

Date of Hearing: April 24, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 3177 (Wendy Carrillo) – As Amended April 18, 2024

SUBJECT: Mitigation Fee Act: land dedications: mitigating vehicular traffic impacts

SUMMARY: Prohibits a local agency from imposing a land dedication requirement on a housing development for purposes of mitigating the impacts of vehicular traffic, except under specific circumstances. Specifically, **this bill:**

- 1) Defines, for purposes of Chapter 5 of the Mitigation Fee Act, “land dedication” as a physical exaction of property for public use without compensation, whether imposed on an ad hoc or legislative basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project.
- 2) Broadens the types of housing developments subject to reduced traffic mitigation fees by changing the eligible housing developments from housing developments that are located within “one-half mile of a transit station and there is direct access between the housing development and the transit station along a barrier-free walkable pathway not exceeding one-half mile in length” to “one-half mile of transit priority area.”
- 3) Prohibits a local agency from imposing a land dedication requirement on a housing development, as specified, for the purpose of mitigating vehicular traffic impacts or achieving an adopted traffic level of service related to vehicular traffic.
- 4) Allows a local agency to impose a land dedication requirement on a housing development if both of the following conditions are met:
 - a) The housing development is not located in a transit priority area.
 - b) The housing development has a street frontage of 500 feet or more.
- 5) Allows a local government to impose a land dedication requirement on a housing development for the purpose of street widening if the local agency makes a finding, specific to the housing development project and supported by a preponderance of the evidence, that the land dedication requirement is necessary to preserve the health, safety, and welfare of the public.
- 6) Provides that nothing in this bill shall prohibit any other lawful land dedication requirement or requirement to construct public improvements, including, but not limited to, sidewalk and sewer improvements.
- 7) Defines, for purposes of the bill, the following terms:
 - a) “Housing development” means a development project with common ownership and financing consisting or residential use or mixed use where not less than 50% of the floor space is residential use

- b) “Transit priority area” means an area within one-half mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program or applicable regional transportation plan.

EXISTING LAW:

- 1) Establishes the Mitigation Fee Act which:

- a) Requires a local agency to do all of the following when establishing, increasing, or imposing a fee on a development project:
 - i) Identify the purpose of the fee;
 - ii) Identify the use to which the fee is to be put;
 - iii) Determine how there is a nexus between the fee’s use and the type of development project on which the fee is imposed; and
 - iv) Determine how there is a nexus between the need for a public facility and the type of development project on which the fee is imposed. (Government Code (GOV) § 66000-66025)
- b) Provides that if a local agency imposes a fee on a housing development to mitigate traffic impacts, and the development is within half a mile barrier-free walk of a transit station, the fee should reflect a lower rate of automobile trips, unless proven at a public hearing that the housing development would not generate fewer automobile trips than a development further away from transit. (GOV § 66005.1)

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **Bill Summary.** AB 3177 prohibits a local government from imposing a land dedication to mitigate traffic impacts on housing developments. The bill would still allow local governments to impose a land dedication on housing developments for purposes of vehicle traffic mitigation if the housing development is not in a transit priority area or the housing development has a street frontage of 500 feet or more. A local government may still require a land dedication for street widening if it makes a written finding that street widening is necessary for health and safety. The bill shall not prohibit any other lawful land dedication requirement or requirement to construct public improvements, including, but not limited to, sidewalk and sewer improvements.

This bill is sponsored by Streets for All.

- 2) **Author’s Statement.** According to the author, “AB 3177 promotes efficient land use by placing limits on Spot Widening, whereby developers give up land and pay for road expansions as a permitting requirement. This practice affects the financial feasibility of housing developments, reducing the number of homes a developer can build and increasing tenants' rents. One project in Los Angeles lost over 6,000 square feet of land to road

widening, which amounted to a loss of over 30 dwelling units. There was a delay of almost two years for another project, consisting of permanent supportive housing for the homeless, as the developer sought to waive the road-widening requirement. These additional costs and delays contribute to California's housing shortage and homelessness crisis.”

- 3) **Mitigation Fee Act.** When approving development projects, counties and cities can require the applicants to mitigate the project's effects by paying fees—known as mitigation fees, impact fees, or developer fees. The California courts have upheld impact fees for sidewalks, parks, school construction, and many other public purposes.

When establishing, increasing, or imposing a fee as a condition of approving a development project, the Mitigation Fee Act requires local officials to:

- a) Identify the fee’s purpose.
- b) Identify the fee’s use, including the public facilities to be financed.
- c) Determine a reasonable relationship between the fee’s use and the development.
- d) Determine a reasonable relationship between the public facility’s need and the development.

When imposing a fee as a condition of approving a development project, the Mitigation Fee Act also requires local officials to determine a reasonable relationship between the fee’s amount and the cost of the public facility. In its 1987 *Nollan* decision, the U.S. Supreme Court said there must be an “essential nexus” between a project's impacts and the conditions for approval. In the 1994 *Dolan* decision, the U.S. Supreme Court said that conditions on development must have a "rough proportionality" to a project's impacts.

In the 1996 *Ehrlich* decision, the California Supreme Court distinguished between “legislatively enacted” conditions that apply to all projects and “ad hoc” conditions imposed on a project-by- project basis. *Ehrlich* applied the “essential nexus” test from *Nollan* and the “rough proportionality” test from *Dolan* to “ad hoc” conditions. The Court did not apply the *Nollan* and *Dolan* tests to the conditions that were “legislatively enacted.” In other words, local officials have generally faced greater scrutiny when they impose conditions on a project-by-project basis. As a result of these decisions and the Mitigation Fee Act, local agencies have conducted nexus studies to ensure any proposed impact fees meet these legal tests for most impact fees. Other requirements in the Mitigation Fee Act ensure that impact fees are appropriately levied and spent.

On April 12 of this year, the United States Supreme Court decided *Sheetz v. County of El Dorado, California*. The case involved the takings clause of the Fifth Amendment to the U.S. Constitution. An El Dorado County resident challenged the county’s legislatively enacted traffic impact mitigation fee, arguing the county should only charge him based on the impact associated with his specific parcel. The main question was whether or not the same standards of “essential nexus” and “rough proportionality” apply to legislatively enacted fees as they do to ad-hoc fees.

In the *Sheetz* decision, the Court stated, “A legislative exception to the *Nollan/Dolan* test ‘conflicts with the rest of our takings jurisprudence,’ which does not otherwise distinguish between legislation and other official acts. *Knick v. Township of Scott*, 588 U. S. 180, 185 (2019).” The Court also proclaimed that, “...as we have explained, a legislative exception to the ordinary takings rules finds no support in constitutional text, history, or precedent. We do not address the parties’ other disputes over the validity of the traffic impact fee, including whether a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development. The California Court of Appeal did not consider this point—or any of the parties’ other nuanced arguments—because it proceeded from the erroneous premise that legislative permit conditions are categorically exempt from the requirements of *Nollan* and *Dolan*. Whether the parties’ other arguments are preserved and how they bear on *Sheetz*’s legal challenge are for the state courts to consider in the first instance.”

In addition, Justice Kavanaugh filed a concurring opinion, in which Justices Kagan and Jackson joined saying that, “I join the Court’s opinion. I write separately to underscore that the Court has not previously decided—and today explicitly declines to decide—whether ‘a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development.’ *Ante*, at 10–11. Importantly, therefore, 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.”

- 4) **In-Lieu Fees.** Local governments also use in-lieu fees when requiring a developer to dedicate land is not optimal or feasible. For example, requiring each developer to dedicate land for school or recreation purposes might not achieve the goal of providing facilities for large, developing suburban areas if the sites are either inadequate in size or not in the best locations. Imposing an in-lieu fee instead substitutes a monetary payment for a dedication of land or property. Fees collected from multiple developers can then be used at a later date to purchase an appropriate site and construct the necessary public improvements.
- 5) **Spot Widening.** In some urban areas, such as the City of Los Angeles, the practice of "Spot Widening" along roadways adjacent to new developments has become a requirement imposed by cities on developers. This process involves the widening of a portion of the roadway to accommodate increased vehicular traffic that might result from the new development. According to the California Department of Housing and Community Development (HCD), this sort of land dedication may affect the cost and feasibility of developing housing as well as its affordability.¹ A 2016 research study published in the *Journal of Transport and Land Use* found that road widening requirements in Los Angeles can cost developers over \$10,000 per unit, resulting in up to hundreds of thousands of dollars being added to projects subjected to these requirements in certain instances.² Such additional

¹ <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/fees-and-exactions>

² Michael Manville, *Automatic street widening: Evidence from a highway dedication law*. *Journal of Transport and Land Use*, 9(1). 2016. <https://doi.org/10.5198/jtlu.2016.834>

costs often lead to higher rent prices to make up for the loss. In addition to the monetary costs, developers also lose valuable land they could have used for additional housing units.

Shifting land from housing to roads on a per project basis may not achieve any mitigation because the widening is limited to the roadway adjacent to the project, leading to road configurations that essentially zigzag. In instances where an entire block of the road is widened due to a large scale development, the growing body of evidence on the effects of road widening makes clear that this practice induces driving and worsens congestion. Therefore, placing “spot widening” requirements on a developer may result in more driving, rather than mitigating congestion.

- 6) **Transit Priority Areas.** Transit Priority Areas (TPAs) are designated regions within a half-mile radius of an existing or planned major transit stop. These areas are identified as part of the state's strategy to promote sustainable development and reduce greenhouse gas emissions. The rationale behind encouraging car-free or low-car developments in TPAs is to leverage the proximity to public transit, thereby reducing the reliance on private vehicles for daily commutes. This approach aligns with California's broader environmental and urban planning goals, aiming to create more walkable, bike-friendly, and transit-oriented communities. By fostering developments in TPAs that minimize automobile dependency, the state seeks to alleviate traffic congestion, improve air quality, and enhance the overall quality of life for residents.
- 7) **Policy Considerations.** The Committee may wish to consider the following:
 - a) **Definitions.** AB 3177 currently defines “land dedication” for a chapter within the Mitigation Fee Act, however the limitations on using land dedications is contained in only one section. The Committee may wish to consider if defining this term for the chapter may have unintended consequences relating to the interpretation of other provisions within the chapter and any applicable cross references.
- 8) **Committee Amendments.** In order to address the policy consideration above, the committee may wish to amend the bill as follows.
 - b) Strike the definition of “land dedication” in Section 1.
 - c) Insert the definition of “land dedication” in subdivision (d) of Section 2.

(d)(1) For purposes of this section:

“Housing development” means a development project with common ownership and financing consisting of residential use or mixed use where not less than 50 percent of the floor space is for residential use.

The examples cited in this report include:

- One \$450,000 improvement that caused a developer to reduce their development from 10 units to 9 units, put otherwise, a cost of \$50,000 per unit.
- A 27 unit development paying \$300,000 (\$11,100 per unit)

(2) “Transit priority area” means the same as defined in paragraph (7) of subdivision (a) of Section 21099 of the Public Resources Code

(3) “Land dedication” means a physical exaction of property for public use without compensation, whether imposed on an ad hoc or legislative basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project.

- 9) **Argument in Support.** Civicwell writes in support, “A common practice by local governments is to require land dedication for road widening as a condition for improving a housing project. According to the California Department of Housing and Community Development (HCD), this sort of land dedication requirement is an exaction that impacts the cost and feasibility of developing housing as well as its affordability. Research from UCLA found that road widening requirements in Los Angeles can cost developers as much as \$500,000 per project. Such additional costs often lead to higher rent prices to make up for this cost.

“In addition to the monetary costs, developers also lose valuable land that could be used for additional housing units. One project in Los Angeles lost over 6,000 square feet of land to road widening, which amounted to a loss of over 30 dwelling units. Another project, consisting of permanent supportive housing for the homeless, was delayed for almost two years as the developer sought to waive the road widening requirement.

“Such dedications are not only inconsistent with the effort to develop badly needed additional housing but are counterproductive to the goal of reducing vehicle trips in places designated as priority transit areas. Eliminating trips and vehicle miles traveled (VMT) is a fundamental requirement to meeting the mandate of SB 32 to reduce greenhouse gas (GHG) emissions to 40% of 1990 levels by 2030. AB 3177 would take an important step in the direction of serving both the goals of developing more housing and decreasing GHG emissions by prohibiting exactions from new development for road widening in transit priority areas, except under limited circumstances.”

- 10) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

Streets for All (Sponsor)
 Abundant Housing LA
 Active San Gabriel Valley
 All Voting Members of The North Westwood Neighborhood Council
 Bike East Bay
 Bike LA
 California Bicycle Coalition
 California Environmental Voters
 California Housing Partnership Corporation
 California YIMBY
 Car-lite Long Beach

Conor Lynch Foundation
Council of Infill Builders
East Bay for Everyone
Everybody's Long Beach
Housing Action Coalition
Long Beach Bike Co-op
Los Angeles Walks
Natural Resources Defense Council
Pedal Movement
People for Housing – Orange County
Safe Routes Partnership
Seamless Bay Area
SoCal Families for Safe Streets
The Greenlining Institute
Transbay Coalition
Transform
YIMBY Action
Youth Climate Strike Los Angeles

Opposition

None on file.

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