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Requirement That Proposed Development Mitigate Cumulative Traffic Impacts Violated Nollan/Dolan Standard

An initiative measure that required new development to mitigate not only its individual traffic impacts but also cumulative impacts of other projects on traffic levels of service violated the rough-proportionality standard of *Nollan* and *Dolan* and was therefore unconstitutional. [Alliance for Responsible Planning v. Taylor \(County of El Dorado](#), No. C085712 (3rd Dist., May 4, 2021). El Dorado County voters adopted Measure E, whose stated



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sued, contending that the measure violated the takings clause by effectively requiring the developer to pay not only for the project's impact, but also for the incremental effects of other projects. The appellate court agreed. Under the "rough-proportionality" standard of *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994), the government must "make some sort of individualized determination that the required [exaction] is related both in nature and extent to the impact of the proposed development." Here, by requiring an individual project proponent to complete "[a]ll necessary road capacity improvements" to prevent peak-hour gridlock, Measure E "plainly cast[] a wider net than the harm resulting from an individual project." Under any reasonable interpretation of the measure, it "required a developer to construct improvements exceeding the extent of the project's own impact." The court rejected the defendant's claim that Measure E was a land use control, not an exaction. The court distinguished *California Building Industry Assn. v. City of San Jose*, 61 Cal.4th 435 (2015), in which the challenged measure required developments to sell a percentage of units at below-market rates. There, the court said, the ordinance did not require the developer to give up a property interest but "simply place[d] a restriction on the way the developer

may use its property by limiting the price for which the developer may offer some of its units for sale." Under Measure E, by contrast, the developer had to give up a property interest -- the cost of construction of roadway improvements -- as a condition of approval. The measure thus constituted an unconstitutional exaction, not a land use control.

## **Topics**

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