



# Sheetz v. County of El Dorado: The Court Explores Legislative Exactions and the Takings Clause

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On January 9, 2023, the U.S. Supreme Court is [scheduled](#) to hear oral argument in *Sheetz v. County of El Dorado*. The dispute in this case centers around an “exaction,” which is a government-imposed requirement that a project developer provide certain public benefits to offset the impacts of the project on the public. Over thirty-five years ago in *Nollan v. California Coastal Comm’n*, the Court recognized that an onerous exaction may constitute a “taking” of property, requiring compensation in accordance with [the Takings Clause of the U.S. Constitution](#), if there is no “essential nexus” between the condition and the original purpose of the land use regulation. Seven years later in *Dolan v. City of Tigard*, the Court developed the “rough proportionality” test for determining whether an exaction rises to the level of an unconstitutional taking, finding that the exaction must be sufficiently “related both in nature and extent to the impact of the proposed development.” *Sheetz* will be the Court’s first exactions case since its 2013 [decision](#) in *Koontz v. St. John’s River Water Mgm’t Dist.* In that case, the Court held that the “essential nexus” and “rough proportionality” requirements of *Nollan* and *Dolan* apply to government exaction demands even if the demands are financial and the government *denies* the application resulting in no property being taken.

The exaction at issue in *Sheetz* is a “Traffic Impact Fee” imposed via legislation by the County of El Dorado, California on any party requesting a building permit from the County. The County imposes the fee based on the location and type of the proposed project, without regard to the project’s individualized impact on traffic or the County’s roads. The California intermediate appellate court, applying state law, [held](#) that “‘legislatively prescribed monetary fees’—as distinguished from a monetary condition imposed on an individual permit application on an ad hoc basis—‘that are imposed as a condition of development are not subject to the *Nollan/Dolan* test.’” As a result, the court [rejected](#) the claim of the property developer that the fee was an unconstitutional exaction. The state supreme court [denied](#) review.

The case thus presents the U.S. Supreme Court with an opportunity to consider a question of first impression: whether a legislatively imposed exaction is exempt from the unconstitutional-conditions doctrine as applied in *Nollan* and *Dolan*.

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## Legal Background

The Fifth Amendment to the United States Constitution [provides](#) in part that private property shall not “be taken for public use, without just compensation.” This Takings Clause is the foundation for two concepts related to property rights. First, the Supreme Court has [interpreted](#) the clause as an affirmation of the government’s power to exercise eminent domain or condemnation, a process by which the government directly acquires property interests from the owner. Second, the Takings Clause offers property owners constitutional protection against “[inverse condemnation](#),” in which either (1) government action results in the physical taking of a property interest without the use of eminent domain (i.e., a physical taking) or (2) a regulatory restriction causes a substantial diminution in the value of an existing property (i.e., a regulatory taking). The [Takings Clause](#) does not bar either physical or regulatory takings, but rather requires the government to provide “just compensation” for the property that was taken.

For several decades after [explicitly recognizing](#) the federal government’s eminent domain authority in 1871, the Court rejected the notion that inverse condemnations that did not result in the physical occupation of property could constitute a taking. The Court reversed course in its 1922 decision in *Pennsylvania Coal Co. v. Mahon*. In *Mahon*, the Court [found](#) that a regulation that made it impractical for a property owner to use the property for its intended purpose had essentially “the same effect for constitutional purposes as appropriating or destroying” the property interest and that therefore, “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.”

This extension of the Takings Clause’s application paved the way for the exactions claims at issue in *Nollan* and *Dolan*, both cases in which a local government sought to require some sort of impact mitigation as a condition of issuing a building permit, a requirement referred to as an “exaction.” In *Nollan*, the Supreme Court [recognized](#) that while governments may require exactions as an aspect of lawful land use regulation, an exaction may constitute a “taking” of property that requires compensation pursuant to the Fifth Amendment if there is no “essential nexus” between the condition and the original purpose of the land use regulation. In *Dolan*, the Court [held](#) that an exaction would be unconstitutional if it were not roughly proportional “both in nature and extent to the impact of the proposed development.” Thus, *Nollan* [dictates](#) that, in order to not be a taking, an exaction condition must have an “essential nexus” to a legitimate state interest. Under *Dolan*’s “rough proportionality” [test](#), the government must establish that “the required dedication is related both in nature and extent to the impact of the proposed development.” This aggregated “essential nexus/rough proportionality” test is often referred to as the *Nollan/Dolan* test or the *Nollan/Dolan* rule.

Subsequently, the Court in *Koontz* [applied](#) the [doctrine of unconstitutional conditions](#) to an exaction. According to this doctrine, “the government may not deny a benefit to a person because he exercises a constitutional right.” In *Koontz*, a government agency negotiated with a permit applicant regarding a set-aside for conservation. When the applicant did not agree to the government’s proposed set-aside terms, the agency denied the application, and the applicant sued. The Court, citing the unconstitutional conditions doctrine, [invalidated](#) the government’s proposed exaction even though it was not agreed to by the applicant. Thus, under *Koontz*, a proposed exaction that stymies a property development can be unconstitutional even if the government does not ultimately take any property.

Land use controls often generate inverse condemnation claims because they can affect property values in many ways. However, the Court’s exaction jurisprudence differs from other takings jurisprudence in a number of notable ways. First, it shifts the burden of proof, [requiring](#) the government to defend the validity of the exaction rather than requiring the claimant to demonstrate loss of a property interest. Second, it [sets a balancing test](#) that allows a court to peer into the “legitimacy” of a government interest, something more frequently encountered in due process and equal protection jurisprudence. Finally, it [allows](#) for a court to find that an exaction amounts to a taking or reject government action even if no actual taking has occurred. The latter two items highlight a frequent criticism of exactions jurisprudence:

it allows a property owner to potentially recover compensation for loss of a property interest due to an unconstitutional exaction attached to a permit that the property owner likely could not have recovered had the government simply denied the request for a permit.

While the Fifth Amendment protects all landowners, many land use controls and other government actions governing property interests occur at the state or local level. This makes for a somewhat unusual confluence of constitutional protections, federal and state government power, and state and local law. For example, even federal courts hearing eminent domain claims [based on federal authority](#) may apply state law to the eminent domain action. This confluence may give rise to issues related to federalism and the extent to which federal law should accommodate not just individual property rights, but state and local interests as well. One such state action is at issue in [Sheetz](#), where the Supreme Court will decide a question of first impression: whether an exaction is exempt from the unconstitutional-conditions doctrine as applied in *Nollan* and *Dolan* because it is authorized by broadly applicable state or local legislation.

## **Sheetz Factual and Procedural History**

In August 2006, the County of El Dorado, California [amended](#) its Growth Plan to incorporate a traffic impact mitigation (TIM) fee to permits for new construction. The TIM fee is intended to help finance the building of new roads and widening of existing roads, and to account for the impact of the construction on state and local roads. The amended Plan allows the County to condition the issuance of a permit on payment of the TIM fee. The fee amount is dependent upon the location and type of construction proposed by the applicant. [According to the California Court of Appeal](#), the TIM fee program “requires that new development pay the full cost of constructing new roads and widening existing roads without regard to the cost specifically attributable to the particular project on which the fee is imposed.” The court also [noted](#) that “in assessing the fee, the County does not make any ‘individualized determinations’” as to the nature and extent of the traffic impacts caused by a particular project on state and local roads.

In July of 2016 the plaintiff/appellant, George Sheetz, applied to the County for a permit to construct a single-family residence. The County assessed Sheetz a \$23,420 TIM fee as a condition of granting the construction permit. Sheetz paid the fee under protest to obtain his permit, and subsequently sent several letters to the County protesting the assessment and requesting a refund. The County did not respond to the letters.

In June 2017, Sheetz filed an action in California state court against the County seeking declaratory and injunctive relief from the TIM fee program as well as a “writ of mandate,” a directive to compel a public agency to perform an act required by law. The petition/complaint asserted seven causes of action challenging the fee program. As relevant here, Sheetz alleged that the County violated the “unconstitutional conditions doctrine” because it mandated a TIM fee that, in Sheetz’s case, would constitute an unlawful exaction in violation of the Takings Clause.

After years of motion practice, the trial court ultimately held that the TIM fee was not required to be analyzed under the *Nollan/Dolan* test because it was legislatively proscribed and broadly applicable. The trial court upheld the TIM fee under both state and federal law.

Sheetz appealed, continuing to argue that the TIM fee was invalid as an exaction under the doctrine of unconstitutional conditions. The California Court of Appeal, Third District [affirmed](#) the trial court’s judgment, holding that “the requirements of *Nollan* and *Dolan* ... do not extend to development fees that are generally applicable to a broad class of property owners through legislative action” and that “‘legislatively prescribed monetary fees’—as distinguished from a monetary condition imposed on an individual permit application on an ad hoc basis—that are imposed as a condition of development are not subject to the *Nollan/Dolan* test.”

After the state supreme court declined to review the case, Sheetz [petitioned](#) for certiorari at the U.S. Supreme Court in May 2023, and the Court granted certiorari on September 29. Arguments are [scheduled](#) for January 9, 2024.

## Issue Before the Court

The sole question presented by *Sheetz* is whether a legislatively imposed building permit exaction is exempt from the unconstitutional-conditions doctrine as applied in *Nollan* and *Dolan*. The California appellate court, citing state court precedent, held that such fees are not subject to the *Nollan/Dolan* test. In his [brief](#) in support of the petition for certiorari, Sheetz first noted a split among federal circuit courts regarding this question, citing [a recent decision](#) from the U.S. Court of Appeals for the Sixth Circuit that held that the *Nollan/Dolan* test applied to a challenge to a “sidewalk ordinance” that imposed certain sidewalk related conditions on landowners seeking building permits. After the grant of certiorari, Sheetz [argued](#) that applying the test to legislatively imposed fees “ensures that any exaction serves as genuine mitigation for public impacts attributable to the proposed use or development rather than a veiled attempt to skirt the compensation requirement of the Takings Clause.” Sheetz [claims](#) that there is no rationale for differentiating between legislatively imposed and administratively imposed exactions, and argues that the text of the Takings Clause itself does not provide a basis for the distinction. Sheetz [noted](#) that the doctrine of unconstitutional conditions has been applied to strike down legislative actions in defense of other rights. Further, Sheetz [argued](#) that application of the doctrine would not frustrate all exactions, only those that do not pass the *Nollan/Dolan* test, so efforts to ensure appropriate land use controls would not be frustrated. In [its response](#), the County quoted both *Koontz* and *Dolan* in support of the notion that “governments possess expansive police power to address the impacts of new development.” The County further [argued](#) that the decisions “explicitly disavow that any particularized showing must justify commonplace fees charged to property owners, such as property taxes, user fees, and similar governmental assessments.” The County also [differentiated](#) the facts in this case from those in *Nollan*, *Dolan*, and *Koontz*, noting that in those cases the government asked for specific property conveyances to offset a particular construction, whereas in this case the exaction is a broadly applied and legislatively imposed fee structure. The County [noted](#) the difficulty of conducting parcel-specific analysis regarding the suitability of legislatively imposed land use controls.

## Considerations for Congress

Public and legislative interest in the exercise of eminent domain and takings jurisprudence tends to increase after a significant Supreme Court decisions on the subject, and it would not be a surprise to see interest in the wake of the *Sheetz* decision from both those interested in protecting the rights of property owners and those interested in reserving the broad authority of state and local governments to regulate land use. Should the Court rule in favor of the County, there may be a call for federal legislation to restrict the broad land use authority of state and local governments, [as there was](#) in the wake of the Court’s 2005 decision in *Kelo v. City of New London*. A ruling that clarifies that legislatively imposed exactions are exempt from *Nollan/Dolan* review might also empower Congress to impose exactions to regulate land use. A ruling in favor of Sheetz, on the other hand, would clarify the Constitutional limits on exactions and might encourage legislators to seek novel means of legislating land use controls.

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