ASSOCIATION OF BAY AREA GOVERNMENTS
METROPOLITAN TRANSPORTATION COMMISSION

Technical Assistance
for Local Planning
HOUSING

DISCLAIMER: This guide is intended solely as a technical overview of the U.S. Supreme Court's *Sheetz* decision and its potential impacts and California Court of Appeal's decision on remand. It is not legal advice regarding any jurisdiction's specific development fees. Local staff should consult with their city attorney or county counsel when determining what the *Sheetz* decision means for its fee programs.

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The *Sheetz* Decision and What It Means for Impact Fees

Introduction

A 2024 U.S. Supreme Court decision, *Sheetz v. County of El Dorado*[1], raises the possibility of increased legal challenges to impact fees charged by local governments. This memo aims to clarify the potential consequences of the Supreme Court's *Sheetz* decision. It does so by first reviewing the foundational *Nollan* and *Dolan* cases, then explaining the *Sheetz* ruling and summarizing the key takeaways, analyzing the Court of Appeal's July 2025 decision on remand, and lastly providing guidance on compliance with the Mitigation Fee Act.

Quick Summary: The U.S. Supreme Court's *Sheetz* decision clarifies that permit conditions, such as impact fees, must be reviewed under the standards set by the Court's earlier *Nollan* and *Dolan* rulings. These rulings require two things: first, that there is a direct and logical connection (an "essential nexus") between the fee and the impact of the proposed development, and second, that the fee is reasonably related ("roughly proportional") to that impact. This is true even if the fee is part of a broader, legislatively approved fee schedule, as the Supreme Court held that the United States Constitution Fifth Amendment Takings Clause does not distinguish between legislative and administrative land use permit conditions.

[1] 601 U.S. 267 (2024).

Action items: There are four major action items resulting from the *Sheetz* decision:

- Support new fees with nexus studies, even if those fees are set by the City Council or the Board of Supervisors. Also note the Government Code nexus study requirements for development impact fees.
- Review existing fees to ensure they are backed by nexus studies.
- Consider more fine-grained analysis in nexus studies.
- Consult with legal counsel to assess existing impact fees and prepare for possible legal challenges.

The Supreme Court's Prior Decisions in *Nollan* and *Dolan*

Prior to discussing the Supreme Court's 2024 *Sheetz* decision, this memo first provides background on *Nollan* and *Dolan*, two key Supreme Court decisions that are critical to understanding the *Sheetz* decision.

As background, local governments often require developers to contribute land or pay fees as a condition of permit approval. The goal is fair: new development should help pay for the increased public service demands it creates (e.g., more traffic or park usage).

However, the U.S. Constitution (specifically the Fifth Amendment Takings Clause[2]) limits this. The government cannot use the permit process to demand unrelated things or charge excessive amounts. The Supreme Court created two key tests in the *Nollan*[3] and *Dolan*[4] cases to ensure fairness, which are together referred to as the *Nollan/Dolan* test or standard:

- **The *Nollan* "Essential Nexus" Test (Is there a connection?):** The fee or condition must have a direct, logical link ("essential nexus") to a specific public need or problem caused by the proposed development. Example: A traffic fee should address traffic impacts caused by the new project, not solve pre-existing city-wide congestion unrelated to the project.

- **The *Dolan* "Rough Proportionality" Test (Is the amount fair?):** The amount of the fee or the extent of the condition must be reasonably related ("roughly proportional") to the scale of the specific impacts expected from the development. The government needs to show some kind of calculation or justification for the amount, demonstrating it is a fair share for that project and that the exaction is proportionate to the burden created by the development. Example: A fee for a small home should not be the same as for a large shopping center if their impacts differ significantly.

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[2] The Takings Clause provides: "nor shall private property be taken for public use, without just compensation."

[3] *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).

[4] *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

Background on *Sheetz* and the Supreme Court Decision

With this understanding of the *Nollan* and *Dolan* precedents, this memo now examines the specifics of the *Sheetz* case.

Factual History

In 2016, George Sheetz applied for a building permit to construct a manufactured home on his residential lot in El Dorado County. As a condition of receiving the permit, the County required him to pay a Traffic Impact Mitigation (TIM) fee amounting to $23,420.

This TIM fee was part of a program established by the County's Board of Supervisors through legislative action, specifically amendments to the County's General Plan, designed to fund road improvements necessitated by new development. The fee amount was determined according to a fee schedule that considered the type of development (e.g., single-family residential, commercial) and its location within the County; importantly, the fee was not based on the potential traffic impacts of Sheetz's specific development project.

Sheetz paid the fee under protest to obtain his permit and then filed suit against the County.

Procedural History

In his lawsuit, Sheetz argued that the TIM fee ran afoul of the Takings Clause of the Fifth Amendment and did not accord with the "essential nexus" and "rough proportionality" requirements imposed on development conditions under *Nollan* and *Dolan*.

The California trial court and the Court of Appeal rejected Sheetz's arguments. These courts relied heavily on established California Supreme Court precedent[5] to conclude that because the TIM fee was imposed pursuant to a legislative schedule applicable to a broad class of properties, it was not subject to the *Nollan/Dolan* analysis. Sheetz sought review by the U.S. Supreme Court.

Supreme Court Majority Opinion

On April 12, 2024, the U.S. Supreme Court issued a unanimous (9-0) decision in favor of Sheetz. The Court squarely rejected the distinction between legislative and administrative permit conditions that had formed the basis of the California courts' rulings.

The Supreme Court's central holding was that the Takings Clause does not differentiate based on which branch of government imposes a condition on a permit. Therefore, permit conditions imposed by legislatures

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[5] *San Remo Hotel L.P. v. City and County of San Francisco*, 27 Cal. 4th 643 (2002).

are subject to the same constitutional scrutiny under *Nollan* and *Dolan* as those imposed by administrative agencies. The California courts must now evaluate El Dorado County's TIM fee under the *Nollan/Dolan* essential nexus and rough proportionality standards.

Importantly, the Supreme Court explicitly stated it was *not* deciding the ultimate validity of the TIM fee itself. As Justice Kavanaugh wrote in his concurring opinion, “Importantly . . . today’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.”

Key Points from Concurring Opinions

While the Supreme Court’s judgment was unanimous, three separate concurring opinions were filed, highlighting significant questions left open by the majority opinion. These concurrences signal areas of future legal debate and uncertainty:

- **Justice Sotomayor (joined by Justice Jackson)**: Justice Sotomayor's concurrence emphasized a critical threshold question that must be addressed before applying the *Nollan/Dolan* test: Would the permit condition (in this case, the traffic impact fee) constitute a compensable taking if the government imposed it directly, outside the permitting process? This raises the possibility that certain types of fees, if deemed not to be takings in their own right (perhaps akin to taxes or user fees), might not trigger *Nollan/Dolan* scrutiny at all, even if imposed as permit conditions. This could become a significant point of contention in future challenges to certain types of fees.

- **Justice Gorsuch**: Justice Gorsuch wrote separately to argue that the *Nollan/Dolan* analysis should apply with equal force regardless of whether the permit condition targets a specific development or applies to a broader “class of properties.” His view suggests that even legislatively imposed, formulaic fees require a justification demonstrating proportionality to the impacts of each specific property or, at minimum, a very well-defined class.

- **Justice Kavanaugh (joined by Justices Kagan and Jackson)**: Justice Kavanaugh’s concurrence directly addressed Justice Gorsuch’s point, emphasizing that the majority opinion explicitly did *not* decide whether a permit condition imposed on a class of properties must be tailored with the *same degree of specificity* as a condition targeting a particular development. He specifically noted that the decision does not prohibit the common government practice of imposing impact fees “through reasonable formulas or schedules that assess the impact of classes of development rather than the impact of specific parcels of property." This concurrence suggests that a less individualized, more programmatic approach to demonstrating proportionality for legislatively imposed fees might still be constitutionally permissible.

The sharp divergence between the Gorsuch and Kavanaugh concurrences highlights a critical unresolved issue: how much do legislatively imposed, formulaic fees need to be tailored to the specific impacts of a particular project. This ambiguity regarding the required specificity—whether analysis must be parcel-specific or if class-based justification suffices—is likely to be a central focus of litigation as lower courts grapple with implementing *Sheetz***.** This uncertainty presents an immediate challenge for local governments seeking to design or defend fees.

Key Takeaways from *Sheetz*

As discussed above, there are significant unanswered questions raised by the *Sheetz* decision. However, there are key takeaways from the decision.

- **The Sheetz decision holds that impact fees authorized by legislation are subject to review under the Nollan/Dolan test.** This means legislative authorization alone does not shield these fees from constitutional scrutiny.
- **Sheetz empowers developers to more readily challenge and negotiate impact fees. Previously**, a California Supreme Court decision[6] gave local jurisdictions a strong defense against challenges to legislatively adopted impact fees. Sheetz removes this shield. Now, developers can argue that jurisdictions must demonstrate a direct link (nexus) between the fee and the impacts of their specific development, and that the fee amount must be roughly proportional to the cost of mitigating those impacts. This might necessitate more detailed and robust nexus studies and fee calculation methods for legislatively set fees than a jurisdiction has previously employed.
- **The Sheetz ruling creates a potential new legal avenue for developers to challenge inclusionary zoning by arguing a lack of "essential nexus" and "rough proportionality" under Nollan and Dolan.** However, California law has historically treated inclusionary zoning differently, similar to general land use regulations like limits on density and building heights, and has not subjected inclusionary zoning to the Nollan/Dolan test.[7] Therefore, the risk to local inclusionary zoning is lower, but still worth noting, as it is arguable that the Sheetz decision should be read to extend to inclusionary housing in-lieu fees.

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[6] *San Remo Hotel L.P. v. City and County of San Francisco*, 27 Cal. 4th 643 (2002).

[7] *California Building Industry Ass'n v. City of San Jose*, 351 P.3d 974 (Cal. 2015).

- **Planners should review existing fees to ensure they are backed by nexus studies.** Moving forward, planners should consider more fine-grained analysis in nexus studies and support new fees with nexus studies, even if those fees are set by the City Council or the Board of Supervisors.

- **Crucially, planners must collaborate closely with legal counsel.** It is important to consult with the city attorney or county counsel to assess whether existing programs are vulnerable under the Nollan/Dolan standard and to determine if any proactive steps are needed. Furthermore, counsel should be consulted and worked with on developing any new impact fees and determining how they should be supported with documentation to demonstrate compliance with Nollan and Dolan.

Update: The California Court of Appeal's Unpublished Decision on Remand

After the U.S. Supreme Court ruled that legislatively created fees are subject to the *Nollan*/*Dolan* test, it sent the *Sheetz* case back to the California courts to apply that test to the County's TIM fee. In July 2025, **the Court of Appeal upheld the County's fee as not violating the Takings Clause**.[8] Following the issuance of that decision, the opinion was ordered unpublished.[9]

Key Holding and Reasoning

The decision provides useful information on how one appellate court analyzed a legislatively adopted, formula-based fee program under the *Nollan*/*Dolan* framework. The Court of Appeal applied the two-part *Nollan*/*Dolan* test and found the County's TIM fee satisfied both prongs:

- The court found an "essential nexus" between the TIM fee and its stated purpose. The County has a legitimate interest in reducing traffic congestion caused by new development, and it can reasonably impose a fee on Sheetz to offset the projected traffic impact from his proposed project.

- The court determined that the TIM fee was "roughly proportionate" to the projected traffic impacts of the Sheetz development. The court specified that the County was not required to conduct an individualized study of the traffic impacts of Sheetz's specific project, and that its programmatic, class-based approach was sufficient. The court's decision was based on the County's evidence that it used a valid method for imposing the TIM fee, which established a reasonable relationship between the fee

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[8] *Sheetz v. County of El Dorado*, (Cal. Ct. App., July 29, 2025, No. C093682) [unpublished].).

[9] Unpublished opinions are opinions that are not certified for publication and generally may not be cited or relied on by other courts or parties in other actions. Judicial Branch of California. (n.d.). *Unpublished/Non-Citable Opinions.* California Courts. Retrieved March 6, 2026, from https://courts.ca.gov/opinions/unpublishednon-citable-opinions.

charged and the projected burdens of the Sheetz development. The court reasoned that the County's fee schedule was supported by detailed traffic and nexus studies; these studies calculated the costs of necessary infrastructure and allocated those costs across different land use types, based on the projected increase in traffic volumes from each type of development in each of the County's eight geographical zones. As such, the County satisfied its initial burden of demonstrating rough proportionality, which Sheetz failed to rebut. The court concluded that a local government can satisfy the "rough proportionality" requirement by using a fee schedule that is grounded in credible data and methodology.

Key Takeaways from the Court of Appeal's Decision

The Court of Appeal's decision provides useful information on how a court may approach the application of the Nollan/Dolan standards to determine if a legislatively-adopted fee program is valid. The central concern after the Supreme Court's ruling—that every impact fee would need to be justified by a costly, parcel-specific analysis—has not materialized in this case. Key takeaways from this decision are as follows.

- **Class-Based Nexus Studies are Defensible:** The ruling suggests that the common practice of using well-documented, formula-based fee schedules may be considered legally sound, provided the underlying nexus study is robust. This affirms the approach suggested in Justice Kavanaugh's concurring opinion in the Supreme Court case.
- **The Quality of the Nexus Study is Paramount:** The key to the County's success was its comprehensive documentation. Jurisdictions should ensure their nexus studies clearly demonstrate the connection between new development, the impacts generated, and the costs of the infrastructure needed to mitigate those impacts. The methodology for allocating costs to different development types must be clear and logical.
- **Continued Vigilance is Necessary:** While this decision is favorable, it is just one Court of Appeal ruling. Planners should continue to work closely with their legal counsel to ensure fee programs are built on a solid evidentiary foundation, in line with the standards affirmed by the Court of Appeal.

Mitigation Fee Act Guidance

While the *Sheetz* decision raises the level of constitutional scrutiny for legislatively-enacted development impact fees, California local agencies must still implement these fees through the Mitigation Fee Act's established framework and longstanding requirements.[10] In particular, the Mitigation Fee Act requires that the purpose and use of the fee be identified and that there be a reasonable relationship between the fee's

[10] Government Code Sections 66000 *et seq.*

use, the type of development project on which the fee is imposed, the need for the public facility, and the cost of the public facility attributable to the development on which the fee is imposed.[11] A nexus study must be adopted before adoption of the associated fee.[12] Additionally, AB 602, which went into effect in January 2022, required HCD to create an impact fee nexus study template for residential projects. That template is available here.

[11] Government Code Section 66001.

[12] Government Code Section 66016.5.