

# Impact Fees and Exactions

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2024



# The Sky Is Falling

*Sheetz v. El Dorado County (CA)*



# What is an Impact Fee?

One-time charge on new development to **mitigate** its impact on public facilities.

Must show a **reasonable relationship** between new development and the need for new or expanded facilities to serve it.

Must also show that new revenues from new development are **insufficient** to remedy its impact.

Impact fees are thus “**gap**” financing.

New development must also **benefit** from the impact fees it pays.



# Why do we Have Them?

- Government is **broke**.
- Citizens want more benefits they're **not willing to pay** for.
- Public does not want new development to **degrade** service quality.
- Legislatures keep adding **unfunded mandates**.
- Occasionally there are “**efficiency**” reasons.
  - True efficiency results in developments with **greater impacts paying** more than development with lesser impacts.
  - All too often, impact fees undercharge developments with greater impacts and over-charge developments with lesser impacts meaning we get more high-cost development and less low-cost development → this is a **recipe for a fiscal train wreck**.



# Exaction versus Mitigation

- Exactions are extortions where development is a **privilege** allowing the community to condition approval on (almost) anything.
- *Nollan* and *Dolan* addressed administrative exactions →
  - **Dolan: No reasonable relationship between expansion of a plumbing goods store and its impact on ... anything.**
- “Rough proportionality” test on **administrative actions** as opposed to legislative actions.



# Nollan v. California Coastal Commission

House expansion  
conditioned on  
dedication of a public  
easement across  
rear of Nollan's lot.

Court found no relation  
between the  
easement and the  
harm being  
mitigated.

“Essential Nexus” test.





**A. Nelson** in “Public Provision of Pedestrian and Bicycle Access Ways: Public Policy Rationale and the Nature of Private Benefits” found that if value added from dedications exceeds the dedication, no economic taking can occur. But Tigard did not make that finding below. Hence, the Nelson study was disregarded at 512 U.S. 374, 388.



\$15,000 easement turned into a \$1.4 million settlement at **\$1,000** per linear inch in 1998.



# The *Dolan* Rough Proportionality Test ... Applied to Administrative Decisions

- No **precise mathematical calculation** is required, but the city must make some sort of ...
- **Individualized determination** that the required dedication is **related both in nature and extent** to the proposed development's impact.

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





# Koontz Goes Beyond Rough Proportionality

- *Koontz v. St. Johns (FL) Water Conservation District*
- Clarified that **monetary exactions** fall under *Dolan*.
- Monetary exactions depend on **mathematical calculations** to show they are not in excess of what is needed to mitigate the monetary impact of development.
- This **raises the standard** for impact fee review by courts from “rough proportionality” to ...?

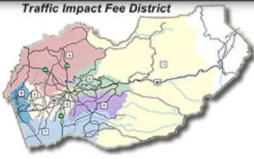
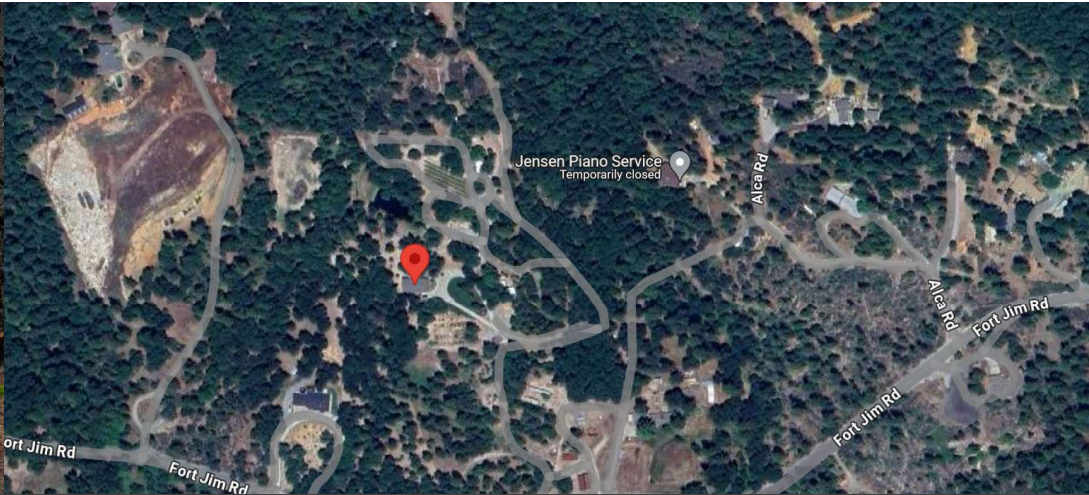
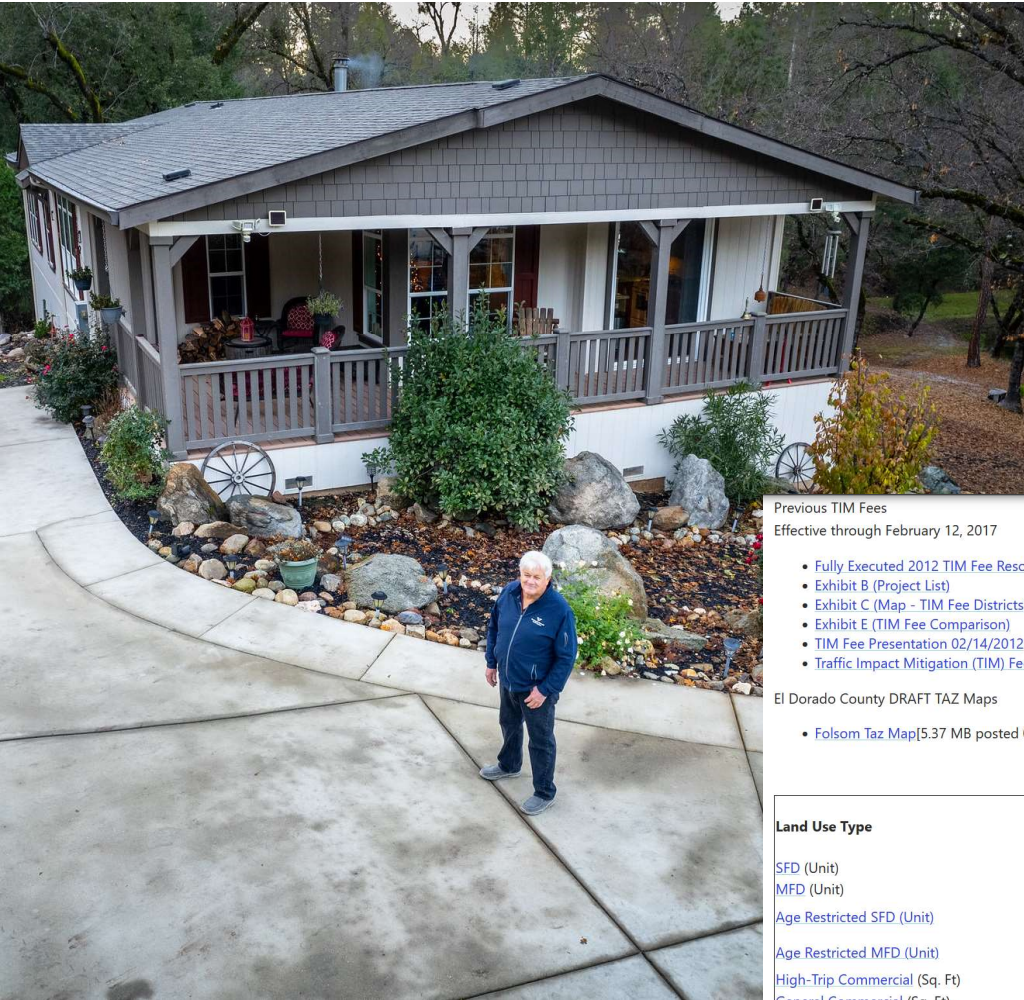
**Specifically attributable?**



# ***Sheetz v. County of El Dorado (CA)***

- Sheetz applied for a building permit in 2016 to build an 1,854-square-foot manufactured home. The **traffic impact mitigation fee** was \$23,420 based on the **type and location** of the home based on a fee schedule. **No individualized** assessment was made to correlate the fee with the project's actual impact on roads.
- *Sheetz* asked the Supreme Court to determine whether El Dorado County's **Traffic Impact Mitigation Fee Program** is an **unconstitutional taking** under the Takings Clause. The Takings Clause prohibits the government from taking individual property without just compensation.
- The question is whether an impact fee applied to a **building-permit is exempt** from the unconstitutional-conditions doctrine as applied in *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard, Oregon* **simply because it is authorized by legislation.**





Previous TIM Fees  
Effective through February 12, 2017

- [Fully Executed 2012 TIM Fee Resolution](#) Posted Mar 30, 2012, 2:00 pm
- [Exhibit B \(Project List\)](#)
- [Exhibit C \(Map - TIM Fee Districts\)](#) Updated 2/22/2012
- [Exhibit E \(TIM Fee Comparison\)](#)
- [TIM Fee Presentation 02/14/2012](#)
- [Traffic Impact Mitigation \(TIM\) Fee Offset Program for Affordable Housing](#)

El Dorado County DRAFT TAZ Maps

- [Folsom Taz Map](#)[5.37 MB posted 01-22-2010]

TIM Fees (Effective April 13, 2012)

Land Use Type	Fee Zone	Fee Zone	Fee Zone	Fee Zone	Fee Zone	Fee Zone	Fee Zone	Fee Zone	Fee Zone
	Number 1	Number 2	Number 3	Number 4	Number 5	Number 6	Number 7	Number 8	Number 8
	Total Fee	Total Fee	Total Fee	Total Fee	Total Fee	Total Fee	Total Fee	Total Fee	Total Fee
SFD (Unit)	14,640	35,740	35,740	13,330	8,720	23,420	14,750	28,140	28,140
MFD (Unit)	9,530	23,300	23,300	8,620	8,720	15,240	9,580	18,370	18,370
Age Restricted SFD (Unit)	N/A	13,580	13,580	N/A	N/A	N/A	N/A	10,690	10,690
Age Restricted MFD (Unit)	N/A	8,850	8,850	N/A	N/A	N/A	N/A	6,980	6,980
High-Trip Commercial (Sq. Ft)	16.45	22.30	22.44	17.91	17.89	18.00	17.53	18.29	18.29
General Commercial (Sq. Ft)	7.66	10.42	10.49	8.33	8.31	8.32	8.17	8.60	8.60
Office (Sq. Foot)	1.97	2.66	2.68	2.14	2.12	2.12	2.10	2.20	2.20
Industrial (Sq. Foot)	1.25	1.70	1.70	1.37	1.35	1.35	1.32	1.40	1.40
Warehouse (Sq. Foot)	0.63	0.86	0.86	0.69	0.68	0.68	0.66	0.71	0.71
Church (Sq. Foot)	0.63	0.86	0.86	0.69	0.68	0.68	0.66	0.71	0.71
Gas Station (pump)	7,730	9,860	9,930	8,310	8,300	8,310	8,170	8,310	8,310
Golf Course (per hole)	6,286	8,586	8,634	6,824	6,818	6,847	6,744	7,067	7,067
Campground (campsite)	2,505	3,247	3,273	2,675	2,673	2,687	2,645	2,931	2,931
Bed & Breakfast (rented room)	1,259	1,629	1,638	1,348	1,357	1,359	1,317	1,461	1,461



# And the Answer Is ...

- Legislative actions **are subject** to Takings claims
- Remand to California Court to **apply Nollan/Dolan/Koontz** to El Dorado County's legislative road impact fees.
- Pacific Legal Foundation wants to **elevate judicial** standard from  
**Rough Proportionality**  
to  
**Specifically Attributable**



# Is The Sky is Falling?

- Are we headed toward a **specifically attributable** impact fee standard?
  - Would this require case-by-case monetary impact assessment based on unique **occupancy and use** features?
  - Would this require a **service area** for each parcel?
  - Could local government **recover** these additional costs?
  - Or ... would local governments **throw in the towel** and cease issuing building permits in the absence of adequate facilities?
- Will NIMBYs **win**?



# Practical Questions

- How much has the **burden of proof** shifted?
- How does this **change** impact fee practice in Utah?
- Do we need our own studies to assess **independent fee studies**?
- Do impact fees need to be based on **more service areas**?
- Do impact fees need to be based more precisely on the land use such as **square foot per home**?

**What are your thoughts?**