 (335 Cal. Rptr.3d at p. 349).]

The Court of Appeal concluded: "[T]he County met its initial burden to demonstrate that it used a valid method for imposing the TIM fee, one that established a reasonable relationship between the fee charged and the projected burdens (i.e., social costs or public impacts) of Sheetz's development of a single-family home in geographic Zone 6. [Opinion, at 45 (335 Cal.Rptr.3d at 348-349).]

In light of that analysis in the Opinion, as well as the holdings in *Boatworks, Lemoore*, *Cresta Bella*, *City of San Marcos*, *F.P. Development* and *Beavercreek*, discussed above, local agencies should do the following in the context of generally-applied fees and programs imposed as conditions on land-use permits:

- Determine the legitimate interest/regulatory goal for the fee or program that is necessitated by the impacts of the new development;
- Determine the reasonable relationship between the proposed use of a given fee or program and both the type of development project and the need for the public facility and the type of development project on which the fee is imposed;
- Utilize a methodology based on technical and expert reports that establishes the causal link between the amount of the development fee or program imposed on a class or type of new development and the impacts of that development (i.e., the cost of the public facility or portion of the public facility attributable to the development, or the burden posed by the development), which impacts the fee or program was designed to address;
- Have such a methodology and supporting evidence well documented in a robust record before the legislative body that is adopting the fee or program;
- Determine that the factual findings made by the legislative body establish that the condition on the land-use permit is proportional, in both nature and scope, to the public impact of the particular classes of development upon which the fee or program is imposed.

IV. Conclusion.

In *Sheetz*, the Supreme Court held that the Takings Clause in the Fifth Amendment to the U.S. Constitution "prohibits legislatures and agencies alike from imposing unconstitutional conditions on land-use permits." But *Sheetz* did not address several issues regarding the application of the *Nollan/Dolan* test to development impact fees. While the "predicate" question was addressed by the Court of Appeal on remand, the Opinion of that court was ordered not to be published and so that issue is still unsettled in California. There is still uncertainty as to how to apply the "rough proportionality" test in *Dolan* to general fee schedules that are legislatively imposed on classes of development. In California, litigants may continue to dispute whether compliance with the MFA's "reasonable relationship" test will satisfy the "rough proportionality" test in *Dolan*. Local agencies are encouraged to utilize methodologies and make factual findings that establish the causal link between the amount of the development fee or program imposed on a class or type of new development and the impacts of that development that the fee or program was designed to address. Such methodologies and evidence in support of such findings should be well documented in the record before the legislative body that is adopting the impact fee or program.