



Real estate development impact fee calculations may change after court ruling

Wallis Law shares insights on development impact fees and why agencies could see challenges to those fees in upcoming months following a recent federal court decision.

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Background

A General Plan is the blueprint for future development because it identifies the growth or development of a city or county over twenty years. Adopting or updating a General Plan is a legislative act, unlike approving a conditional use permit, which is an adjudicatory act. A General Plan also identifies the infrastructure necessary to support the growth or development contained in a General Plan. Once the infrastructure, such as roads, water supply facilities, wastewater facilities, etc., are identified, a city or county prepares the requisite nexus and proportionality studies. A city then typically adopts an annual resolution setting impact fees for the next year. The impact fees fund relevant improvements specific to that type of infrastructure. The United States Supreme Court issued a ruling on April 12, 2024, which affects how impact fees are calculated.

Sheetz v. County of El Dorado

Property owners applied for a building permit to construct a prefabricated home on their property in El Dorado County. The county required the property owners to pay a \$23,420 traffic impact fee before the county would issue a permit for the prefabricated home. The traffic impact fee was based on a rate schedule that considered only the type of development (e.g.: residential, commercial, industrial, etc.) and the property's location within the county. The property owners paid the \$23,420 traffic impact fee under protest, asserting that the Fifth Amendment of the Federal Constitution required the county to make an individualized determination that this fee was necessary to offset traffic

impacts from this specific prefabricated home. The county initially disagreed with the landowner's assertions because development impact fees are the product of a legislative act - adopting or updating a General Plan - and relied on prior court decisions evaluating physical or monetary exaction in conjunction with adjudicatory permits or requirements, such as use permits or coastal development permits.

California's Appellate Court ruled against the landowner, and California's Supreme Court declined to hear this case. The litigation eventually made its way to the United States Supreme Court. The U.S. Supreme Court looked to the history of the Fifth Amendment of the Federal Constitution, also called the "Takings Clause", which prohibits the taking of property without just compensation. The Takings Clause prevents individual landowners from shouldering burdens that should be borne by the public. The Takings Clause requires an "essential nexus" to ensure that the exaction substantially advances a legitimate government interest directly related to the development or permit. Takings Clause court decisions also require "rough proportionality", which limits the amount or severity of the exaction to only what is necessary to mitigate a specific development's impacts.

Long-established court decisions unequivocally applied the Takings Clause to a physical invasion of property. A physical invasion of property occurs when the government physically invades land, such as requiring a landowner to give part of its land to a public agency for a road expansion in conjunction with the subdivision approval or an easement to monitor groundwater extraction from a well. Conditions of approval attached to permits are likewise protected by the Takings Clause. A condition of approval cannot require a landowner to give up physical land or property rights or pay a fee greater than what is necessary to mitigate the impact of the development.

Impact fees are the product of the legislative act of adopting a General Plan. A legislative act is neither a physical nor regulatory exaction. In deciding this matter, the U.S. Supreme Court went as far back as the American Revolution to determine if the Takings Clause was intended to apply to legislative acts. The U.S. Supreme Court found legislation requiring the government to pay dispossessed property owners, among other historic legislation, demonstrating that the Takings Clause was intended to apply to legislative acts. Thus, the Supreme Court ruled that the Takings Clause applies to legislative acts, such as impact fees derived from General Plan adoptions and updates.

Notably, the United States Supreme Court declined to decide how an impact fee must be calculated to ensure that the fee does not exceed the proposed development's impacts. The court also declined to decide if an impact fee,

resulting from a legislative act, must be calculated with the same degree of specificity as a condition of approval for a use permit or other adjudicatory permits. Instead, the Supreme Court sent this case back to California's Appellate Court for further analysis. Going forward, California's Appellate Court will consider whether an impact fee imposed on the class of properties must be narrowly tailored with the same degree of specificity as adjudicatory permits for specific properties or developments, such as use permits.

How This Affects Permit Holders

Many jurisdictions adopt their impact fee resolutions in July, which is only three months away, and it is unlikely that there will be a resolution from California's Appellate Court before then. In the meantime, agencies should expect challenges from permit holders who have not yet paid their impact fees and from future permit applicants about whether the impact fee is roughly proportional to the impact of the development. For example, someone obtaining a building permit for single-family home is likely to object to being required to pay the same traffic impact fee as someone developing a shopping center. Similarly, permit holders who have not yet paid their impact fees, may wish to review the amount of the fee with the agency that issued the permit.

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