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Traffic Mitigation Fee Did Not Violate the Unconstitutional Conditions Doctrine Under Nolan and Dolan



A traffic mitigation fee required for construction of a single-family home did not amount to an "unconstitutional condition" in violation of the takings clause of the Fifth Amendment, and the County complied with the Mitigation Fee Act in assessing the fee. *Sheetz v. County of El Dorado*, No. C093682 (4th Dist., Oct 19, 2022).

George Sheetz challenged a traffic mitigation fee imposed as a condition to a building permit for a new home on his property. He argued that the fee violated the unconstitutional conditions doctrine applied in the land-use context by *Nolan* and *Dolan* and that the County violated the Mitigation Fee Act in adopting and imposing the fee.



Under the unconstitutional conditions doctrine, the government may not ask a person to give up a constitutional right — such as the right to receive just compensation for a taking — in exchange for a development permit where the condition has little or no relationship to the development. Under *Nolan* and *Dolan*, there must be an essential nexus between the exaction and the governmental interest sought to be advanced and the government must make an individualized determination that the exaction is related both in nature and extent to the project's impact. In *Koontz v. St. John's River Management Dist.*, 570 U.S. 595 (2013), the Court held that the doctrine applies to development fees, which it found to be "functionally equivalent" to the property dedications involved in *Nolan* and *Dolan*.

The California Supreme Court has held that the requirements of *Nolan* and *Dolan* apply only to fees imposed on an individualized or ad hoc basis, not to fees that are generally applicable to a broad class of property owners through legislative action. Relying on this authority, the Court of Appeal concluded that the unconstitutional conditions doctrine did not apply in this case because the traffic fee was imposed under a legislatively authorized fee program that generally applied to all new residential development within the County.

In support of his Mitigation Fee Act claim, Sheetz argued that the County had improperly failed to evaluate the traffic impacts attributable to his specific project in violation of section 66001(b) of the Act, which provides that the "local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion [thereof] attributable to the development on which the fee is imposed." Relying again on prior caselaw, the Court of Appeal held that section 66001(b) applies only to adjudicatory, case-by-case decisions to impose a fee on a particular project, not to legislatively adopted fees such as the traffic fee in question.

Assessing Sheetz's broader claim that the County did not comply with the Mitigation Fee Act traffic in adopting and calculating the fee, the court found no error. The fee was adopted as part of the County's 2004 General Plan, guided by policies designed to limit traffic congestion, including ensuring that roadway improvements were developed concurrently with new development. The fee was based on a transportation study that evaluated a range of factors, including the expected increase in traffic volumes (average daily vehicle trips) from each type of new development based on data published in the Institute of Transportation Engineers Trip Generation Manual, 7th Edition. The record reflected that the County considered the relevant factors and demonstrated a rational connection between those factors and the fee imposed. The limited portions of the record relied upon by Sheetz did not demonstrate that the fee was arbitrary, entirely lacking in evidentiary support, or otherwise invalid under the deferential standard applied to legislatively adopted fees.

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