

The logo for Renne Public Law Group (RPLG) features the letters "RPLG" in a bold, blue, serif font, centered within a white rectangular box. The background of the slide is a blue gradient at the top, transitioning into a photograph of a classical building with white columns and a blue sky with clouds.

RPLG

Renne Public Law Group®

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

Presentation By
Glen C. Hansen
Of Counsel
Renne Public Law Group

BRIEF PRIMER:

THE *NOLLAN/DOLAN* TEST PRIOR TO THE *SHEETZ* CASE

- ❖ Private property shall not “be taken for public use, without just compensation.” (U.S. Const., Fifth Amend.)
- ❖ The government may not force some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.
- ❖ Special category of takings claims for “land-use exactions” -
- government demands real property or money from a land-use permit applicant as a condition of obtaining a permit.

THE *NOLLAN/DOLAN* TEST PRIOR TO *SHEETZ*

- ❖ Doctrine of “unconstitutional conditions”: The government may not ask a person to give up the constitutional right in exchange for a discretionary benefit from the government.
- ❖ The “essential nexus” test in *Nollan v. California Coastal Comm’n* (1987) 483 U.S. 825 (“*Nollan*”), asks whether there is a logical connection between the government’s legitimate state interest and the permit condition.

THE NOLLAN/DOLAN TEST PRIOR TO SHEETZ

- ❖ The “rough proportionality” test in *Dolan v. City of Tigard* (1994) 512 U.S. 374 (“*Dolan*”) involves the degree of connection between the permit condition and the projected public impacts or social costs of the proposed development project.
- ❖ *Koontz v. St. Johns River Water Management Dist.* (2013) 570 U.S. 595 (“*Koontz*”): *Nollan/Dolan* test to “monetary exactions” demanded by the government as a substitute for the dedication of real property to mitigate the impact of a proposed development project.

County of El Dorado's Traffic Impact Mitigation (TIM) Fee



**Created by General
Plan Amendment
to finance traffic
improvements**



- Condition of building permit approval.
- Only to mitigate traffic impacts of the new development, not existing deficiencies.
- Based on location of project in particular zone, and type of project.
- No individualized determination as to impact of a particular project or specific parcel.

HISTORY OF THE *SHEETZ* CASE

In 2016, George Sheetz pays \$23,420 TIM Fee. The County issues a building permit for Sheetz's home. Sheetz protests.

El Dorado County Superior Court

- Sheetz brings claims of:
 - (1) Violation of California's Mitigation Fee Act (Govt. Code § 66000, et seq.) ("MFA")
 - (2) Taking under unconstitutional conditions doctrine in *Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825 ("*Nollan*"), and *Dolan v. City of Tigard* (1994) 512 U.S. 374 ("*Dolan*").
- Trial court holds:
 - (1) No violation of MFA; (2) *Nollan/Dolan* does not apply.



HISTORY OF THE *SHEETZ* CASE



Cal. Court of Appeal, 3rd App. Dist. (2022)

Affirms:

- (1) No violation of MFA under legislative exactions provision in Govt. Code § 66001(a).
- (2) *Nollan/Dolan* does not apply to this impact fee imposed on a broad class of owners via legislative action. 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 Cnty. of San Fran.* (2002) 27 Cal.4th 643, 666-670).)

California Supreme Court – Denies review.



Sheetz Files A Petition For Writ Of Certiorari In The UNITED STATES SUPREME COURT



The question presented is whether a permit exaction is exempt from the unconstitutional-conditions doctrine as applied in *Nollan* and *Dolan* simply because it is authorized by legislation.

In The
Supreme Court of the United States

GEORGE SHEETZ,
Petitioner,

v.

COUNTY OF EL DORADO,
Respondent.

On Petition for Writ of Certiorari
to the California Court of Appeal,
Third Appellate District

PETITION FOR WRIT OF CERTIORARI

PAUL BEARD II
**Counsel of Record*
FisherBroyles LLP
4470 W. Sunset Blvd.
Suite 93165
Los Angeles, CA 90027
Telephone: (818) 216-3988
paul.beard@fisherbroyles.com
Counsel for Petitioner

HISTORY OF THE *SHEETZ* CASE

United States Supreme Court

Sheetz v. County Of El Dorado (2024) 601 U.S. 267



- Takings Clause in the Fifth Amendment to the U.S. Constitution “prohibits legislatures and agencies alike from imposing unconstitutional conditions on land-use permits.”
- Such conditions are not exempt from heightened scrutiny under *Nollan/Dolan*, just because a legislature imposed them.

HISTORY OF THE *SHEETZ* CASE

The U.S. Supreme Court Does NOT Answer Key Questions:

- (1) “Predicate Question”: Whether a generally applicable impact fee based on a fee schedule imposed on classes or types of projects is a compensable taking outside the permitting context.
- (2) Whether an impact fee imposed on a class of properties must be tailored with the same degree of specificity as an ad hoc fee that targets a particular development.
- (3) Whether compliance with the “reasonable relationship” test in the MFA (Govt. Code § 66001(a)) satisfies the *Nollan/Dolan* test.
- (4) Whether the TIM fee in *Sheetz* complies with *Nollan/Dolan*.

HISTORY OF THE *SHEETZ* CASE

California Court of Appeal (July 2025)

- *Nollan/Dolan* scrutiny applies here.
- “Under the circumstances presented,” the TIM fee withstands *Nollan/Dolan* scrutiny, as to both the “essential nexus” test under *Nollan*, and the “rough proportionality” test under *Dolan*.



California Supreme Court (Nov. 2025)

- Denies review.
- Orders the Opinion of the Court of Appeal not to be published.



BACK TO THE U.S. SUPREME COURT

Sheetz Files New Petition For Writ of Certiorari (Feb. 9, 2026)

➤ “Rough proportionality” challenged:

1. Does the Takings Clause’s protection against unconstitutional permit conditions encompass *an evidentiary* requirement (as opposed to a *legislative process*) by which the government bears the burden to demonstrate that its development permit exaction complies with *Dolan’s* “rough proportionality” standard?

2. Can an impact fee be roughly proportional when imposed on one discrete class of development (residential) for the purpose of addressing impacts caused by another discrete class of development (commercial)?



In the Supreme Court of the United States

GEORGE SHEETZ,
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COUNTY OF EL DORADO, CALIFORNIA,
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On Petition For A Writ Of Certiorari
To The California Court Of Appeal,
Third Appellate District

PETITION FOR A WRIT OF CERTIORARI

DEBORAH J. LA FETRA
DAVID J. DEERSON
3100 Clarendon Blvd.
Suite 1000
Arlington, VA 22201

PAUL J. BEARD II
Pierson Ferdinand LLP
453 S. Spring St.
Suite 400-1458
Los Angeles, CA 90013

BRIAN T. HODGES
Counsel of Record
Pacific Legal Foundation
555 Capitol Mall
Suite 1290
Sacramento, California
95814
Telephone: (916) 419-7111
BHodges@pacificlegal.org

Counsel for Petitioner

NOLLAN/DOLAN AFTER SHEETZ

A. THE “PREDICATE” QUESTION MAY STILL BE ARGUED.

- ❖ Court of Appeal Opinion is no longer published, may not be relied on.
- ❖ Justices Sotomayor and Jackson appear to argue against the application of *Nollan/Dolan*.
- ❖ New York Court of Appeals decision in 2026 holds *Nollan/Dolan* does not apply to impact fees that are not “in lieu” fees.
- ❖ Justice Mosk stated in *Ehrlich* that generally applied impact fees are the functional equivalent to assessments, which are not takings.
- ❖ Comments by Chief Justice Roberts and Justices Gorsuch and Jackson in oral argument in *Sheetz* indicate the “predicate question” is unresolved.



NOLLAN/DOLAN AFTER SHEETZ

B. THE “ESSENTIAL NEXUS” TEST IN *NOLLAN*.

❖ On remand, the Court of Appeal found:

- (a) the TIM fee imposed on all new development to finance roadway improvements to meet increased traffic needs caused by such development is a “quintessential or classic instance of a government’s legitimate exercise of the police power in the land-use context”;
- (b) the required relationship between the TIM fee and that government interest.

NOLLAN/DOLAN AFTER SHEETZ

B. THE “ESSENTIAL NEXUS” TEST IN *NOLLAN*.

- ❖ Sheetz is not challenging the “essential nexus” finding by Court of Appeal in his new Petition for Writ of Certiorari.

ISSUES THAT LITIGANTS MAY DISPUTE

Local agencies should be prepared for “essential nexus” challenges to government exactions and programs:

- Is the public problem preexisting?
- Is the public problem readily linked to the impacts of new development?

NOLLAN/DOLAN AFTER SHEETZ

C. THE “ROUGH PROPORTIONALITY” TEST IN *DOLAN*.

ISSUES THAT LITIGANTS MAY DISPUTE

1. Are general fee schedules that are legislatively imposed on *classes* of development allowed, *or* must there always be a *parcel/project-specific* analysis for each fee imposed?

NOLLAN/DOLAN AFTER SHEETZ

C. THE “ROUGH PROPORTIONALITY” TEST IN *DOLAN*.

ISSUES THAT LITIGANTS MAY DISPUTE

2. Litigants may continue to dispute whether California’s Mitigation Fee Act’s “reasonable relationship” test (Govt. Code Govt. Code § 66001, subd. (a)) satisfies The “Rough Proportionality” Test In *Dolan*.

NOLLAN/DOLAN AFTER SHEETZ

C. THE “ROUGH PROPORTIONALITY” TEST IN *DOLAN*.

ISSUES THAT LITIGANTS MAY DISPUTE

3. Establishing the causal connections between the fee and the impacts caused by new development.
 - Methodologies
 - Technical and expert reports
 - Causal links
 - Documentation

A low-angle photograph of a classical building facade featuring large, fluted columns and ornate carvings. The sky is visible in the background, and a solid blue horizontal bar runs across the bottom of the image.

Questions? Concerns? Discussion