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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

GEORGE SHEETZ, Plaintiff and Appellant, v. COUNTY OF EL DORADO, Defendant and Respondent.	C093682 (Super. Ct. No. PC20170255)

APPEAL from a judgment of the Superior Court of El Dorado County, Dylan Sullivan, Judge. Affirmed.

Pacific Legal Foundation, Brian T. Hodges and David J. Deerson; Pierson Ferdinand and Paul James Beard II; FisherBroyles and Matthew Howard Weiner for Plaintiff and Appellant.

Citizen Action Defense Fund, Building Industry Association of Washington, Manhattan Institute, Wallace Properties Inc., Washington Business Properties Association, and Soundbuilt Homes, Sam Spielgelman and Jackson Maynard; Timothy R. Snowball as Amici Curiae for Plaintiff and Appellant.

Charles Gardner and Emily Hamilton of the Mercatus Center at George Mason University, Pillsbury Winthrop Shaw Pittman, Blaine I. Green and Nathan J. Wexler as Amici Curiae for Plaintiff and Appellant.

California Building Industry Association and National Association of Home Builders, Rutan & Tucker, David P. Lanferman and Jayson A. Parsons as Amici Curiae for Plaintiff and Appellant.

Abbott & Kindermann, William W. Abbott and Glen C. Hansen; County Counsel, David Anthony Livingston, Senior Deputy County Counsel, Kathleen A. Markham for Defendant and Respondent.

Rob Bonta, Attorney General, Daniel A. Olivas, Senior Assistant Attorney General, Haley Peterson, Supervising Deputy Attorney General, Matthew T. Struhar and Andrew R. Contreiras, Deputy Attorneys General as Amicus Curiae for Defendant and Respondent.

City and County of San Francisco, David Chiu, City Attorney, Austin M. Yang, Chief Land Use Deputy, Kristen Ann Jensen, Assistant Chief Land Use Deputy as Amicus Curiae for Defendant and Respondent.

This case returns to us from the United States Supreme Court, after that court invalidated settled California law regarding the application of the takings clause of the Fifth Amendment to the Constitution of the United States, on which we had relied in our original opinion. After analyzing the dispute before us in the manner now mandated by our nation's highest court, we again affirm the judgment, as we next explain.

Development impact fees are a widely used method for local governments to finance public infrastructure improvements necessary to serve new growth in their community. In California, local governments have broad authority, under the grant of police power in the state Constitution, to regulate the development and use of real property within their jurisdiction to promote the public welfare, which includes the power to require landowners to pay a fee to mitigate the public impacts of their proposed development projects as a condition of approval. (See Cal. Const., art. XI, § 7; *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 455-460 (*California Building*).)

Before us is a constitutional challenge to a development impact fee brought under the Fifth Amendment's takings clause, which prohibits the government from taking private property for public use without just compensation. (U.S. Const., 5th Amend.) More specifically, we address the special application of the "unconstitutional conditions doctrine" in the context of land-use exactions—government-imposed conditions for obtaining a building permit—established in *Nollan v. California Coastal Commission* (1987) 483 U.S. 825 (*Nollan*) and *Dolan v. City of Tigard* (1994) 512 U.S. 374 (*Dolan*).

Plaintiff George Sheetz wanted to build a single-family home on his residential parcel of land in Placerville. As a condition of receiving a building permit, defendant El Dorado County (County) required him to pay $23,420 to mitigate local traffic congestion spurred by new development. Sheetz paid the fee under protest and obtained the permit.

In 2017, Sheetz brought suit against the County, challenging the validity of the traffic impact mitigation fee (TIM fee, impact fee, or fee). Among other things, Sheetz claimed the fee was an unlawful taking of property ("exaction" of money) under the takings clause.[1] In Sheetz's view, the "essential nexus" and "rough proportionality" standards announced in *Nollan* and *Dolan* (commonly referred to as "the *Nollan*/*Dolan* test") required the County to make an individualized determination that the fee amount ($23,420) was necessary to offset traffic congestion attributable to his specific development. The County's predetermined fee schedule (set forth in the planning document called the "General Plan"), Sheetz argued, failed to meet that requirement. In other words, Sheetz claimed the County violated the takings clause by improperly "leveraging" its land use "permitting monopoly" in an extortionate fashion to exact more private property (money) than was necessary to mitigate the public impacts (increased traffic congestion) from his proposed development project. According to Sheetz, the County unlawfully deployed its police power to regulate land use by leveraging its interest in mitigating traffic congestion to pursue governmental ends that lacked an "essential nexus" and "rough proportionality" to that public interest, resulting in a taking without just compensation in violation of the Fifth Amendment.

In 2022, in a published opinion, we agreed with the trial court that the challenged permit condition (TIM fee) did not violate the takings clause as a matter of

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[1] Sheetz also challenged the TIM fee under state law. At this juncture, the only remaining issue is whether the fee violates the federal takings clause.

law, and therefore affirmed the resulting judgment after the trial court dismissed Sheetz's federal takings claim without leave to amend and denied his verified petition for writ of mandate. (See *Sheetz v. County of El Dorado* (2022) 84 Cal.App.5th 394, 401, 410, 414, 417, vacated and cause remanded by *Sheetz v. County of El Dorado, California* (2024) 601 U.S. 267, 273 (*Sheetz*).) In so ruling, we relied on longstanding precedent from the California Supreme Court, which held that the requirements of *Nollan* and *Dolan* did not apply where (as here) the challenged impact fee was a legislatively imposed permit condition that generally applied to a broad class of permit applicants through formulas or schedules that assessed the impact of entire classes of development (e.g., single-family residential, commercial). Rather, under established California law, the *Nollan/Dolan* test only applied to an impact fee that targeted a particular development and was imposed on an ad hoc and discretionary basis upon an individual permit applicant through administrative action (i.e., government agency action). (See *Sheetz v. County of El Dorado*, *supra*, 84 Cal.App.5th at pp. 410, 414 [citing cases].) The California Supreme Court denied review.

In 2023, the United States Supreme Court[2] granted certiorari to resolve the split among the state courts on the question of whether the Fifth Amendment's takings clause "recognizes a distinction between legislative and administrative conditions imposed on land-use permits." (*Sheetz, supra*, 601 U.S. at p. 273.) In 2024, the Supreme Court held that the requirements of *Nollan* and *Dolan* apply to land-

[2] Unless otherwise specified, all further "Supreme Court" references are to the United States Supreme Court.

use exactions (including impact fees) imposed by legislators *and* administrators, meaning that the takings clause "prohibits legislatures and agencies alike from imposing unconstitutional conditions on land-use permits." (*Id.* at pp. 279-280.) In other words, the Supreme Court concluded that, contrary to settled California law, "conditions on building permits are not exempt from scrutiny under *Nollan* and *Dolan* just because a legislature imposed them." (*Ibid.*) The Supreme Court opined that the rule on which we relied—a legislative exception to the ordinary takings rules—"finds no support in constitutional text, history, or precedent." (*Id.* at p. 280; see *id.* at pp. 276-279 [discussing the text as well as the relevant history and precedent of the takings clause].) Accordingly, because the analysis in our prior opinion "proceeded from the erroneous premise that legislative permit conditions are categorically exempt from the requirements of *Nollan* and *Dolan*," the Supreme Court vacated the federal takings portion of our prior opinion and remanded the matter for further proceedings. (*Id.* at p. 280.)

Upon further analysis as directed by the Supreme Court, we now conclude that the challenged permit condition (TIM fee) does not constitute an unlawful monetary exaction under the *Nollan/Dolan* test. The legislatively formulated generally applicable impact fee is not an unconstitutional condition imposed on land use in violation of the Fifth Amendment's takings clause. Accordingly, we again affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Given the procedural posture of this case, we briefly summarize the underlying facts and procedure, which we take from *Sheetz*, *supra*, 601 U.S. 267. Additional information related to Sheetz's federal takings claim is set forth as necessary in the Discussion section, *post*.

Factual Background

"El Dorado County, California is a rural jurisdiction that lies east of Sacramento and extends to the Nevada border. Much of the County's 1,700 square miles is backcountry. It is home to the Sierra Nevada mountain range and the Eldorado National Forest. Those areas, composed mainly of public lands, are sparsely populated. Visitors from around the world use the natural areas for fishing, backpacking, and other recreational activities.

"Most of the County's residents are concentrated in the west and east regions. In the west, the towns of El Dorado Hills, Cameron Park, and Shingle Springs form the outer reaches of Sacramento's suburbs. Placerville, the county seat, lies just beyond them. In the east, residents live along the south shores of Lake Tahoe. Highway 50 connects these population centers and divides the County into north and south portions.

"In recent decades, the County has experienced significant population growth, and with it an increase in new development. To account for the new demand on public services, the County's Board of Supervisors adopted a planning document, which it calls the General Plan, to address issues ranging from wastewater collection to land-use restrictions. The Board of Supervisors is a legislative body under state

law, and the adoption of its General Plan is a legislative act. [Citation.]

"To address traffic congestion, the General Plan requires developers to pay a traffic impact fee as a condition of receiving a building permit. The County uses proceeds from these fees to fund improvements to its road system. The fee amount is determined by a rate schedule, which takes into account the type of development (commercial, residential, and so on) and its location within the County. The amount is not based on 'the cost specifically attributable to the particular project on which the fee is imposed.'" (*Sheetz*, *supra*, 601 U.S. at pp. 271-272, fn. omitted.)

"Sheetz owns property in the center of the County near Highway 50, which the General Plan classifies as 'Low Density Residential.' Sheetz and his wife applied for a permit to build a modest prefabricated house on the parcel, with plans to raise their grandson there. As a condition of receiving the permit, the County required Sheetz to pay a traffic impact fee of $23,420, as dictated by the General Plan's rate schedule. Sheetz paid the fee under protest and obtained the permit. The County did not respond to his request for a refund." (*Sheetz*, *supra*, 601 U.S. at p. 272, fn. omitted.)

Procedural Background

"Sheetz sought relief in state court. He claimed, among other things, that conditioning the building permit on the payment of a traffic impact fee constituted an unlawful 'exaction' of money in violation of the Takings Clause. In Sheetz's view, [the Supreme Court's] decisions in *Nollan* . . . and *Dolan* . . . required the County to make an individualized determination that the fee amount was necessary to

offset traffic congestion attributable to his specific development. The County's predetermined fee schedule, Sheetz argued, failed to meet that requirement. (*Sheetz*, *supra*, 601 U.S. at p. 272.)

"The trial court rejected Sheetz's claim and [a panel from this court] affirmed. Relying on precedent from the California Supreme Court, [we held] that the *Nollan/Dolan* test applies only to permit conditions imposed '"on an individual and discretionary basis."' [Citations.] Fees imposed on 'a broad class of property owners through legislative action,' [we] said, need not satisfy that test. [Citation.] The California Supreme Court denied review." (*Sheetz*, *supra*, 601 U.S. at p. 273.)

Because the state courts had "reached different conclusions on the question of whether the Takings Clause recognizes a distinction between legislative and administrative conditions on land-use permits," the Supreme Court granted certiorari to resolve the split. (*Sheetz*, *supra*, 601 U.S. at p. 273 & fn. 3 [collecting cases].)

In 2024, the Supreme Court reversed our prior opinion, holding that the *Nollan/Dolan* test applies to legislative and administrative conditions on building permits. In other words, the court determined that, contrary to established California law, permit conditions are not exempt from scrutiny under *Nollan* and *Dolan* just because a legislature imposed them. (*Sheetz*, *supra*, 601 U.S. at pp. 276-280.) In so concluding, the court found that the takings clause applies equally to legislators and administrators, which means that it "prohibits legislatures and agencies alike from imposing unconstitutional conditions on land-use permits." (*Id.* at p. 279.)

The Supreme Court vacated the federal takings portion of our prior opinion and remanded the matter for further proceedings not inconsistent with its opinion. (*Sheetz*, *supra*, 601 U.S. at p. 280.) In doing so, the high court did not resolve the "important threshold question to any application of *Nollan/Dolan* scrutiny: whether the permit condition would be a compensable taking if imposed outside the permitting context." (*Id.* at pp. 280-281 (conc. opn. of Sotomayor, J.).) As explained by Justice Sotomayor: "'A predicate for any unconstitutional conditions claim is that the government could not have constitutionally ordered the person asserting the claim to do what it attempted to pressure that person into doing.' [Citation.] In the takings context, *Nollan/Dolan* scrutiny therefore applies only when the condition at issue would have been a compensable taking if imposed outside the permitting process." (*Id.* at p. 281 (conc. opn. of Sotomayor, J.).) Thus, we must first decide whether the challenged permit condition (TIM fee) is subject to *Nollan/Dolan* scrutiny. (*Ibid.*) If the answer to that question is "yes," we must then determine whether the impact fee survives the *Nollan/Dolan* test, that is, whether the fee has an "essential nexus" to the County's land-use interest (reducing traffic congestion from new development), and whether the amount of the fee ($23,420) is roughly proportional to the proposed development's impact on that interest. (See *Sheetz*, at pp. 275-276.) In making the latter determination, we must decide a question the Supreme Court explicitly declined to decide in *Sheetz*; namely, 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.'" (See *id.* at p. 284 (conc. opn. of Kavanaugh, J.).)

As noted by Justice Kavanaugh: "[T]oday'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. Both *Nollan* and *Dolan* considered permit conditions tailored to specific parcels of property. [Citations.] Those decisions had no occasion to address permit conditions, such as impact fees, that are imposed on permit applicants based on reasonable formulas or schedules that assess the impact of classes of development." (*Sheetz*, *supra*, 601 U.S. at p. 284 (conc. opn. of Kavanaugh, J.).)

After the Supreme Court issued the remittitur, the parties submitted supplemental briefing on the remaining issues in this matter and we granted various private and public entities permission to file amicus briefing. Briefing was completed in late November 2024, and the case was ultimately argued in June 2025.

DISCUSSION

I

Governing Law

"When the government wants to take private property to build roads, courthouses, or other public

projects, it must compensate the owner at fair market value." (*Sheetz*, *supra*, 601 U.S. at p. 273.) The just compensation requirement comes from the takings clause of the Fifth Amendment, made applicable to the states by the Fourteenth Amendment, which provides that "private property shall not 'be taken for public use, without just compensation.'" (*Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 536 (*Lingle*).) By requiring the government to pay for what it takes, the takings clause prevents the government from "'forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'" (*Palazzolo v. Rhode Island* (2001) 533 U.S. 606, 618; *Armstrong v. United States* (1960) 364 U.S. 40, 49.)

The Supreme Court has identified two general categories of takings: "physical takings" and "regulatory takings." (*Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* (2002) 535 U.S. 302, 321.) Apart from these two general categories of takings, the Supreme Court has also identified a "special" category of takings claims for "land-use exactions." (*Lingle*, *supra*, 544 U.S. at p. 546.) A land-use exaction occurs when the government demands real property or money from a land-use permit applicant as a condition of obtaining a building permit. (*Koontz v. St. Johns River Water Management Dist.* (2013) 570 U.S. 595, 599, 612, 616 (*Koontz*); see *City of Monterey v. Del Monte Dunes at Monterey, Ltd.* (1999) 526 U.S. 687, 702 [explaining that exactions are "land-use decisions conditioning approval of development on the dedication of [private] property to public use"].) The leading examples of land-use

"exactions" come from the Supreme Court's decisions in *Nollan*, *Dolan*, and *Koontz*.

In *Nollan*, the California Coastal Commission conditioned its grant of a permit to landowners who sought to rebuild their house on their agreement to dedicate a public easement across their beachfront property. (*Nollan*, *supra*, 483 U.S. at p. 827.) In *Dolan*, a city conditioned its grant of a permit to a property owner who sought to increase the size of her existing retail business and pave her parking lot on her agreement to dedicate a portion of her property for flood control and traffic improvements. (*Dolan*, *supra*, 512 U.S. at p. 377.) And most recently in *Koontz*, a water district conditioned its grant of a permit to a landowner who sought to develop 3.7 acres of an undeveloped property on his agreement to either reduce the size of his development to 1 acre and dedicate a conservation easement on the remainder of the property (13.9 acres) or proceed with the development as proposed, building on 3.7 acres and deeding a conservation easement on the remainder of the property (11.2 acres), and pay money to improve certain public wetlands the water district owned. (*Koontz*, *supra*, 570 U.S. at pp. 601-602.)

To determine whether these types of demands (i.e., land-use exactions) are impermissible, courts apply a "special application of the 'doctrine of "unconstitutional conditions."'" (*Lingle*, *supra*, 544 U.S. at p. 547.) Under that doctrine, the government may not ask a person to give up a constitutional right (e.g., the right to receive just compensation when private property is taken for a public use) "in exchange for a discretionary benefit conferred by the government where the benefit sought has little or no relationship

to the property." (*Dolan*, *supra*, 512 U.S. at p. 385.) In applying the doctrine in the context of land-use exactions, particular rules apply because of two competing realities surrounding land-use permits. On the one hand, the government can take unreasonable advantage of landowners who seek a permit. "By conditioning a building permit on the owner's deeding over a public right-of-way, for example, the government can pressure an owner into voluntarily giving up property for which the Fifth Amendment would otherwise require just compensation." (*Koontz*, *supra*, 570 U.S. at p. 605.) On the other hand, the government often has legitimate interests in controlling or mitigating the effects of a particular development project. For example, where a building proposal would substantially increase traffic congestion, a local government might condition permit approval on the owner's agreement to deed over the land needed to widen a public road. (*Ibid.* [describing permit conditions of this nature—conditions that insist landowners "internalize the negative externalities of their conduct"—as "a hallmark of responsible land-use policy," and noting that the Supreme Court has "long sustained such regulations against constitutional attack"]; see also *Sheetz*, *supra*, 601 U.S. at p. 275 [observing that the "government is entitled to put the landowner to the choice of accepting the bargain or abandoning the proposed development"].)

But the Supreme Court has found that permitting conditions may sometimes go too far and make extortionate demands on land-use permit applicants—a group the court has found "especially vulnerable to the type of coercion that the uncon-

stitutional conditions doctrine prohibits because the government often has broad discretion to deny a permit that is worth far more than property it would like to take." (*Koontz*, *supra*, 570 U.S. at p. 605.) *Extortionate* demands for property (including money) made by the government when owners apply for land-use permits, "frustrate the Fifth Amendment right to just compensation, and the unconstitutional conditions doctrine prohibits them." (*Ibid.*) "Extortionate demands for property in the land-use permitting context run afoul of the Takings Clause not because they take property but because they impermissibly burden the right not to have property taken without just compensation. As in other unconstitutional conditions cases in which someone refuses to cede a constitutional right in the face of coercive pressure, the impermissible denial of a governmental benefit is a constitutionally cognizable injury." (*Id.* at p. 607.)

To accommodate the competing realities surrounding land-use permits and ensure against extortionate demands against building permit applicants, *Nollan* and *Dolan* establish that the government may condition approval of a land-use permit on the landowner's agreement to dedicate a portion of his private property to the public "so long as there is a 'nexus' and 'rough proportionality' between the property that the government demands and the social costs of the [landowner's] proposal." (*Koontz*, *supra*, 570 U.S. at pp. 605-606 [explaining that dedications of private property (e.g., deeding over land needed to widen a public road) can offset proposed land uses that threaten to impose costs on the public].) Put another way, "[u]nder *Nollan* and *Dolan* the govern-

ment may choose whether and how a permit applicant is required to mitigate the impacts of a proposed development, but it may not leverage its legitimate interest in mitigation to pursue govern-mental ends that lack an essential nexus and rough proportionality to those impacts." (*Id.* at p. 606 [explaining that the government may insist that permit applicants bear the full costs of their proposed development projects, but the Fifth Amendment right to just compensation forbids the government from "engaging in 'out-and-out . . . extortion'"].)

As noted *ante*, the requirements established in *Nollan* and *Dolan* for evaluating takings claims in the context of land-use exactions are commonly referred to as the "*Nollan/Dolan* test," which is viewed as a type of "heightened" or intermediate scrutiny. (See *California Building*, *supra*, 61 Cal.4th at pp. 457-459, 470; *Beach & Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 266.) The *Nollan* part of the test is the "essential nexus" standard. That component asks whether there is an "essential nexus" or logical connection between the government's legitimate state interest and the permit condition; the required condition (e.g., impact fee) must be imposed because of the costs associated with the state interest (e.g., reduction of traffic congestion) and not for other reasons. (See *Nollan*, *supra*, 483 U.S. at pp. 834-837; see also *Sheetz*, *supra*, 601 U.S. at p. 275 ["permit conditions must have an 'essential nexus' to the government's land-use interest"].)

The *Dolan* part of the test is the "rough proportionality" standard. That component concerns the "degree of connection" between the permit condition and the projected public impacts or social

costs of the proposed development project. (*Dolan, supra*, 512 U.S. at p. 386; see also *Sheetz*, *supra*, 601 U.S. at pp. 275-276 ["permit conditions must have '"rough proportionality"' to the development's impact on the [government's] land-use interest"].) "No precise mathematical calculation is required, but the [government] must make *some sort of individualized determination* that the [land-use exaction] is related both in nature and extent to the impact of the proposed development." (*Dolan*, at p. 391, italics added.) In other words, the government "must make *some effort to quantify its findings*" in support of the required private property dedication beyond mere conclusory statements. (*Id.* at pp. 395-396, italics added.) As the Supreme Court has explained, the requirements of *Nollan* and *Dolan* are meant to "ensure[ ] that the government is acting to further its stated purpose, not leveraging its permitting monopoly to exact private property without paying for it" (*Sheetz*, at p. 275), and to prevent the government from imposing a permit condition that "requires a landowner to give up more than is necessary to mitigate harms resulting from new development" (*id.* at p. 276).

In *Koontz*, the Supreme Court extended the *Nollan/Dolan* test to "so-called 'monetary exactions'" demanded by the government as a substitute for the dedication of real property to mitigate the impact of a proposed development project. (*Koontz*, *supra*, 570 U.S. at pp. 612, see also p. 619.) Because these "'in lieu of' fees are utterly commonplace" and "functionally equivalent to other types of land use exactions," the Supreme Court has concluded that they too must satisfy the "essential nexus" and "rough propor-

tionality" requirements of *Nollan* and *Dolan*. (*Id.* at p. 612.)

While local governments in California have substantial authority to regulate land-use (see Cal. Const., art. XI, § 7; *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1151-1152), the federal taking clause's right to just compensation coexists with their power to engage in land-use planning (see *Sheetz, supra*, 601 U.S. at p. 274). In *Sheetz*, the Supreme Court recently clarified that, in the land-use permitting context, the takings clause "constrains the government *without any distinction between legislation and other official acts*," meaning that land-use exactions imposed as a condition of development by a legislative body and other branches of government (administrative agencies) "stand on equal footing." (See *id.* at p. 277 [explaining that the "'essential question'" is whether the government has taken private property, not whether the "'government action at issue comes garbed as a regulation (or statute, or ordinance, or miscellaneous decree),'" (*id.* at p. 278)].)

II

Takings Clause Claim

Sheetz argues the challenged permit condition (TIM fee) effects an unlawful taking of private property without just compensation under the special application of the "unconstitutional conditions" doctrine established in *Nollan* and *Dolan*. He contends the fee imposed by the County as a condition for approving a permit to build a single-family home on his residential parcel constituted an unconstitutional monetary exaction under the Fifth Amendment's

takings clause because: (1) the fee lacks an "essential nexus" or logical connection to the County's land-use interest (reducing traffic congestion from new development); and (2) the amount of the fee ($23,420) is not roughly proportional to the projected public burdens or social costs (increase in traffic congestion) attributable to his development project.

A. *Antecedent Question*

We begin our analysis by addressing the threshold or antecedent question Justice Sotomayor identified in her concurring opinion in this case. In the land-use regulation context, the requirements of *Nollan* and *Dolan* apply only when the permit condition at issue (e.g., easement, impact fee) would have been a compensable taking if imposed by the government outside the permitting process. (See *Sheetz*, *supra*, 601 U.S. at pp. 280-281 (conc. opn. of Sotomayor, J.), citing *Koontz*, *supra*, 570 U.S. at p. 612; see also *California Building*, *supra*, 61 Cal.4th at pp. 459-460.) As recognized by the Supreme Court in *Koontz*: "A predicate for any unconstitutional conditions claim is that the government could not have constitutionally ordered the person asserting the claim to do what it attempted to pressure that person into doing." (*Koontz*, at p. 612 ["[W]e began our analysis in both *Nollan* and *Dolan* by observing that if the government had directly seized the easements it sought to obtain through the permitting process, it would have committed a *per se* taking"]; see *Nollan*, *supra*, 483 U.S. at p. 831 [noting that a taking would have occurred had the government simply required the landowners to make an easement across their beach-front lot available to the public on a permanent basis in order to increase public access to the beach, rather

than conditioning their permit to rebuild their house on their agreeing to do so]; *Dolan*, *supra*, 512 U.S. at p. 384 [explaining that a taking would have occurred had the government simply required the permit applicant to dedicate a strip of her land for public use, rather than conditioning the grant of her application to redevelop her property on such a dedication].)

In *Koontz*, the Supreme Court rejected the government's contention that "an obligation to spend money can never provide the basis for a takings claim." (*Koontz*, *supra*, 570 U.S. at p. 612.) In so doing, the court initially observed that if it were to accept this argument, it would be very easy for land-use permitting officials to avoid the requirements of *Nollan* and *Dolan*, reasoning as follows: "Because the government need only provide a permit applicant with one alternative that satisfies the nexus and rough proportionality standards, a permitting authority wishing to exact an easement could simply give the owner a choice of either surrendering an easement or making a payment equal to the easement's value. Such so-called 'in lieu of' fees are utterly commonplace, [citation], and they are functionally equivalent to other types of land use exactions. For that reason and [others], we reject [the government's] argument and hold that so-called "monetary exactions" must satisfy the nexus and rough proportionality requirements of *Nollan* and *Dolan*." (*Ibid.*) The *Koontz* court went on to reject the argument that a government-imposed condition requiring a permit applicant to spend money improving public lands could not give rise to a taking, concluding that a monetary obligation that burdens a person's ownership of a specific parcel of land is subject to scrutiny under *Nollan* and *Dolan*.

(*Id.* at pp. 613-614.) In reaching this conclusion, the court explained: "The fulcrum this case turns on is the direct link between the government's demand and a specific parcel of real property. Because of that direct link, this case implicates the central concern of *Nollan* and *Dolan*: the risk that the government may use its substantial power and discretion in land-use permitting to pursue governmental ends that lack an essential nexus and rough proportionality to the effects of the proposed new use of the specific property at issue, thereby diminishing without justification the value of the property." (*Id.* at p. 614, fn. omitted.) The court further explained that "when the government commands the relinquishment of funds linked to a specific, identifiable property interest such as a . . . parcel of real property, a '*per se* [takings] approach' is the proper mode of analysis under the Court's precedent." (*Ibid.*)[3]

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[3] In holding that "the government's demand for property from a land-use permit applicant must satisfy the requirements of *Nollan* and *Dolan* even when the government denies the permit and even when its demand is for money" (*Koontz, supra*, 570 U.S. at p. 619), the Supreme Court distinguished *Eastern Enterprises v. Apfel* (1998) 524 U.S. 498, a case the government relied on "for the proposition that an obligation to spend money can never provide the basis for a takings claim." (*Koontz,* at p. 612.) In *Eastern Enterprises*, a federal statute retroactively imposed on a former mining company an obligation to pay for the medical benefits of retired miners and their families. A plurality of the Supreme Court concluded that the statute's imposition of retroactive financial liability was so arbitrary that it violated the takings clause. (*Eastern Enterprises,* at pp. 529-537.) Although Justice Kennedy concurred in the result on due process grounds, he joined four other justices in dissent, concluding that the takings clause does not apply to government-imposed financial obligations that "d[o] not operate upon or alter an identified

We agree with Sheetz that *Koontz* "controls" the "predicate taking question." Here, because there is a "direct link" between the County's demand that Sheetz make a monetary payment to improve public roadways and a specific parcel of real property (Sheetz's residential parcel), the challenged permit condition (TIM fee) is subject to the heightened scrutiny of *Nollan* and *Dolan*. The condition is a government-imposed financial obligation that burdened Sheetz's ownership of his real property. As such, it implicates the "central concern" of *Nollan* and *Dolan*, thereby requiring a "'*per se* [takings] approach.'" (See *Koontz, supra*, 570 U.S. at p. 614, see *id.* at p. 613.) In other words, the TIM fee is a monetary exaction that must satisfy the "essential nexus" and "rough proportionality" requirements of *Nollan* and *Dolan* to withstand a constitutional challenge under the takings clause. (See *Anderson*

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property interest." (*Id.*, at p. 540 [conc. & dis. opn. of Kennedy, J.); see *id.* at pp. 554-555 [dis. opn. of Breyer, J.) [concluding that the takings clause applies only when the government appropriates a "specific interest in physical or intellectual property" or "a specific, separately identifiable fund of money"; by contrast, the clause has no bearing when the government imposes "an ordinary liability to pay money"].)

In distinguishing *Eastern Enterprises*, the *Koontz* court explained: "[The government's] argument rests on a mistaken premise. Unlike the financial obligation in *Eastern Enterprises*, the demand for money at issue here did 'operate upon . . . an identified property interest' by directing the owner of a particular piece of property to make a monetary payment. [Citation.] In this case, unlike *Eastern Enterprises*, the monetary obligation burdened petitioner's ownership of a specific parcel of land. In that sense, this case bears resemblance to our cases holding that the government must pay just compensation when it takes a lien—a right to receive money that is secured by a particular piece of property." (*Koontz, supra*, 570 U.S. at p. 613.)

Creek Partners, L.P. v. County of Harnett (2022) 382 N.C. 1, 27-30 (*Anderson Creek*) [North Carolina Supreme Court reached the same conclusion as to water and sewer "capacity use" fees imposed as a condition for residential development].)

We arrive at this conclusion with the understanding that while *Koontz* involved an "in lieu of" fee—i.e., an impact fee instead of a dedication of real property—the majority's holding was clearly not limited to those precise fees or monetary exactions. (See *Sheetz*, *supra*, 601 U.S. at p. 276 [explaining that the *Nollan/Dolan* test "applies regardless of whether the [permit] condition requires the landowner to relinquish property or requires her to pay a 'monetary exactio[n]' instead of relinquishing the property"], citing *Koontz*, *supra*, 570 U.S. at pp. 612-615; see *California Building*, *supra,* 61 Cal.4th at p. 459, fn. 11 [declining to decide the issue but recognizing that *Koontz* "suggests that the *Nollan/Dolan* test applies to monetary permit conditions even when the payment is not imposed in lieu of a requirement that the property owner dedicate a property interest"]; *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 868, 876, 881 (*Ehrlich*) (plur. opn. of Arabian, J.) [concluding that certain impact fees (a fee imposed by an administrative agency upon a specific development project on an individual and discretionary basis) qualify as land-use regulations subject to the heightened scrutiny of *Nollan* and *Dolan*]; *id.* at p. 899 (conc. opn. of Mosk, J) [agreeing with the plurality on this point].)[4] According to Sheetz, the permit

[4] The *Koontz* majority extended the scope of the takings clause in the special context of land-use exactions "to cases in which the

condition at issue here (TIM fee) involves an extortionate demand for private property (money) made by the County in response to his application to build a single-story home on his residential parcel. Thus, under *Koontz*, the challenged fee (monetary exaction) implicates the "unconstitutional-conditions" test the Supreme Court established in *Nollan* and *Dolan*, which governs the validity of land-use conditions (e.g., impact fees) the government imposes

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government conditions a permit not on the transfer of real property, but instead on the payment or expenditure of money." (*Koontz*, *supra*, 570 U.S. at p. 620 (dis. opn. of Kagan, J.); see *id.* at pp. 629-630 [noting that the majority extended *Nollan* and *Dolan's* heightened scrutiny to *all monetary exactions* made by the government in the land-use permitting context].) As pointed out by Justice Kagan in her dissenting opinion and acknowledged by Justice Alito in his majority opinion, prior to the issuance of *Koontz*, the requirements of *Nollan* and *Dolan* applied only if the property demand made during the permitting process would have violated the takings clause independent of that proposed exchange. In other words, the heightened scrutiny of the *Nollan/Dolan* test applied only if the demand made by the government (land-use exaction) would have constituted a taking when executed outside the permitting process. (See *Koontz,* at p. 612; *id.* at pp. 622-626 (dis. opn. of Kagan, J.).) According to Justice Kagan, the majority in *Koontz* failed to explain why the government's condition for the issuance of a building permit (monetary payment for offsite mitigation work on public wetlands) was unconstitutional under the analytical framework that *Nollan* and *Dolan* established, that is, how imposition of the challenged condition directly—i.e., independent of an exchange for a government benefit—would violate the Fifth Amendment. (See *Koontz,* at p. 626, fn. 1 (dis. opn. of Kagan, J.).) In so asserting, Justice Kagan noted: "The government may (separate and apart from permitting) require a person—whether Koontz or anyone else—to pay or spend money without effecting a taking. The majority offers no theory to the contrary: It does not explain, as it must, why the [government's] condition was 'unconstitutional.'" (*Ibid.* (dis. opn. Kagan. J.).)

for the approval of a building permit. (See *Koontz*, *supra*, 570 U.S. at p. 607 ["Extortionate demands for property in the land-use permitting context run afoul of the Takings Clause not because they take property but because they impermissibly burden the right not to have property taken without just compensation. As in other unconstitutional conditions cases in which someone refuses to cede a constitutional right in the face of coercive pressure, the impermissible denial of a governmental benefit is a constitutionally cognizable injury"].)

B. *Nollan/Dolan Test*

Having determined that the challenged permit condition (TIM fee) is subject to the heightened scrutiny of *Nollan* and *Dolan*, we must decide whether the condition constitutes a violation of the takings clause under the special application of the "unconstitutional conditions" doctrine. Recall that, to ensure against extortionate demands against permit applicants by the government, the Supreme Court has adopted a two-part test for evaluating land-use permit conditions (i.e., exactions), which is commonly referred to as the *Nollan*/*Dolan* test after the two cases that established it. (*Sheetz*, *supra*, 601 U.S. at p. 275.) Applied here, we must decide whether there is an "essential nexus" or logical connection between the TIM fee and the County's land-use interest (reducing traffic congestion from new development), and whether there is "rough proportionality" between the magnitude of the fee ($23,420) and the projected public impacts/social costs of Sheetz's proposed development (single-family home) on the County's land-use interest. (*Id.* at pp. 275-276.) Contained within the latter inquiry is the additional question of

whether a permit condition imposed on a class (i.e., type) of development (here single-family residential), must be tailored with the same degree of specificity as a permit condition that only targets a particular development project. More specifically, we must decide the question the Supreme Court explicitly declined to answer in this case: whether the takings clause prohibits the longstanding government practice of imposing permit conditions, such as impact fees, on permit applicants based on reasonable formulas or schedules that assess the impact of entire classes of development rather than the impact of specific parcels of property. (*Id.* at p. 284 (conc. opn. of Kavanaugh, J.).)

As we next explain, we conclude the TIM fee does not constitute an unlawful taking without just compensation in violation of the Fifth Amendment. Under the circumstances presented, the impact fee withstands the heightened scrutiny of the *Nollan/Dolan* test.

1. *Essential Nexus Standard*

The "essential nexus" component of the *Nollan/Dolan* test comes from *Nollan*, *supra*, 483 U.S. 825. The inquiry regarding this standard is a relatively low threshold, requiring only some logical connection between a legitimate governmental interest and the permit condition demanded by the government. (*Id.* at p. 837; *Dolan*, *supra*, 512 U.S. at pp. 386-388; see *Ehrlich*, *supra*, 12 Cal.4th at p. 877 [plur. opn. of Arabian, J.) [explaining that the "vice" of the government's permit condition in *Nollan* was "the absence of any logical connection between the condition and the purported justification for an outright ban on development"].) The essential nexus

requirement ensures that the government is acting to further its stated interest or regulatory purpose, not leveraging its "permitting monopoly" to exact private property without paying for it. (*Sheetz*, *supra*, 601 U.S. at p. 275; see *Ehrlich,* at pp. 867-868 (plur. opn. of Arabian, J.) [*Nollan* requires a permit condition to be logically related to a legitimate regulatory interest or objective, explaining that a land-use permitting authority engages in improper regulatory "leveraging" by imposing unrelated land-use ex-actions as a condition for granting permit approval].) For example, in *Dolan*, the Supreme Court found that the prevention of flooding and reducing traffic congestion were legitimate government interests, and that the government's permit conditions for approval of a project that would have increased the size of an existing retail business and paved a parking lot—greenway and pedestrian/bicycle pathway easements—were reasonably linked to those interests. (*Dolan*, *supra*, 512 U.S. at pp. 387-388.)

By contrast, in *Nollan*, the Supreme Court found that the essential nexus standard had not been met. There, the government (California Coastal Commission) demanded a lateral public easement across the landowners' beachfront lot in Ventura County in exchange for a permit to demolish an existing bungalow and replace it with a three bedroom house. (*Nollan, supra*, 483 U.S. at pp. 827-828.) The public easement was designed to connect two public beaches that were separated by the landowners' property. (*Ibid.*) The government claimed the public easement condition was imposed to, among other things, promote the legitimate public interests of "protecting the public's ability to see the beach" and "assisting the

public in overcoming the 'psychological barrier' to using the beach created by a developed shorefront." (*Id.* at p. 835.) In holding that the permit condition violated the takings clause, the Supreme Court assumed (without deciding) that the government's concern with protecting visual access to the ocean constituted a legitimate public interest, and noted that a permit condition requiring the landowners to provide a viewing spot on their lot for the public with which their new house would not interfere would have been constitutional. (*Id.* at pp. 835-836.) However, the court went on to conclude that the government exceeded the scope of its regulatory authority when it claimed that a nexus existed between visual access to the ocean and a permit condition requiring lateral public access along the landowners' beachfront lot. (*Id.* at pp. 836-839.) The court found it "quite impossible to understand" how such an easement furthered "visual access" to the ocean or lowered the "psychological barrier" for people to use the beach. (*Id.* at p. 838.) In the absence of the required nexus or link between the permit condition and the government's justification for requiring it, the government was simply trying to obtain an easement through "gimmickry," which converted a valid regulation of land use into "'an out-and-out plan of extortion'" in violation of the takings clause. (*Id.* at pp. 837, 841-842; see *Dolan*, *supra*, 512 U.S. at p. 387 [describing the government's actions in *Nollan* as an attempt to obtain an easement "through gimmickry"].)

Here, we have little difficulty concluding that an "essential nexus" exists between the County's legitimate interest in reducing traffic congestion from new development and the permit condition requiring

Sheetz to pay a fee to mitigate or offset the traffic impacts from his proposed development project. As the Supreme Court recognized in *Dolan*, reducing traffic congestion is a legitimate government interest in the land-use regulation context, including when (as here) the landowner seeks a permit for new development. (*Dolan*, *supra*, 512 U.S. at p. 387; see also *Northern Illinois Home Builders Ass'n, Inc. v. County of Du Page* (1995) 165 Ill.2d 25, 32 ["it is clear that the need to minimize or reduce traffic congestion is a legitimate State interest"].) And there is a logical connection between the County's legitimate government interest and the challenged TIM fee. Sheetz, through the permitting process, sought permission from the County to build a single-family home on his residential parcel, which would have increased the amount of traffic on public roads within the County. Sheetz does not dispute that increased population from new residential development places additional burdens on the County's public roadway system. (See *Ehrlich*, *supra*, 12 Cal.4th at p. 909 (conc. opn. of Kennard, J.) [observing that because the construction of 30 new townhouses would have increased the city's "housing stock and thus the number of its residents," the city "could reasonably impose a fee to offset the increased demand on public recreational facilities attributable to the increase in population resulting from the development"].) Nor does Sheetz dispute that new and improved roadway facilities would be required to maintain existing traffic levels to accommodate the increase in traffic generated by new development. (See *Home Builders Assn. of Tulare/ Kings Counties, Inc. v. City of Lemoore* (2010) 185 Cal.App.4th 554, 565 (*City of Lemoore*) [explaining that because increased population due to new

development would place additional burdens on the citywide community and recreation facilities, new facilities would be required to maintain a similar level of service to the population].) Accordingly, because the County has a legitimate interest (i.e., valid police-power purpose) in mitigating the traffic impacts from new development, the County could reasonably impose a fee on Sheetz to offset the projected impact on that interest from his proposed development project. Indeed, the Supreme Court has described a permit condition of this nature—a condition that insists "landowners internalize the negative externalities of their conduct"—as "a hallmark of responsible land-use policy." (*Koontz*, *supra,* 570 U.S. at p. 605 [noting that the court has "long sustained such regulations against constitutional attack"].)

We find unpersuasive Sheetz's contention that the TIM fee "lacks" an "essential nexus" to the County's legitimate government interest in reducing traffic congestion from new development. In support of his position, Sheetz cites *Nollan* for the proposition that "unless the permit condition serves the same governmental purpose as [a] development ban, the building restriction is not a valid regulation of land use but 'an out-and-out plan of extortion.'" (*Nollan*, *supra*, 483 U.S. at p. 837.) He argues the TIM fee fails the nexus test because there is no essential connection or rational link between the specific public impacts (social costs) attributable to his development project and the County's actual interest in denying him a building permit outright (i.e., without the option to secure the permit by agreeing to pay the fee), since the purpose of the County's fee program "is not to mitigate a particular project's traffic impacts, but instead to

provide 'additional funding mechanisms necessary to ensure that [traffic] improvements . . . are fully funded and capable of being implemented concurrently with new development.'" He claims the required nexus is absent here because the fee program is "drive[n]" by the County's desire to "exact money from a permit applicant—not the particular project's impacts." We are not persuaded.

The Supreme Court has "long recognized that land-use regulation does not effect a taking if it 'substantially advance[s] legitimate state interests' and does not 'den[y] an owner economically viable use of his land.'" (*Nollan*, *supra,* 483 U.S. at p. 834.) After noting that a "broad range of governmental purposes and regulations satisfies these requirements" (see *id.* at p. 845 [citing cases]), the *Nollan* court explained that "a permit condition that serves the same legitimate police-power purpose as a refusal to issue the permit should not be found to be a taking if the refusal to issue the permit would not constitute a taking." (*Id.* at p. 836; see *Ehrlich*, *supra*, 12 Cal.4th at p. 868 (plur. opn. of Arabian, J.) ["Where the local permit authority seeks to justify a given exaction as an alternative to denying a proposed use, *Nollan* requires a reviewing court to scrutinize the instrumental efficacy of the permit condition in order to determine whether it logically furthers the *same* regulatory goal as would outright denial of a development permit"].)

By way of example, the *Nollan* court explained: "[I]f the [government had] attached to the [beachfront landowners'] permit some condition that would have protected the public's ability to see the beach notwithstanding construction of the new house—for example, a height limitation, a width restriction, or a

ban on fences—so long as the [government] could have exercised its police power . . . to forbid construction of the house altogether, imposition of the condition would also be constitutional. Moreover[,] . . . the condition would be constitutional even if it consisted of the requirement that the [landowners] provide a viewing spot on their property for passersby with whose sighting of the ocean their new house would interfere. Although such a requirement, constituting a permanent grant of continuous access to the property, would have to be considered a taking if it were not attached to a development permit, the [government's] assumed power to forbid construction of the house in order to protect the public's view of the beach must surely include the power to condition construction upon some concession by the owner, even a concession of property rights, that serves the same end. If a prohibition designed to accomplish that purpose would be a legitimate exercise of the police power rather than a taking, it would be strange to conclude that providing the owner an alternative to that prohibition which accomplishes the same purpose is not. [¶] The evident constitutional propriety disappears, however, if the condition substituted for the prohibition utterly fails to further the end advanced as the justification for the prohibition." (*Nollan*, *supra*, 483 U.S. at pp. 836-837.) In *Nollan*, the Supreme Court held that the essential nexus standard had not been satisfied because the government's purported justifications for the permit condition—e.g., the interference of the newly constructed house with a public view of the ocean and the "psychological barrier" the new home created to people using the public beaches—were not served by

a lateral easement allowing individuals to walk along the shoreline. (*Id.* at pp. 838-839.)

Here, the record reflects that the challenged permit condition (TIM fee) substantially advances the County's legitimate government interest in reducing traffic congestion generated by new development. The County uses the impact fee to finance improvements to its public roadway system that are necessitated by increased traffic attributable to population and job growth from new development. Sheetz, for his part, does not argue the County could not have lawfully denied his request for a building permit on the ground that his parcel would not have remained "economically viable" without the requested new development. Nor does Sheetz argue that the County's refusal to issue the requested building permit outright—that is, without the option to secure the permit by agreeing to pay the fee—would have constituted an unconstitutional taking.[5] (See *Nollan*, *supra*, 483 U.S. at pp. 835-836 [explaining that it was "unquestionable" the government could deny the beachfront landowners a building permit outright if their new house (alone, or by reason of the *cumulative* impact produced in conjunction with other construction) would

[5] As the Supreme Court has explained: "A requirement that a person obtain a permit before engaging in a certain use of his or her property does not itself 'take' the property in any sense: after all, the very existence of a permit system implies that permission may be granted, leaving the landowner free to use the property as desired. Moreover, even if the permit is denied, there may be other viable uses available to the owner. Only when a permit is denied and the effect of the denial is to prevent 'economically viable' use of the land in question can it be said that a taking has occurred." (*United States v. Riverside Bayview Homes, Inc.* (1985) 474 U.S. 121, 127.)

substantially impede permissible public interests (e.g., protecting the public's ability to see the beach)].) Further, Sheetz has not offered a persuasive explanation as to how the challenged permit condition (TIM fee) "utterly fails" to serve the same governmental interest/police-power purpose as a refusal to issue him a residential building permit. Indeed, both options undoubtedly further the County's legitimate regulatory goal of minimizing traffic congestion on public roadways.

In this case, the County sought to accommodate Sheetz's desire to build a new single-family home on the condition he pay a fee to mitigate or offset the increased traffic generated from his proposed project. Sheetz has not cited, and our independent research has not revealed, any authority supporting the conclusion that the essential nexus standard is not met under the circumstances presented. And we see no basis to conclude otherwise. It is clear to us that the required nexus exists between the County's legitimate interest/regulatory goal of minimizing traffic congestion and the TIM fee, which is imposed on all new development to finance roadway improvements to meet increased traffic needs caused by such development. This case presents a quintessential or classic instance of a government's legitimate exercise of the police power in the land-use context. (See *Dolan*, *supra*, 512 U.S. at p. 387 [noting that the reduction of traffic congestion from a proposed development project qualifies as the type of legitimate public interest that has been upheld].)

We reject Sheetz's suggestion that the TIM fee does not satisfy *Nollan's* "essential nexus" standard because the permit condition requires him to "solve a

problem" that does not "arise" from his proposed development project. As we have discussed, Sheetz does not dispute that new residential development results in population growth. And there is evidence in the administrative record showing that population growth from residential development increases commercial development, job growth, and traffic congestion on public roadways within the County. The record further reflects that Sheetz was not singled out to bear the burden of the County's attempt to remedy the problem of increased traffic congestion spurred by new development. To the contrary, the County's TIM fee program requires *all* types of new development, including multifamily and commercial development, to pay a fee to finance roadway improvements. The record includes competent evidence demonstrating that such infrastructure improvements are necessary to further the County's regulatory goal of minimizing the direct and cumulative traffic impacts on public roadways attributable to new development. We are unpersuaded by the remaining conclusory arguments Sheetz offers as to why the TIM fee lacks an essential nexus.[6]

In short, we find that the required relationship or link between the challenged permit condition (TIM fee) and the County's legitimate government interest (reducing traffic congestion) is present here. Stated differently, we conclude the *Nollan* component of the

[6] These remaining arguments, such as the claim that the fee program requires single-family development to pay a substantial portion of costs to mitigate traffic impacts attributable to *commercial* development, are essentially reasons why, in Sheetz's view, the fee does not satisfy *Dolan's* "rough proportionality" standard. We address this next step of the analysis *infra*.

Nollan/Dolan test has been satisfied because there is an "essential nexus," or logical connection, between the County's regulatory goal or police-power purpose and the challenged impact fee. Accordingly, we turn to the second step of the *Nollan/Dolan* analysis.

2. *Rough Proportionality Standard*

The "rough proportionality" component of the *Nollan/Dolan* test comes from *Dolan, supra*, 512 U.S. 374. It requires a court to determine whether the degree of the land-use exaction demanded by the government's permit condition "bears the required relationship to the projected impact of [the landowner's] proposed development." (*Id.* at p. 388.) The inquiry regarding this standard is whether there is a "rough proportionality," both in nature (type) and extent (magnitude), between the permit condition (e.g., impact fee) and the projected public impacts (social costs) of the proposed development. (*Id.* at p. 391.) Thus, while the Supreme Court in *Nollan* was concerned with the nature of the relationship between a proposed development project and a permit condition, its focus in *Dolan* was on the *degree* of the required connection between the permit condition and the projected impact of the proposed development. (See *id.* at pp. 377, 386-391, italics added.) To satisfy this standard, the permit condition (e.g., impact fee) must have "rough proportionality" to the proposed development's impact or burden on the government's land-use interest (here, reducing traffic congestion), and must not require a landowner to give up (here, pay) more than is necessary to mitigate the harm (social costs) resulting from the new development. (*Sheetz*, *supra*, 601 U.S. at pp. 275-276; see *Dolan*, *supra,* 512 U.S. at pp. 388-396; *Koontz*, *supra*, 570

U.S. at pp. 612-615, 619 [monetary exactions must satisfy the rough proportionality requirement of *Dolan*].)

In *Dolan*, a landowner sought to double the size of her hardware store and pave the store's parking lot. (*Dolan*, *supra*, 512 U.S. at p. 379.) As a condition for approval of the building permit, an Oregon municipality (city) required that the landowner dedicate a portion of her parcel for flood control and traffic improvements. (*Id.* at p. 380.) Specifically, the city directed the landowner to dedicate a percentage of her parcel adjacent to a floodplain to the city's "greenway system" to prevent additional stress on its storm drainage system. (*Id.* at pp. 379-380.) To relieve traffic congestion in the area near the landowner's business, the city also required the dedication of an additional 15-foot strip of land adjacent to the floodplain as a pedestrian/bicycle pathway. (*Id.* at p. 380.) As justification for the required real property dedications, the city made generalized findings concerning the relationship between the exactions and the projected impacts of the proposed project. With respect to the pedestrian/bicycle pathway, the city found it was "'*reasonable to assume* that customers and employees of the future uses of this site could utilize a pedestrian/bicycle pathway adjacent to this development for their transportation and recreational needs.'" (*Id.* at p. 381, italics added.) As for the flood control dedication, the city found that the "'anticipated increased storm water flow from the subject property to an already strained creek and drainage basin *can only add* to the public need to manage the stream channel and floodplain for drainage purposes.'" (*Id.* at p. 382, italics added.) The

Oregon state courts upheld the city's permit conditions, and the Supreme Court granted certiorari. (*Id.* at p. 383.)

In reversing, the *Dolan* court extended the "essential nexus" standard established in *Nollan* by adding a "rough proportionality" requirement. (See *Dolan, supra*, 512 U.S. at pp. 388-396.) In so doing, the high court began its analysis by observing that state courts had been dealing with the land-use question at issue "a good deal longer" than it had and typically applied one of three standards. (*Id.* at pp. 389-391.) The Supreme Court rejected the "deferential" standard adopted in some states, which allowed "very generalized statements as to the necessary connection between the required [exaction] and the proposed development . . . to suffice." (*Id.* at p. 389.) The court found this standard "too lax" to adequately protect a person's constitutional right to just compensation if their property is taken for a public purpose. (*Ibid.*) The court also rejected the more stringent standard adopted in other states, which required a "very exacting correspondence" between the required exaction and the proposed development, described as the "'specific and uniquely attributable' test." (*Ibid.*) Under that standard, the government must demonstrate that the mandated exaction is "directly proportional" to a burden specifically created by the development; otherwise, the "exaction becomes 'a veiled exercise of the power of eminent domain and a confiscation of private property behind the defense of police regulations.'" (*Id.* at p. 390.) In rejecting this standard, the Supreme Court determined that the federal constitution does

not require "such exacting scrutiny, given the nature of the interests involved." (*Ibid.*)

The third standard, an "intermediate position" adopted by a majority of the state courts requires a showing of a "reasonable relationship" between the required exaction and the public impacts of the proposed development project. (*Dolan*, *supra*, 512 U.S. at pp. 390, 391 [explaining that "[d]espite any semantical differences, general agreement exists among the courts 'that the [exaction] should have some reasonable relationship to the needs created by the [development]'"].) As a representative example of this standard, the *Dolan* court cited a decision issued by the Nebraska Supreme Court, which observed that the distinction between a proper exercise of the police power and an improper exercise of eminent domain turned on whether there was "some reasonable relationship or nexus to the use to which the property is being made or is merely being used as an excuse for taking property simply because at that particular moment the landowner is asking the [government] for some license or permit." (*Id.* at p. 390.) The government may not, the Nebraska high court held, "require a property owner to dedicate private property for some future public use as a condition of obtaining a building permit when such future use is not 'occasioned by the construction sought to be permitted.'" (*Ibid.*)

As another example of the "intermediate position," the *Dolan* court cited a decision issued by the Wisconsin Supreme Court. (*Jordan v. Village of Menomonee Falls* (1965) 28 Wis.2d 608 (*Jordan*), appeal dismissed, *Jordan v. Village of Menomonee Falls* (1966) 385 U.S. 4.) In that case, which involved

a taking clause challenge to an ordinance requiring "subdividers" (i.e., subdivision developers) to either dedicate a portion of their land or pay a fee in lieu thereof to ensure adequate open spaces and sites for public uses (e.g., schools, parks), the court concluded that "a required dedication of land for school, park, or recreational sites as a condition for approval of the subdivision plat should be upheld as a valid exercise of police power if the evidence reasonably establishes that the municipality will be required to provide more land for schools, parks, and playgrounds as a result of approval of the subdivision."[7] (*Id.* at p. 618; see also *id.* at pp. 613-614.) In holding that both the real property dedication and the in lieu of fee were constitutional and a reasonable exercise of the police power, the court explained: "The evidence reasonably supports the conclusions that: (1) the approval of the instant and other subdivision plats during the four-year period following the enactment of the ordinance has required defendant village and the encompassing school districts to expend large sums for acquisition of park and school lands and construction of additional

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[7] In discussing the reasonable relationship test in the context of land-use exactions, the Wisconsin Supreme Court stated: "The basis for upholding a compulsory land-dedication requirement in a platting ordinance in the nature of the instant ordinance is this: The municipality by approval of a proposed subdivision plat enables the subdivider to profit financially by selling the subdivision lots as home-building sites and thus realizing a greater price than could have been obtained if he had sold his property as unplatted lands. In return for this benefit the municipality may require him to dedicate part of his platted land to meet a demand to which the municipality would not have been put but for the influx of people into the community to occupy the subdivision lots." (*Jordan v. Village of Menomonee Falls*, *supra*, 28 Wis.2d at pp. 619-620.)

school facilities; (2) these expenditures were made necessary by the influx of people into these subdivisions; and (3) these expenditures are greater than the amount which has been exacted from the subdividers by way of land-dedication and equalization fees paid in lieu of land dedication." (*Id.* at pp. 620-621.) In rejecting the more restrictive "specifically and uniquely attributable" test applied in other jurisdictions, the court stated: "In most instances it would be impossible for the municipality to prove that the land required to be dedicated for a park or a school site was to meet a need solely attributable to the anticipated influx of people into the community to occupy this particular subdivision. On the other hand, the municipality might well be able to establish that a group of subdivisions approved over a period of several years had been responsible for bringing into the community a considerable number of people making it necessary that the land dedications required of the subdividers be utilized for school, park and recreational purposes for the benefit of such influx. In the absence of contravening evidence this would establish a reasonable basis for finding that the need for the acquisition was occasioned by the activity of the subdivider." (*Id.* at pp. 617-618; see *Collis v. City of Bloomington* (1976) 310 Minn. 5, 12-13, 18 [Minnesota Supreme Court following the approach of the high courts in Wisconsin, California, and New York, which require "a reasonable relationship" between the permit condition (exaction) and the government's need for the property demanded as a condition of project approval (*id.* at p. 14].)

In endorsing the intermediate standard of judicial scrutiny, the *Dolan* court declined to adopt the

"reasonable relationship" moniker (see *Dolan*, *supra*, 512 U.S. at p. 391), and instead concluded that the term " 'rough proportionality' best encapsulates . . . the requirement of the Fifth Amendment," explaining that such a formulation entails "*some sort of individualized determination* that the required [exaction] is related both in nature and extent to the impact of the proposed development." (*Ibid.*, italics added.) Although no "precise mathematical calculation is required" (*ibid.*), the government must nevertheless "make *some effort to quantify its findings* in support of the [exaction]" beyond mere conclusory statements that it will mitigate or offset some anticipated public impacts created by the project (*id.* at pp. 395-396, italics added).

Applying the newly established rough proportionality standard, the *Dolan* court found that the city's required real property dedications to its greenway system and pedestrian/bicycle pathway were not "reasonably related" to the landowner's proposed development project, which (as noted *ante*) involved increasing the size of her retail store and paving the store's parking lot. (See *Dolan*, *supra,* 512 U.S. at pp. 392-396.) While the Supreme Court acknowledged that keeping portions of the floodplain adjacent to the landowner's property free of development could logically mitigate pressures on the city's sewage system, the court observed that "the city demanded more—it not only wanted [the landowner] not to build in the floodplain, but it also wanted [her] property along [the] Creek for its greenway system." (*Id.* at p. 393.) However, the city never explained "why a public greenway, as opposed to a private one, was required in the interest of flood control." (*Ibid.*) The

court thus found it "difficult to see" how public access to the landowner's floodplain easement was "sufficiently related to the city's legitimate interest in reducing flooding problems along [the] Creek." (*Ibid.*) And the court noted that the city had not attempted to make any individualized determination to support this part of its request. (*Ibid.*) As a result, the court held, "the findings upon which the city relies do not show the required reasonable relationship between the flood-plain easement and the [landowner's] proposed new building." (*Id.* at pp. 394-395.)

As for the pedestrian/bicycle pathway, the Supreme Court stated that it had "no doubt" the landowner's proposed development would increase traffic in the area near the project. (*Dolan*, *supra*, 512 U.S. at p. 395.) Nevertheless, the court concluded the city had not demonstrated that the additional vehicle and bicycle trips generated by the project "reasonably related" to the city's requirement for the pedestrian/bicycle pathway easement. (*Ibid.*) The city, the high court said, had "simply found that the creation of the pathway '*could* offset some of the traffic demand . . . and lessen the increase in traffic congestion.'" (*Ibid.*, italics added.) The fact that the pathway "*could*" have had such an effect was insufficient to demonstrate the constitutionally required relationship between the development and the required dedication of property. In so finding, the court explained that the potential of the bicycle system to "'"offset some of the traffic demand" is a far cry from a finding that the . . . system *will,* or is *likely to*, [do so].'" (*Ibid.*) The *Dolan* court held that "the city must make some effort to quantify its findings in support of the dedication for the pedestrian/bicycle pathway beyond the conclusory

statement that it could offset some of the traffic demand generated." (*Id.* at pp. 395-396.) Concluding that "the findings upon which the city relies do not show the required reasonable relationship," the court ordered the case remanded for further proceedings. (*Id.* at pp. 394-395.)

Over the ensuing three decades since *Dolan* was decided in the early 1990s, the Supreme Court has not provided further guidance as to the contours of the *Dolan* standard aside from noting that the rough proportionality requirement has not been extended "beyond the special context of exactions—land-use decisions conditioning approval of development on the dedication of property to public." (*City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, *supra*, 526 U.S. at p. 702.) As a result, the law in this area, as it did prior to *Nollan* and *Dolan*, has largely developed in the state courts. (See *Sheetz*, *supra*, 601 U.S. at p. 273, fn. 3 [collecting state court cases issued after *Dolan*]; *Koontz*, *supra*, 570 U.S. at p. 618 [citing state court cases and noting that "courts in many of our Nation's most populous States . . . have confronted constitutional challenges to monetary exactions over the last two decades and applied the standard from *Nollan* and *Dolan* or something like it"]; *Dolan*, *supra*, 512 U.S. at pp. 389, 390 [recognizing that state courts had been "dealing with" the validity of land-use exactions "a good deal longer than [the Supreme Court had]"]); *Anderson Creek*, *supra*, 382 N.C. at pp. 20-24 [North Carolina Supreme Court discussing cases decided after *Dolan*, including cases from California].) As the law developed without high court guidance, so did conflicts between the states' various approaches to the *Dolan* standard.

As we have outlined, *ante*, three decades after *Dolan* was decided, the Supreme Court resolved the conflict between the states' various approaches in *Sheetz*, *supra*, 601 U.S. 267, holding that the takings clause does not distinguish between legislative and administrative land-use permit conditions (exactions). (*Sheetz*, *supra*, 601 U.S. at p. 271.) Thus, *all* exactions in the land-use permitting context, whether they are imposed on an individualized basis through administrative action or on a generally applicable basis through legislative action, are now subject to the two-step *Nollan/Dolan* test, which is a type of "intermediate" judicial scrutiny that asks at the second step whether the required private property dedication (e.g., easement, impact fee) is related both in nature and extent to the public impacts (social costs) of the proposed development. As applied here, this requires the County to show that the challenged permit condition (TIM fee) is roughly proportional to the projected impacts of Sheetz's proposed development project on traffic congestion. (See *Dolan*, *supra*, 512 U.S. at pp. 390-391; *Koontz*, *supra*, 570 U.S. at 612-615; *Sheetz*, *supra*, 601 U.S. at pp. 275-276, 279.) In determining whether the County has done so, we must initially 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." (*Sheetz*, at p. 280.) We conclude that the answer to this question is "yes."

Having carefully reviewed the relevant Supreme Court authority, we agree with Justice Gorsuch that the *Nollan/Dolan* test does not "operate[] differently" when a land-use exaction affects (as here) a class of

properties rather than a particular development. (*Sheetz*, *supra*, 601 U.S. at p. 282 (conc. opn. of Gorsuch, J.).) Nothing in the landmark decisions of *Nollan* and *Dolan* (or any other opinion issued by the Supreme Court thereafter) hold or suggest otherwise. In other words, we conclude the same constitutional rules apply whenever the government seeks to offset the public costs of new development through land-use exactions, regardless of whether the exaction (e.g., impact fee) is generally applicable to a class of permit applicants (as here) or is imposed on an individual basis in connection with a specific development project.

However, a finding that the same constitutional rules apply to the different analyses is not determinative of whether the impact fee challenged here effects an unlawful taking.

As noted by Justice Kavanaugh in his concurring opinion in *Sheetz*, no prior decision of the Supreme Court has addressed, let alone prohibited, the common government practice employed by the County here; namely, the imposition of 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. (*Sheetz*, *supra*, 601 U.S. at p. 284 (conc. opn. of Kavanaugh, J.).) And nothing inherent in the standards articulated in *Nollan* and *Dolan* precludes the government from making the required showing in this manner. In the context of a generally applicable impact fee imposed by a legislative body on specific types of new development (e.g., single-family residential, commercial) through formulas or schedules (as here), the *Dolan*

standard logically requires a reviewing court to determine whether the amount of the fee is sufficiently tailored—i.e., roughly proportional (or proportionally related) in nature and extent—to the overall impact the specific type of development has on the government's land-use interest.[8] (See *Puce v. City of Burnsville* (2023) 997 N.W.2d 49, 59-60 [concluding that the government (in Minnesota) could satisfy the *Dolan* standard by using percentage-based formulas to impose a park dedication fee on a particular type of property (commercial development) rather than determining the fee amount on a case-by-case basis].) The remaining question, then, is whether the challenged impact fee survives scrutiny under *Dolan*'s "rough proportionality" standard.

As noted *ante*, although the *Dolan* court declined to explicitly endorse the reasonable relationship test adopted by the majority of states as of 1994, it found that the test (intermediate judicial scrutiny) was

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[8] Sheetz, for his part, appears to agree with our conclusion. On remand, Sheetz argues, for the first time, that "a fee based on classes of development can survive *Nollan/Dolan* review if . . . the government establishes (1) the proposed project's impacts on the public facility at issue is roughly within the range of impacts ascribed to the class to which the project belongs; and (2) the imposed fee mitigates the identified impacts—and not . . . impacts attributable to other class of development or other sources." He agrees that *Nollan/Dolan* does not require a "precise mathematical calculation" or "perfect correlation" between the fee imposed and the projected impacts of the proposed development project.

We recognize that Sheetz's supplemental brief (as we discuss *post*), also includes a contradictory argument; namely, that the challenged impact fee violates the taking clause because it was imposed without regard to the costs specifically attributable to *his particular project*.

"closer to the federal constitutional norm" than the other tests employed by the state courts (*Dolan*, *supra*, 512 U.S. at p.391), including the less exacting standard akin to rational basis review and the more exacting standard requiring a land-use exaction to be "directly proportional to the specifically created need" (*id.* at p. 390). Thus, it appears that the *Dolan* court essentially adopted a version of the reasonable relationship test, as the "rough proportionality" standard established in that case does not mandate a "precise mathematical calculation," but instead requires the government to make "*some sort of individualized determination*," including "*some effort to quantify its findings*," showing that the required land-use exaction is "related both in nature and extent to the impact of the proposed development." (*Id.* at pp. 391, 395-396, italics added [the land-use exaction "'should have some reasonable relationship to the needs created by the [development]'"]; see *id.* at pp. 394-395 [concluding that a recreational floodplain easement violated the takings clause because the findings upon which the city relied to justify the exaction did not show the required reasonable relationship between the easement and the landowner's proposed new development].)

As we understand it, the *Nollan/Dolan* test is similar to the reasonable relationship standard employed in California to assess the validity of land-use exactions (e.g., impact fees) in the context of individualized (i.e., project-specific) conditions imposed on an ad hoc basis thorough administrative action. (*San Remo*, *supra*, 27 Cal.4th at p. 668 ["individualized development fees warrant a type of review akin to the conditional conveyances at issue in *Nollan* and

Dolan"]; see *Ehrlich*, *supra*, 12 Cal.4th at p. 865 (plur. opn. of Arabian, J.) [describing California law as requiring the government to determine how there is a reasonable relationship between: (1) "'the proposed use of a given exaction and both 'the type of development project' and 'the need for the public facility and the type of development project on which the fee is imposed'"; and (2) "'the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed'"][9]; *City of Lemoore*, *supra*, 185 Cal.App.4th at p. 561 [local governments in California have the burden to demonstrate that they used a valid method for imposing the fee in question, one that established a reasonable relationship between the fee charged and the burden posed by the development].)

The California Supreme Court reached the same conclusion nearly three decades ago in *Ehrlich*. (See *Ehrlich*, *supra*, 12 Cal.4th at pp. 859-860, 865-868 (plur. opn. of Arabian, J.) [equating California's

[9] California law defines a development fee as "a monetary exaction other than a tax or special assessment . . . 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 . . . ." (§ 66000, subd. (b).) "A [development] fee shall not include the costs attributable to existing deficiencies in public facilities, but may include the costs attributable to the increased demand for public facilities reasonably related to the development project in order to (1) refurbish existing facilities to maintain the existing level of service or (2) achieve an adopted level of service that is consistent with the general plan." (§ 66001, subd. (g).) "'Public facilities' includes public improvements, public services, and community amenities." (§ 66000, subd. (d).)

reasonable relationship test with *Nollan/Dolan* scrutiny].) Thus, under the reasonable relationship test employed in California, the question at the second step of the analysis (i.e., the *Dolan* standard) is whether the amount of the challenged impact fee is reasonably related (or in *Dolan's* terms—roughly proportional) to the cost of the public facility or portion of the public facility attributable to the development on which the impact fee is imposed.

As previously indicated, with respect to the *Dolan* component of the test, the question is "whether the factual findings made by the permitting body support the condition as one that is more or less proportional, in both nature and scope, to the public impact of the proposed development." (*Ehrlich, supra*, 12 Cal.4th at p. 868 (plur. opn. of Arabian J.).) In answering that question, we are mindful the County has the burden of demonstrating the required degree of connection—"rough proportionality"—between the challenged land-use exaction and burden or projected social costs/public impacts of Sheetz's proposed project. (*Dolan*, *supra*, 512 U.S. at pp. 390-391; *Ehrlich*, *supra*, 12 Cal.4th at pp. 882-883 (plur. opn. of Arabian, J.).) We turn to that issue next.

In *Koontz*, the majority disagreed with the dissent's "forecast" that its holding—the heightened scrutiny of *Nollan* and *Dolan* applies even when the government denies a development permit and even when its demand is for money rather than real property—would "work a revolution" in land use law by depriving local governments of the ability to impose reasonable development impact fees. (*Koontz*, *supra*, 570 U.S. at pp. 618, 619.) In doing so, the majority explained: "Numerous courts—including courts in

many of our Nation's most populous States—have confronted constitutional challenges to monetary exactions over the last two decades and applied the standard from *Nollan* and *Dolan* or something like it. [Citations.] Yet the 'significant practical harm' the dissent predicts has not come to pass [(e.g., how to determine whether a simple demand to pay money is a tax or impermissible land-use exaction)]. [Citation.] That is hardly surprising, for the dissent is correct that state law normally provides an independent check on excessive land use permitting fees." (*Koontz*, at p. 618; see *id.* at p. 627 [dis. opn. of Kagan, J).) As representative examples, the majority in *Koontz* cited three state court cases, including an opinion issued by the Ohio Supreme Court—*Home Builders Assn v. Beavercreek* (2000) 89 Ohio St.3d 121 (*Beavercreek*). (*Koontz*, at p. 618.)

Like here, *Beavercreek* involved an impact fee imposed on classes of new development (e.g., residential, commercial) to fund roadway improvements to offset the increased traffic generated from such development. (*Beavercreek*, *supra,* 89 Ohio St.3d at pp. 121-122.) In resolving the takings clause challenge, the Ohio Supreme Court used a "dual rational nexus test"[10] based on *Nollan* and *Dolan*, which "applies a middle level of scrutiny that balances the prospective needs of the community against the

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[10] In some states, the reasonable relationship test is referred to as the "rational nexus test" or "dual rational nexus test." (See, e.g., *Anderson Creek, supra*, 382 N.C. at p. 16 [North Carolina]; *Beavercreek, supra*, 89 Ohio St.3d at p. 128 [Ohio]; *F & W Associates v. County of Somerset* (1994) 276 N.J. Super. 519, 528-529 [New Jersey]; *St. Johns County v. Northeast Florida Builders Ass'n, Inc.* (1991) 583 So.2d 635, 637 [Florida]; *Simpson v. City of North Platte* (1980) 206 Neb. 240, 245 [Nebraska].)

property rights of the developer," giving local governments "the ability to reasonably address problems that are not subject to precise measurement without being subject to unduly strict review." (*Beavercreek*, at p. 128.) Under that test, a court must determine: (1) whether there is a reasonable connection (i.e., relationship) between the need for additional capital facilities and the growth in population generated by the subdivision; and (2) if a reasonable connection/relationship exists, whether there is a reasonable connection/relationship between the expenditure of the funds collected through the imposition of an impact fee, and the benefits accruing to the subdivision. (*Id.* at pp. 126, 128.) As explained by the Ohio Supreme Court: "The dual rational nexus test places the burden on the [government]. In determining the constitutionality of [the challenged impact fee], therefore, the [government] must first demonstrate that there is a reasonable relationship between the [government's] interest in constructing new roadways and the increase in traffic generated by new developments. [Citation.] If a reasonable relationship exists, it must then be demonstrated that there is a reasonable relationship between the impact fee imposed by [the government] and the benefits accruing to the developer from the construction of new roadways." (*Id.* at p. 128.) To prove that a reasonable relationship exists in the context of a traffic impact fee, the government "must demonstrate that the methodology used to determine the need for roadway improvements funded by the impact fee is based on generally accepted traffic engineering practices." (*Id.* at pp. 128-129.) In Ohio, the "role of a court in reviewing the constitutionality of an impact fee ordinance is not to decide which methodology provides

the best results. Given that impact fee ordinances are not subject to precise mathematical formulation, choosing the best methodology is a difficult task that the legislature, not the courts, is better able to accomplish. Rather, a court must only determine whether the methodology used is reasonable based on the evidence presented." (*Id.* at p. 129.)

California follows a similar procedural or program-level approach to assessing the validity of generally applicable impact fees imposed by a legislative body on classes of new development.[11] Under current

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[11] We recognize that, in the context of development impact fees, Ohio's reasonable relationship test asks at the second step of the analysis whether there is a reasonable relationship between the impact fee and the *benefits* accruing to the developer from the use of the fee. (*Beavercreek, supra,* 89 Ohio St.3d at p. 128.) By contrast, in California, the question at the second step of the reasonable relationship analysis is whether "there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed." (§ 66001, subd. (b); see also *Ehrlich, supra*, 12 Cal.4th at p. 865 (plur. opn. of Arabian J.); see *id.* at p. 860 [at the second step of the analysis, the "reasonable relationship" standard requires "a 'rough proportionality' between the magnitude of the fiscal exaction and the effects of the proposed development"].) In our view, the California standard is closer to the "rough proportionality" requirement adopted by the Supreme Court in *Dolan*. (See *Dolan, supra*, 512 U.S. at p. 388 [the second part of the analysis asks whether the degree of the exaction demanded by the government's permit condition "bears the required relationship to *the projected impact of [the] proposed development*"]; *Koontz, supra*, 570 U.S. at pp. 605-606 [explaining that under the *Dolan* standard, the government may condition approval of a building permit on the dedication of property to the public so long as there is a "rough proportionality" between the property demanded and the *social costs* (i.e., public impacts) of the landowner's proposal];

California law, a local government has "the initial burden of producing evidence sufficient to demonstrate that it used a valid method for imposing the fee in question, one that established a reasonable relationship between the fee charged and the burden posed by the development." (*City of Lemoore*, *supra*, 185 Cal.App.4th at p. 562; *Boatworks, LLC v. City of Alameda* (2019) 35 Cal.App.5th 290, 298 (*Boatworks*); see *Ehrlich*, *supra*, 12 Cal.4th at pp. 860, 881-883 (plur. opn. of Arabian, J.) [the government has the burden to produce evidence showing that the requirements of *Nollan* and *Dolan* have been satisfied.) "However, the figures upon which the [government] relies will necessarily involve predictions regarding population trends and future building costs, and they need not be exact. [Citation.] 'As a practical matter it will not always be possible to fashion a precise accounting allocating the costs, and consequent benefits, of particular building projects to particular portions of the population. All that is required of the [government] is that it demonstrate that development contributes to the need for the facilities, and that its choices as to what will adequately accommodate the [new population] are reasonably based.'" (*Boatworks*, *supra*, 35 Cal.App.5th at p. 298.) In determining whether there was a valid method for imposing the fee in question, courts do not "concern themselves with the [government's] methods of marshalling and evaluating scientific data. [Citations.] Yet the court must be able to assure itself that before imposing the fee the [government] engaged in a reasoned analysis

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Sheetz, *supra*, 601 U.S. at pp. 275-276 [explaining that permit conditions must have "'"rough proportionality"' to the development's impact on the [government's] land-use interest"].)

designed to establish the requisite connection between the amount of the fee imposed and the burden created." (*Cresta Bella, LP v. Poway Unified School Dist.* (2013) 218 Cal.App.4th 438, 447.)

"If the [government] does not produce evidence sufficient to avoid a ruling against it on the validity of the fee, the plaintiff challenging the fee will prevail. However, if the [government's] evidence is sufficient, the plaintiff must establish a requisite degree of belief in the mind of the trier of fact or the court that the fee is invalid, e.g., that the fee's use and the need for the public facility are not reasonably related to the development project on which the fee is imposed or the amount of the fee bears no reasonable relationship to the cost of the public facility attributable to the development." (*City of Lemoore, supra*, 185 Cal. App.4th at p. 562 ["a plaintiff challenging an impact fee has to show that the record before the [government] clearly did not support the underlying determinations regarding the reasonableness of the relationship between the fee and the development"]; see also *Boatworks*, *supra*, 35 Cal.App.5th at p. 298.)

Although the *Dolan* court did not expressly endorse any particular version of the reasonable relationship test adopted by many states as of 1994, the principles that undergird those respective tests clearly and closely resemble the *Nollan*/*Dolan* test, including the "rough proportionality" requirement established in *Dolan*. (See *Anderson Creek*, *supra*, 382 N.C. at pp. 16-17 [concluding that North Carolina's "rational nexus" test "closely resembles" the "essential nexus" and "rough proportionality" requirements of *Nollan*/*Dolan*].) Applying the relevant principles here, we conclude the administrative record includes sufficient

evidence establishing that the challenged permit condition (TIM fee) satisfies the *Dolan* standard. (See *F.P. Dev., LLC v. Charter Twp. of Canton* (6th Cir. 2021) 16 F.4th 198, 207 [collecting state court cases the Supreme Court cited positively in *Koontz* and noting that "the government generally satisfies the nexus and rough proportionality test with ease by introducing some evidence relating to the 'methodology and functioning' of its exactions"].) Here, as we explained in our prior opinion, the administrative record discloses as follows:

"[T]he County's adoption of the 2004 General Plan was guided by policies that limit traffic congestion, including policies that ensure that roadway improvements are developed concurrently with new development and paid for by that development and not taxpayer funds. In September 2005, the County adopted the interim 2004 General Plan traffic impact mitigation fee program (i.e., the TIM fee program), which implemented the transportation and circulation policies of the general plan and set forth the fee rates (that must be updated annually) imposed at the building permit stage to mitigate the effects of each type of new development (e.g., single-family residence) in the County's eight geographical fee zones.[12]

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[12] "The TIM fee program was adopted to implement measure TC-B of the 2004 General Plan, which requires the County to adopt impact fees to mitigate roadway impacts from new development. That policy states, in part, that the 'traffic fees should be designed to achieve the adopted level of service standards and preserve the integrity of the circulation system.' As part of the process to implement the General Plan, the County's Department of Transportation (DOT) led several interrelated studies to determine traffic projections, specific

The interim program was adopted after the County considered the information contained in a technical report prepared by the DOT and studies analyzing the impacts of contemplated future development on existing public roadways and the need for new and improved roads as a result of the new development.

"In August 2006, the County amended the general plan to permanently adopt the TIM fee program with adjusted new fee rates. This amendment occurred following the DOT's preparation of a detailed memorandum explaining the purpose of the fee, the use to which the fee was to be put, and the methodology used to calculate the fee rate for each type of new development. The memorandum indicated that the fee rates were developed after consideration of a variety of factors, including the expected increase in traffic volumes (average daily vehicle trips) from each type of new development. To estimate the vehicle trips or trip generation rates attributable to new development projects, the County relied on data published in the Institute of Transportation Engineers Trip Generation Manual, 7th Edition.[13] Prior to the adoption of new fee rates

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roadway improvement needs and projected costs, existing funding and funding sources, and a proposed TIM fee rate specific to eight fee zones and various types of new development."

[13] "In amending the 2004 General Plan to permanently adopt the TIM fee program, the County concluded that '[t]he facts and evidence presented in the reports, analyses, and a public hearing . . . establish that there is a reasonable relationship between the need for the described public facilities and the impacts of the types of development described, for which the corresponding fee is charged.' The County also concluded that '[t]he facts and evidence presented in the reports, analyses, and a public hearing

in 2012, including the fee rate at issue here, the DOT explained the methodology it used to adjust the rates." (*Sheetz v. County of El Dorado*, *supra*, 84 Cal.App.5th at pp. 416-417.)

Applying the heightened scrutiny of *Dolan*'s "rough proportionality" standard, we conclude the County met its initial burden to demonstrate that it used a valid method for imposing the TIM fee, one that established a reasonable relationship between the fee charged and the projected burdens (i.e., social costs or public impacts) of Sheetz's development of a single-family home in geographic Zone 6.

In establishing the fee schedules for each class (i.e., type) of new development in a particular geographic zone, the County identified the existing level of traffic flow on public roadway segments, assessed the degree to which projected population and employment growth from new development would impact that flow of traffic on those roadway segments over a 20-year period, and estimated the resources needed to complete infrastructure projects that would accommodate the new traffic patterns from new development to ensure compliance with the traffic flow standards set forth in the General Plan. The amount of the fee imposed on a specific type of development was based on a travel demand forecasting model, which determined the traffic contribution (vehicle trips) from each type of new development in a particular geographical zone as to each roadway segment that was projected to have a traffic flow that did not meet

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. . . establish that there is a reasonable relationship between the fee's use and the type of development for which the fee is charged.'"

the standards established in the General Plan. The administrative record reflects that the County considered the relevant factors and demonstrated a rational connection between those factors and the TIM fee. The record contains detailed analyses in the form of expert technical reports (e.g., traffic studies) quantifying the traffic impacts from each type of new development in the County's eight geographical zones. In other words, the record establishes a factually sustainable proportionality between the effects of new development on traffic congestion and the amount of the challenged impact fee. We further conclude Sheetz has failed to show that the record does not support the County's determinations regarding the reasonableness of the relationship between the magnitude of the TIM fee and the public impacts of his development project. The limited portions of the record relied upon by Sheetz in the trial court and on appeal did not demonstrate that the fee constituted an unconstitutional taking in violation of the Fifth Amendment. Sheetz failed to establish that the fee is invalid because the amount ($23,420) bears no reasonable relationship to the cost of the public facility or portion of the public facility attributable to his development project.

On remand from the Supreme Court, Sheetz makes a number of new arguments that we deem forfeited. (*Cabatit v. Sunnova Energy Corporation* (2020) 60 Cal.App.5th 317, 322 ["If a party fails to raise an issue or theory in the trial court, we may deem consideration of that issue or theory forfeited on appeal"]; *Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 798 [party forfeited claims "by failing to demonstrate either that it preserved these

arguments in the trial court, or that it may properly raise such arguments for the first time on appeal"].) Forfeiture aside, we are unpersuaded by Sheetz's belated arguments. Before turning to the merits of those arguments, however, we briefly pause to address the principal contention Sheetz advanced in the trial court (which he reiterated on appeal and now on remand from the Supreme Court); namely, that the heightened scrutiny of *Nollan/Dolan* required the County to make an *individualized* or "project-specific" determination that the required TIM fee was necessary to offset traffic congestion attributable to his *specific* development. We reject this argument because it implicitly advocates for the application of a test that is closer to the "specific and uniquely attributable test" rejected by the *Dolan* court, which requires "the local government [to] demonstrate that its exaction is directly proportional to the specifically created need." (*Dolan*, *supra*, 512 U.S. at p. 390.) Had the Supreme Court intended to adopt the standard suggested by Sheetz, it easily could have done so in *Dolan*. Instead, as we have explained, the *Dolan* court specifically endorsed a test "closer" to the "reasonable relationship" test adopted by the majority of state courts as of 1994, including California. (See *id.* at p. 391.) The standard articulated in *Dolan*—rough proportionality—does not require the more exacting scrutiny Sheetz urges us to apply here. And Sheetz fails to cite any authority persuading us to hold otherwise.

We likewise reject the other more nuanced arguments Sheetz offers for the first time on remand from the Supreme Court. In his supplemental opening brief, Sheetz primarily contends the TIM fee

does not survive scrutiny under the *Dolan* standard because the amount of the fee ($23,420) is not "proportional" to the traffic impacts attributable to the development of single-family home in his geographical zone. This is so, Sheetz claims, because the County's fee program "shift[ed] substantial costs attributable to other property uses onto new single-family residential development and otherwise required single-family development to pay a substantially higher proportion of traffic improvement costs than other classes of development" (e.g., multifamily residential development (e.g., apartments), commercial development). As an example, Sheetz asserts the County improperly "shift[ed]" at least 84 percent of the traffic impact costs attributable to commercial development "onto residential development." According to Sheetz, the TIM fee "fails the proportionality test" because the record shows that the County's fee program "was not designed to collect money in an amount commensurate with a project's traffic impacts." Instead, Sheetz argues, the "actual purpose" of the fee program "is to raise funds needed to pay the total unfunded cost of road improvement projects identified as far back as 2005, without regard to a particular project's impacts." Thus, in Sheetz's view, the TIM fee violates the takings clause because it impermissibly reallocates public burdens (the need to finance roadway improvements to offset increased traffic congestion from new development) to make single-family residential development "bear more than its fair share of the traffic improvement costs" as compared to other types of development (e.g., commercial development).

As an initial matter, we note that Sheetz's argument is predicated on a misunderstanding (or mischaracterization) of how the TIM fee program operates. Contrary to Sheetz's contention, the fee program does not "shift" 84 percent of the traffic mitigation costs attributable to new commercial development onto new residential development. Rather, the fee program requires that *all* new residential development—single-family *and* multi-family development—*collectively* pay for 84 percent of the *total costs* of the program, with nonresidential (e.g., commercial) development responsible for the remaining 16 percent of the costs. In making this determination, the County relied on expert analysis in technical reports (including traffic studies), which found that an increase in residential housing would result in population growth and the need for new jobs and services, thereby making new residential development responsible for a large share of the increased traffic from new development, including a substantial portion of the traffic impacts attributable to new nonresidential (e.g., commercial) development.[14] The County also relied on expert analysis in

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[14] Trip generation is part of the process used for forecasting travel demands. It predicts the number of vehicle trips to and from particular land uses (e.g., residential, commercial). As noted, the County measured traffic impacts from new development by determining how many vehicle trips that each type of new development (e.g., single-family residential, commercial) was expected to generate.

A technical report prepared by the DOT found that, based on trip generation rates, approximately 60 percent of the total project costs for the TIM fee program were directly attributable to trips to and from residential land uses with the remaining 40 percent attributable to trips to and from nonresidential (e.g.,

technical reports (e.g., traffic modeling analysis) to develop traffic flow projections based on population growth from anticipated residential development over a 20-year period consistent with the County's General Plan, and to identify specific roadway improvement needs from the forecasted population growth that would provide the infrastructure necessary to achieve compliance with traffic level of service (LOS) standards (i.e., acceptable quality of traffic flow to preserve the integrity of the circulation system) set forth in the General Plan.[15] Cost estimates were

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commercial) land uses. The report, however, determined that a substantial portion (65 percent) of the anticipated new nonresidential land uses (e.g., grocery store) would be directly attributable to new residential population growth. As a result, the report recommended that the County "reallocate" a portion of traffic mitigation costs to residential development, resulting in a cost distribution with 84 percent of the total costs of the fee program being allocated to new residential development and 16 percent to new nonresidential development. In support of this allocation, the report explained that market-based studies determined that there was "limited tolerance" of nonresidential development to "absorb increased fees," and that without new nonresidential development to serve residential growth (retail and service needs), "the new residential uses would cause significantly more traffic on the roads" within the County. The report further explained that, upon "further review," it was determined that "well over half" of the remaining 35 percent of anticipated new nonresidential land uses were also directly attributable to projected residential growth. The report recommended that the County use the original 84/16 split rather than a 94/6 split.

[15] The goal of the TIM fee program is to ensure that increased traffic generated by new development does not exceed available roadway capacity. To determine the necessary roadway improvements, the County relied on expert analysis in technical reports that analyzed traffic impacts using the LOS method, which

prepared for the roadway improvements deemed necessary to address future traffic congestion spurred by population and employment growth from new development, and certain nondevelopment fee revenues (e.g., previously collected TIM fees, federal and state grant funds) were used to reduce the costs of infrastructure projects eligible for such funds. In allocating the traffic mitigation costs attributable to each type of new development (e.g., single-family residential), the County relied on technical reports, which considered the different land use characteristics of each geographical zone and the percentage of new traffic growth attributable to each respective zone for each type of new development. The record reflects that the TIM fee imposed for a new development project within a particular zone (e.g., single-family residential in Zone 6) was based on expert estimations as to the percentage of vehicle trips from that zone that resulted in use of roadway segments in need of improvements to accommodate traffic increases from population and employment growth. "For example, if a certain roadway improvement project costs $12 million and development in Zone 5 contributes 10% of the traffic using the road where that project is located, then development in Zone 5 is responsible for 10%, or $1.2 million, of the project costs." To calculate the applicable TIM fee rate for each type of new development (e.g., single-family residential), the County divided the "total costs" of all traffic improvement projects for each geographical zone by the "projected growth" of each type of

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measures traffic operating conditions using with a grade of A to F. LOS A is free flowing traffic and LOS F is congested, "stop and go" traffic.

development and the "applicable trip generation rates" for each type of development. The resulting fee rates were set forth in a series of class-based fee schedules for each type of new development in the eight geographical zones, which are automatically imposed based on the type of the proposed new development. Sheetz, for his part, has not persuaded us that the TIM fee does survive scrutiny under the *Dolan* standard. He has not shown that the County violated the takings clause by improperly allocating the traffic mitigation costs attributable to new development, such that there is no "rough proportionality" between the challenged impact fee and the projected burden (social costs) of his proposed development project.

Equally without merit is Sheetz's related contention that the TIM fee program does not satisfy the *Dolan* standard because "the fee applicable to multifamily residential development is a fraction of the fee that [he] paid" to secure a permit to build a single-family home. According to Sheetz, it "makes no sense" that the required fee for a single-family home is significantly higher than the fee imposed on multifamily residential development. In support of his position, Sheetz notes that, at the time he applied for a building permit, the TIM fee required for the development of a single-family home in Zone 6 was $23,420, whereas the TIM fee for a multifamily residential development in the same zone was $15,240. But the administrative record does not support Sheetz's contention that the TIM fee for multifamily residential development was imposed "regardless of how many units are proposed by a multifamily project." Rather, the record reflects that

each unit of a multifamily residential development is subject to the TIM fee. Thus, at the time Sheetz applied for a building permit, the total TIM fee for a proposed new multifamily residential project in Zone 6 with 15 units would have been 15 times the fee amount applicable to *each* dwelling unit—$15,240. In other words, contrary to Sheetz's contention, the required fee to build a single-family home was not significantly higher than the required fee for multi-family residential development. And the difference between the fee imposed per dwelling unit of a multifamily residential project in Zone 6 ($15,240) and a single-family residential project in the same zone ($23,420) was based on (among other things) traffic studies, which determined that an individual dwelling unit of a multifamily residential development generates fewer vehicle trips per day (6.26) than a single-family residential development (9.45 to 9.55). Thus, because it was determined that single-family residential development generates more vehicle trips than one dwelling unit of a multifamily development (e.g., apartment complex), the County imposed a higher fee on that type of development.

Finally, we reject the remaining undeveloped arguments Sheetz offers in support of his contention that the TIM fee "fails" the *Dolan* "proportionality test." The administrative record does not, as Sheetz suggests, "confirm" that the challenged fee does not survive scrutiny under the *Dolan* standard because it includes a portion of the costs to complete roadway projects "that predated the 2012 fee schedule by over a decade" and the cost of addressing roadway deficiencies "caused by other uses." Nor has Sheetz

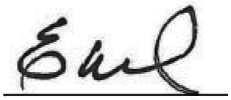
otherwise demonstrated that the TIM fee does not satisfy the *Dolan* standard.

DISPOSITION

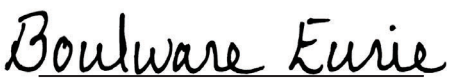
The judgment is affirmed. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

Duarte, J.

We concur:



Earl, P.J.



Boulware Eurie, J.

* * *

FILED on 2/4/2021

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

GEORGE SHEETZ and FRIENDS OF EL DORADO COUNTY, Petitioners and Plaintiffs, v. COUNTY OF EL DORADO; and DOES 1 TO 20, inclusive, Respondents and Defendants.	Case No. PC 20170255 *Assigned for all purposes to: Hon. Dylan M. Sullivan—Dept. 9* ~~**[PROPOSED]**~~ **JUDGMENT** **[Filed: Feb. 4, 2021]**

Having issued a Tentative Ruling on April 6, 2018, which sustained the demurrer of Respondent and Defendant County of El Dorado ("County") to the Second Cause Of Action For A Declaration That The Exaction Violates Gov. Code § 66001, to the Third Cause Of Action For A Declaration That The Exaction Violates The Unconstitutional Conditions Doctrine (U.S. Const. Amends. V & XIV), to the Fourth Cause Of Action For A Declaration That The County Policy And Authorizing Laws Re: New Development Violate Gov't Code § 66001, to the Fifth Cause Of Action For A Declaration That The County Policy And Authorizing Laws Re: New Development Violate The Unconstitutional Conditions Doctrine (U.S. Const. Amends. V & XIV), to the Sixth Cause Of Action For A Declaration That The County Policy And

Authorizing Laws Re: New Development Violate Gov't Code § 66001, and to the Seventh Cause Of Action For A Declaration That The County Policy And Authorizing Laws Re: New Development Violate The Unconstitutional Conditions Doctrine (U.S. Const. Amends. V & XIV), which causes of action were alleged in the Verified Petition For Writ Of Mandate; Complaint For Declaratory And Injunctive Relief that was filed on June 5, 2017 ("Petition"), without leave to amend (a true and correct copy of which is attached hereto as Exhibit A);

Having issued the Minute Order on May 29, 2018, which adopted the Tentative Ruling issued on April 6, 2018, and sustained the County's demurrer to the Second through Seventh causes of action in the Petition;

Having issued the Tentative Ruling on November 30, 2020, which denied the Petition For Writ Of Mandate, which is the First Cause Of Action alleged in the Petition;

Having issued the Minute Order on December 8, 2020, which adopted the Tentative Ruling issued on November 30, 2020, as modified (a true and correct copy of which is attached hereto as Exhibit B); and

For good cause appearing;

IT IS ORDERED, ADJUDGED, AND DECREED that

1. The Verified Petition For Writ Of Mandate; Complaint For Declaratory And Injunctive Relief is denied;

2. Petitioners and Plaintiffs George Sheetz and Friends of El Dorado County shall take nothing against the County;

3. The County is the prevailing party and entitled to its costs in the amount of $ *Please submit a memorandum of costs*.

Date: Feb 04 2021

Dylan Sullivan
Judge of the Superior Court
El Dorado County Superior Court

Approved as to form.

_____
Paul J Beard II, Esq.

EXHIBIT A

Law and Motion Calendar— April 6, 2018
Department Nine (10:00 a.m.)

4. Sheetz v. County of El Dorado PC-20170255

Respondent County of El Dorado's Demurrer to Petition for Writ of Mandate and Complaint.

On June 5, 2017 petitioners/plaintiffs filed a petition for writ of mandate and a complaint asserting several causes of action for declaratory relief. Petitioners/plaintiffs request: a declaration that the Traffic Impact Mitigation (TIM) program fee exacted from petitioner/plaintiff Sheetz in the amount of $23,420 for the issuance of a permit to construct an 1,854 square foot manufactured home on his real property violated Government Code, § 66001; a declaration that the $23,420 exaction violates the unconstitutional conditions doctrine; a declaration that the TIM fee as applied to petitioner/plaintiff Sheetz violates Government Code, § 66001(b) by mandating petitioner/plaintiff Sheetz to pay the full cost of constructing new roads and widening existing roads without regard to the cost specifically attributable to the development on which the fee is imposed; a declaration that the exaction as applied to petitioner/plaintiff Sheetz violates the unconstitutional conditions doctrine; a declaration that the TIM fee program is facially invalid in that it violates Government Code. § 66001(b); and a declaration that the TIM fee program on its face violates the unconstitutional conditions doctrine.

Respondent/Defendant County demurs to all causes of action of the complaint and the petition for writ of mandate on the following grounds: the petition for writ of mandate (1st cause of action), and the 3rd,

5th and 7th causes of action are fatally defect, because they rely on the application of the *Nollan/Dolan* test where that test does not apply to the legislatively enacted and generally applied TIM fees that were alleged in the petition/complaint; the petition for writ of mandate and the 2nd, 4th and 6th causes of action are fatally defective, because petitioners/plaintiffs allege statutory claims premised upon violation of Government Code, § 66001(b), while as a matter of law Section 66001(b) does not apply to the TIM fees that are challenged in this action; all causes of action are time barred; and declaratory relief causes of action are not appropriate to seek review of an administrative decision.

Petitioners/Plaintiffs oppose the demurrers on the following grounds: the petition for writ of mandate (1st cause of action), and the 3rd, 5th and 7th causes of action sufficiently allege violation of the unconstitutional conditions doctrine; the petition for writ of mandate and the 2nd, 4th and 6th causes of action are legally sufficient; all seven causes of action were timely filed; and the declaratory relief causes of action are proper.

Petitioners/Plaintiffs also object to the County's requests for judicial notice in support of the demurrers.

The County replied: the constitutional claims of violation of the unconstitutional conditions doctrine fail to state sufficient facts to constitute such causes of action, because the *Nollan/Dolan* test does not apply to legislatively imposed and generally applied TIM fees as a matter of law; the statutory claims of violation of Government Code, § 66001(b) are fatally defective; and all causes of action are time barred.

Respondent County's Requests of Judicial Notice

The County requests judicial notice be taken of the following: County Planning and Building Department records related to permit number 2498783, which is the permit Mr. Sheetz obtained upon payment of fees, and the receipt issued by the County on August 25, 2016 acknowledging Mr. Sheetz's payment of the Traffic Impact Mitigation (TIM) program fees and other fees; selected portions of the General Plan related to the TIM fee program and the various amounts of fees set by Board resolution; and statutes 2006, chapter 194 concerning the amendment of Government Code, § 66001 in 2006.

Petitioners/Plaintiffs object to the court taking judicial notice of these items on the sole ground that they are irrelevant to the proceeding.

The objection is overruled.

Statute of Limitations

"A demurrer on the ground of the bar of the statute of limitations will not lie where the action may be, but is not necessarily barred. (*Moseley v. Abrams* (1985) 170 Cal.App.3d 355, 359, 216 Cal.Rptr. 40; *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762, 775, 167 Cal.Rptr. 440.) It must appear clearly and affirmatively that, upon the face of the complaint, the right of action is necessarily barred. (*Valvo v. University of Southern California* (1977) 67 Cal.App.3d 887, 895, 136 Cal.Rptr. 865; *Mangini v. Aerojet-General Corp.* (1991) 230 Cal.App.3d 1125, 1155, 281 Cal.Rptr. 827.) This will not be the case unless the complaint alleges every fact which the defendant would be required to prove if he were to plead the bar of the applicable statute of limitation as an affirmative

defense. (*Farris v. Merritt* (1883) 63 Cal. 118, 119.)" (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & Mccort* (2001) 91 Cal.App.4th 875, 881.)

Citing Government Code, § 65009(c)(1), respondent County contends that the challenge to the amount of the TIM fee paid by petitioner to obtain a construction permit for his parcel had to be brought within 90 days of the Board of Supervisor's (Board) adoption of the challenged general plan provision setting the amount of the TIM fee and that the time to bring that challenge expired on May 14, 2012, long before the filing of the action.

Petitioner argues in opposition that the applicable statute of limitations is the 180 day limitation to bring an action after the mitigation fee was imposed as a condition of issuance of a construction permit for petitioner's specific parcel under the provisions of Government Code, § 66020(d), the three year statute of limitations set forth in Code of Civil Procedure, § 338(a) for liability created by statute (the Mitigation Fee Act) and two or four year statutes of limitation for liability based upon constitutional claims (Code of Civil Procedure, §§ 335.1 and 343.), rather than the 90 day limitation set forth in Government Code, § 65009(c)(1).

Respondent County replied: the allegations of the petition establish that petitioner is not bringing an "as applied" challenge to the TIM fee imposed and, therefore, it is merely an untimely facial challenge to the Board's enactment on February 14, 2012; and even assuming petitioner Sheetz's has set forth a timely "as applied" challenge, petitioner Friends of El Dorado County have failed to allege any timely claim

in this action and have not asserted an "as applied" claim.

The California Supreme Court resolved this particular issue and found that even where a governmental entity's legislative decision is being challenged, provided there is also an "as applied" challenge to the ordinance or fee enactment being first applied to a specific parcel, the proper statute of limitation to apply is the one whose limitation period commences upon imposition of the mitigation fee or exaction as a condition for development of the specific parcel and not the statute of limitation that commences to run upon legislative enactment of the statute or ordinance setting the fee or exaction.

"In the related context of local government development fees, the Court of Appeal has distinguished between a "legislative decision" adopting a generally applicable fee and an "adjudicatory decision" imposing the fee on a particular development. (*N. T. Hill Inc. v. City of Fresno* (1999) 72 Cal.App.4th 977, 986, 85 Cal.Rptr.2d 562.) Adjudicatory fee decisions, the court held, are subject to the protest procedures and limitations period set forth in Government Code section 66020: legislative fee decisions are subject only to the limitations period in Government Code section 66022. "Put slightly differently, section 66022 applies when the plaintiff's goal is a judicial finding that the legislative decision adopting the charge cannot be enforced in any circum-stance against any existing or future development because of some procedural or substantive illegality in the decision and section 66020 applies when the plaintiffs goal is a judicial finding that the charge set by the legislative decision cannot be demanded or collected in whole or

part with respect to the specific development." (*N. T. Hill Inc. v. City of Fresno*, *supra*, at pp. 986-987, 85 Cal.Rptr.2d 562.) [FN 4] Analogously, to the extent Travis seeks a finding that the Ordinance cannot be applied against him, and relief in the form of removal of the conditions on his permit, his challenge is to the County's adjudicatory decision imposing the conditions and comes within section 65009, subdivision (c)(1)(E). [FN 5] ¶ FN.4 The court added, "In the latter [adjudicatory] situation, the funda-mental validity of the legislative decision enacting or modifying the fee is not in issue." (*N. T. Hill Inc. v. City of Fresno*, *supra*, 72 Cal.App.4th at p. 987, 85 Cal.Rptr.2d 562.) As our discussion above indicates, we do not agree with any suggestion that a property owner's challenge to an adjudicatory decision on a development fee (or zoning) matter may not include an attack on the validity of the fee or zoning ordinance itself. More correct is that in the adjudicatory situation, the validity of the legislation cannot be the only issue at stake—there must be a challenged enforcement or application of the legislation against the plaintiff's property. ¶ FN 5. The Attorney General, in an amicus curiae brief, points out that Travis's challenge to the adjudicatory permit decision should have been brought by petition for administrative mandate (Code Civ. Proc., § 1094.5) rather than ordinary mandate (*id.*, § 1085). But where the entitlement to mandate relief has been adequately pied, "a trial court may treat a proceeding brought under Code of Civil Procedure section 1085 as one brought under Code of Civil Procedure section 1094.5." (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109, 61 Cal.Rptr.2d 134, 931 P.2d 312.) As the only question before us is

timeliness, and as a writ of administrative mandate, like a challenge under section 65009, subdivision (c)(1)(E), must be brought within 90 days of the final administrative decision (Code Civ. Proc., § 1094.6, subd. (b)), we need not address the effect, if any, of plaintiffs' having failed to label their petition as one for administrative as well as ordinary mandate. ¶ *Utility Cost Management v. Indian Wells Valley Water Dist.* (2001) 26 Cal.4th 1185, 114 Cal.Rptr.2d 459, 36 P.3d 2 does not suggest a different result. Without deciding whether the distinction drawn in *N. T. Hill Inc. v. City of Fresno* is correct, we there held the fee imposition decision at issue would in any case be deemed legislative rather than adjudicatory because the fee ordinance was expressly applicable to the plaintiff and "calculation of the fees was a purely ministerial act—assertedly performed by a computer—based on the formulas set forth in the fee legislation." (*Utility Cost Management v. Indian Wells Valley Water Dist.*, *supra*, at p. 1194. 114 Cal.Rptr.2d 459, 36 P.3d 2.) In the present case, the decision by the County's zoning officials to issue Travis a second unit permit subject to rent and occupancy conditions, while it may have been legally compelled by the Ordinance. required more than a purely mechanical or arithmetic process on their part. ¶ The County's construction of section 65009 would, in addition, tend to produce unjust and potentially unconstitutional results, which we do not believe the Legislature intended. If a preempted or unconstitutional zoning ordinance could not be challenged by a property owner in an action to prevent its enforcement within 90 days of its application (§ 65009, subd. (c)(1)(E)), but instead could be challenged only in an action to void or annul the ordinance within 90 days of its enactment (*id.*,

subd. (c)(1)(B)), a property owner subjected to a regulatory taking through application of the ordinance against his or her property would be without remedy unless the owner had had the foresight to challenge the ordinance when it was enacted, possibly years or even decades before it was used against the property. Like the "notice" rule rejected in *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, 626-627, 121 S.Ct. 2448, 150 L.Ed.2d 592 (the idea that a post-enactment purchaser takes with notice of the legislation and therefore cannot claim it effects a taking), a construction of section 65009 barring any challenge to the validity of a zoning ordinance once 90 days have passed from its enactment—even in the context of its application to particular property—would allow the government, "in effect, to put an expiration date on the Takings Clause. This ought not to be the rule. Future generations, too, have a right to challenge unreasonable limitations on the use and value of land." (*Palazzolo v. Rhode Island*, *supra*, at p. 627, 121 S.Ct. 2448.) The Legislature intended section 65009 to provide certainty to local governments (§ 65009, subd. (a)(3)), but not, we think, at the expense of a fair and reasonable opportunity to challenge an invalid ordinance when it is enforced against one's property. [FN 6], ¶ FN 6. In suggesting, on the basis of *Palazzolo v. Rhode Island*, *supra*, 533 U.S. 606, 121 S.Ct. 2448, 150 L.Ed.2d 592, that permittees and their successors in interest may bring actions to invalidate the Ordinance or the property restrictions imposed thereunder as unconstitutional takings of property *without regard to any statute of limitations*, the concurring and dissenting opinion (*post*, 16 Cal.Rptr.3d at p. 419, 94 P.3d at p. 550) goes much farther than plaintiffs themselves. Plaintiffs

disavow any claim that "statutes of limitations on takings claims may be 'set aside.'" Rather, plaintiffs argue, *Palazzolo* "affirms the federal constitutional right to bring an as-applied challenge when a land-use ordinance is first applied to one's property, even if one is the successor in interest to the person who owned the property when the ordinance was enacted." Such a challenge, plaintiffs concede, is subject to "the appropriate statute of limitations." We agree and observe that *Palazzolo* concerned only the effect of a post-enactment change of ownership on takings claims, not the application of any statute of limitations. ¶ We conclude, therefore, that Travis's challenge to the imposition of conditions on his second unit permit was timely brought, though the Sokolows' was not." (Emphasis added.) (*Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 769-771.) Petitioner Travis had filed his action within 90 days of denial of his administrative appeal from the imposition of rent and occupancy conditions to his application for a permit to construct a second dwelling unit on his property, which was found timely, and petitioners Stanley and Sonya Sokolow were granted a second unit permit containing occupancy and rent restrictions 11 months prior to filing the action, which was found untimely. (*Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 764.)

"(d)(1) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a development project. Each local agency shall provide to the project applicant a notice in writing at the time

of the approval of the project or at the time of the imposition of the fees, dedications, reservations, or other exactions, a statement of the amount of the fees or a description of the dedications, reservations, or other exactions, and notification that the 90-day approval period in which the applicant may protest has begun. ¶ (2) Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations. or other exactions imposed on a development project by a local agency within 180 days after the delivery of the notice. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings." (Emphasis added.) (Government Code, § 66022(d).)

The verified petition was filed on June 5, 2017 by George Sheetz and the Friends of El Dorado County. The verified petition alleges: petitioner/plaintiff Friends of El Dorado County is a section 501(c)(3) organization incorporated for the purpose of promoting and protecting property owners' rights and represents the interests of all citizens and taxpayers in the County who has brought the action in the public interest; petitioner/plaintiff Sheetz paid a TIM program fee in the amount of $23,420 in order to obtain the issuance of a permit to construct a 1,845 square foot manufactured home on his property; the permit was issued on August 25, 2016; the county did

not provide petitioner/plaintiff Sheetz with oral or written notice of his right to administratively protest the fee; petitioner/plaintiff Sheetz learned of this right and submitted a letter on December 7, 2016 protesting the fee on various grounds; he sent a follow-up protest letter that included his complaint that he was not given notice of the right to protest or appeal the TIM fee; as taxpayers, petitioner/plaintiff Friends of El Dorado County's members have a right to restrain or prevent an illegal expenditure of public money to apply and enforce unlawful County policies, such as the policy to make new developments pay for the full cost of new roads and/or road widening; and as citizens, petitioner/plaintiff Friends of El Dorado County's members have a clear, present and beneficial right to the County performing its public duty to only apply lawful policies related to traffic impact mitigation. (Petition/Complaint, paragraphs 2, 19, 20, 22, 23, 24, 25, 28, and 29.)

Petitioners/Plaintiffs argue that the 180 day limitation to file an action arising out of the protest of the imposition of a development fee does not commence to run until the local agency provides the party with notice of the 90 day limitation to file the protest of the imposition of the fee.

"Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a development project by a local agency *within 180 days after the delivery of the notice*." (§ 66020, subd. (d)(2), italics added.) Thus, the 180-day limitations period under section 66020 does not commence running until written notice of the 90-day protest

period has been delivered to a party complying with the protest provisions. [FN 6] ¶ FN 6. Of course, if the 180-day statute of limitation does not begin to run because a local agency fails to deliver such notice, the affirmative defense of laches might be a bar. In this case, the City asserted the affirmative defense of laches in its answer but did not argue laches in its written opposition to Branciforte's petition." (*Branciforte Heights, LLC v. City of Santa Cruz* (2006) 138 Cal.App.4th 914, 925.)

The allegations of the petition/complaint taken as true for the purposes of demurrer indicates that the 180 statute of limitation has not yet commenced to run.

Taking the allegations of the petition/complaint as true for the purposes of demurer, the court finds it does not appear clearly and affirmatively that, upon the face of the complaint, the petition for writ of mandate and the 2nd through 5th causes of action that are partially premised on an as-applied claim are necessarily barred. The statute of limitations demurrer to those causes of action and the petition ae overruled.

On the other hand, the 6th and 7th causes of action that expressly relate solely to facial challenges to the TIM fee program are barred, because the statute of limitations to assert facial challenges to the enactment of the subject fee amount commenced to run on the Board's February 14, 2012 enactment/ adoption of that fee schedule as part of the general plan TIM fee program. The 90 day statute of limitations set forth in Government Code § 65009(c)(1) expired on May 14, 2012 and even assuming for the sake of argument that a four year statute of

limitations applied, that statute would have expired on February 14, 2016, long before the verified petition was filed on June 5, 2017.

The statute of limitations demurrer to the 6th and 7th causes of action is sustained. Inasmuch as those causes of action appear to be incapable of amendment to cure the fatal defect, and petitioner Sheetz has not demonstrated how the petition/complaint can be amended to cure the defect, the court sustains the demurrer to the 6th and 7th causes of action without leave to amend. (See *Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 322.)

Inasmuch as the statute of limitation demurrer to the facial challenges to the TIM fee in the 6th and 7th causes of action was sustained without leave to amend, the court need not and does not address any demurrers to those two causes of action brought on other grounds.

Statutory Claims – Petition for Writ of Mandate and 2nd and 4th Causes of Action

County argues that Section 66001(a) applies to legislatively enacted, generally applied TIM fees while Section 66001(b) only applies to adjudicatory determinations of the TIM fee with regards to a specific parcel; and the requirement to find some nexus between the fee and the particular project upon which it is imposed does not apply to Section 66001(a) enactments of the fee amount.

Petitioner/Plaintiff Sheetz argues in opposition that there is a two stage process to the imposition of the TIM fee, first the quasi-legislative adoption of the development fees under Section 66001(a) and then Section 66001(b) applies to each and every specific fee

imposed on a specific development, which requires the local agency to determine how there is a reasonable relationship between the amount of the fee and cost of the public facility or portion of the public facility attributable to the specific development on which the fee is based.

"Subdivisions (a) and (b) describe different stages of a fee imposition process. Subdivision (a)—which speaks of use and need in relation to a "type" of development project and of agency action "establishing, increasing, or imposing" fees—applies to an initial, quasi-legislative adoption of development fees. Subdivision (b)—which speaks of "imposing" fees and of a reasonable relationship between the "amount" of a fee and the "cost of the public facility or portion of [it] attributable to the development on which the fee is imposed"—applies to adjudicatory, case-by-case actions. Only at that stage could a local agency know how much of a public facility's cost (or some portion of it) is attributable to "the development" as opposed to a "type" of development. Giving the subdivisions this interpretation also reconciles why both apply to actions "imposing" fees. If subdivision (b) applied to quasi-legislative action, as plaintiffs would have it, then its reasonable-relationship requirement could have been added to those in subdivision (a). Moreover, as a practical matter, determining subdivision (b)'s reasonable relationship between "amount" and a particular development at the quasi-legislative stage would be imprecise at best. Plaintiffs' construction of both subdivisions as applying to quasi-legislative action could also leave a local agency without legislative guidance on what kind of "reasonable relationship" to look for when relevant statutes call

for an adjudicatory stage of tile approval process." (*Garrick Development Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320, 336.)

An appellate court has discussed the standard to apply in reviewing the amount of development fee set by legislative action: "The district is not required to evaluate the impact of a *particular* development project before imposing fees on a developer; rather, the required nexus is established based on the justifiable imposition of fees "on a *class* of development projects rather than particular ones." (*Garrick*, *supra*, 3 Cal.App.4th at p. 335, 4 Cal.Rptr.2d 897.) Further, because the fee determination process "will necessarily involve predictions regarding population trends and future building costs, it is not to be expected that the figures will be exact. Nor will courts concern themselves with the District's methods of marshalling and evaluating scientific data. [Citations.] Yet the court must be able to assure itself that before imposing the fee the District engaged in a reasoned analysis designed to establish the requisite connection between the amount of the fee imposed and the burden created." (*Shapell*, *supra*, 1 Cal.App.4th at p. 235, 1 Cal.Rptr.2d 818.)" (Emphasis added.) (*Cresta Bella, LP v. Poway Unified School District* (2013) 218 Cal.App.4th 438, 447.)

In other words, there is no mandated two stage process of legislative action followed by a mandatory adjudicatory determination of the fee for each and every parcel that seeks a permit for construction. Once the fee amount is imposed on a class of development projects, rather than particular ones, to which Section 66001(a) applies as a matter of law, the County is not required to determine the impact of a

single parcel development before imposing the class fee amount.

"(a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency, the local agency shall do all of the following: ¶ (1) Identify the purpose of the fee. ¶ (2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged. ¶ (3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed. ¶ (4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed." (Government Code, § 66001(a).)

"The trial court is limited in its review of the City's assessment of mitigation fees, and this court's review of the trial court's determination is de novo. Assessment of mitigation fees is a quasi-legislative action. The authority of the trial court is, therefore, "limited to determining whether the decision of the agency was arbitrary, capricious, entirely lacking in evidentiary support, or unlawfully or procedurally unfair." (*Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 786, 187 Cal.Rptr. 398, 654 P.2d 168.)" (*City of San Marcos v. Loma San Marcos, LLC* (2015) 234 Cal.App.4th 1045, 1053.)

However, whether or not subdivisions (a) or (b) apply is not determinative of the demurrer. If a fee subject to the Mitigation Fee Act "is challenged, the local agency has the burden of producing evidence in support of its determination. [Citation.] The local agency must show that a valid method was used for imposing the fee in question, one that established a reasonable relationship between the fee charged and the burden posed by the development." (*Home-builders Assn. of Tulare/Kings Counties, Inc. v. City of Lemoore* (2010) 185 Cal.App.4th 554, 561, 112 Cal.Rptr.3d 7.) The "burden of producing evidence is not equivalent to the burden of proof." (*Id.* at p. 562, 112 Cal.Rptr.3d 7.) Rather, while the "agency has the obligation to produce evidence sufficient to avoid a ruling against it on the issue" (*ibid.*), the party "challenging an impact fee has to show that the record before the local agency clearly did not support the underlying determinations regarding the reasonable-ness of the relationship between the fee and the development." (*Ibid.*) ¶ "Accordingly, the local agency has the initial burden of producing evidence sufficient to demonstrate that it used a valid method for imposing the fee in question, one that established a reasonable relationship between the fee charged and the burden posed by the development. If the local agency does not produce evidence sufficient to avoid a ruling against it on the validity of the fee, the [party] challenging the fee will prevail. However, if the local agency's evidence is sufficient, the [challenging party] must establish a requisite degree of belief in the mind of the trier of fact or the court that the fee is invalid, e.g., that the fee's use and the need for the public facility are not reasonably related to the development project on which the fee is imposed or the amount of

the fee bears no reasonable relationship to the cost of the public facility attributable to the development." (*Homebuilders Assn. of Tulare/Kings Counties, Inc. v. City of Lemoore*, *supra*, 185 Cal.App.4th at p. 562, 112 Cal.Rptr.3d 7.)" (*City of San Marcos v. Loma San Marcos, LLC* (2015) 234 Cal.App.4th 1045, 1058-1059.)

The petition/complaint alleges: the County exacted a fee from Mr. Sheetz in the amount of $23,420 as a condition of issuing a building permit; Mr. Sheetz sent a letter to the County, dated December 7, 2016, which protested the validity of the fee on various grounds; the County failed to establish and can not establish that the fee bears a reasonable relationship to traffic impacts purportedly caused by the manufactured home; and the fee includes costs attributable to existing deficiencies in the traffic infrastructure that the County required Mr. Sheetz to fund. (Petition/ Complaint, paragraphs 24, 40 and 41.) A copy of the fee protest letter is attached to the petition/complaint as Exhibit A.

"A demurrer challenges only the legal sufficiency of the complaint, not the truth of its factual allegations or the plaintiff's ability to prove those allegations. (*Amarel v. Connell* (1988) 202 Cal.App.3d 137, 140 [248 Cal.Rptr. 276].) We therefore treat as true all of the complaint's material factual allegations, but not contentions, deductions or conclusions of fact or law. (*Id.* at p. 141; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [216 Cal.Rptr. 718,703 P.2d 58].) We can also consider the facts appearing in exhibits attached to the complaint. (See *Dodd v. Citizens Bank of Costa Mesa*, *supra*, 222 Cal.App.3d at p. 1627.) We are required to construe the complaint liberally to

determine whether a cause of action has been stated, given the assumed truth of the facts pleaded. (*Rogoff v. Grabowski* (1988) 200 Cal.App.3d 624, 628 [246 Cal.Rptr. 185).)" (*Picton v. Anderson Union High School Dist.* (1996) 50 Cal.App.4th 726, 732-733.)

" . . ."plaintiff need only plead facts showing that he may be entitled to some relief [citation]." [Citation.] Furthermore, we are not concerned with plaintiff's possible inability or difficulty in proving the allegations of the complaint.' (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572 [108 Cal.Rptr. 480, 510 P.2d 1032].)" (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 696-697.)

Taking the allegations as true for the purposes of demurrer, the petition for writ of mandate and 2nd and 4th causes of action of the complaint sufficiently state causes of action for violation of Section 66001(a). The failure to state a statutory cause of action demurrer to petition for writ of mandate and 2nd and 4th causes of action of the complaint is overruled.

<u>Constitutional Challenges to Fee – Exaction Doctrine/ Unconstitutional Conditions Doctrine Causes of Action</u>

Respondent/Defendant County argues: the county policy being challenged as an unconstitutional condition/exaction is alleged to be authorized by the general plan, which includes Measure Y, certain general plan policies, and the TIM fee program approved by the Board as part of the general plan; the county policy challenge is a direct challenge to the County's General plan; and since Mr. Sheetz paid legislatively imposed and generally applied TIM Fees in the amount set in 2012, the fee was not imposed by

an ad-hoc adjudication, therefore, the *Nollan/Dolan* unconstitutional conditions/exactions test does not apply.

Petitioner/Plaintiff Sheetz argues in opposition: the U.S. Supreme Court in *Koontz v. St. Johns Water Management District* (2013) 570 U.S. 595 held that the *Nollan/Dolan* Test/unconstitutional conditions doctrine applies to all permit exactions regardless of whether they are imposed by legislative action by a government body or by a public official behind the permit counter; and respondent's/defendant's authorities to the contrary are distinguishable.

Inasmuch as the court has overruled the statute violation demurrer to the petition for writ of mandate, the court need not address the county's demurrer that the petition for writ of mandate does not state a cause of action for violation of the exaction doctrine/unconstitutional conditions doctrine. The rule is that a general demurrer should be overruled if the pleading, liberally construed, states a cause of action under any theory. (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 870-871.) "A demurrer does not lie to a portion of a cause of action. (Citations Omitted.)" (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682.) Where a portion of the cause of action is defective on the face of the complaint, the appropriate remedy is to bring a motion to strike that portion of the complaint. (*PH II, Inc.*, *supra* at pages 1682-1683.)

The 3rd cause of action for violation of the exaction doctrine/unconstitutional conditions doctrine is premised upon an allegation that the County failed to make an individualized determination that the TIM fee imposed bears an essential nexus or rough

proportionality to the public impacts caused by the proposed project. (Petition/Complaint, paragraph 47.)

The 5th cause of action is premised upon allegations that the County enforces a policy that new development bear the full costs of construction of and widening roads without regard to the cost specifically attributable to the development on which the fee is imposed; the court requires a development to pay the entire cost of improvements for new roads or widened roads if there is some causal connection between the new development and the need for such roads and widening; the policy is authorized by Measure Y's mandate, general plan policies TC-X and TC-Xf, and the TIM fee program; and upon information and belief the County applied that policy to Mr. Sheetz's application for construction. (Petition/Complaint, paragraphs 52-54.)

In finding that a residential hotel conversion and demolition ordinance (HCO) is not subject to the *Nollan/Dolan* test, because the HCO does not provide City staff or administrative bodies with any discretion as to the imposition or size of a housing replacement fee, the City did not single out plaintiffs for payment of a housing replacement fee and the HCO is generally applicable legislation in that it applies, without discretion or discrimination, to every residential hotel in the city, an appellate court stated: "The "sine qua non" for application of *Nollan/Dolan* scrutiny is thus the "discretionary deployment of the police power" in the imposition of land-use conditions in individual cases." (*Ehrlich*, *supra*, 12 Cal.4th at p. 869, 50 Cal.Rptr.2d 242, 911 P.2d 429 (plur. opn. of Arabian, J.).) Only "individualized development fees warrant a type of review akin to the conditional conveyances at

issue in *Nollan* and *Dolan*." (*Santa Monica Beach*, *supra*, 19 Cal.4th at pp. 966-967, 81 Cal.Rptr.2d 93, 968 P.2d 993; see also *Landgate, Inc. v. California Coastal Com.* (1998) 17 Cal.4th 1006, 1022, 73 Cal.Rptr.2d 841, 953 P.2d 1188 (*Landgate*) [heightened scrutiny applies to "development fees imposed on a property owner on an individual and discretionary basis"].) ¶ Under our precedents, therefore, housing replacement fees assessed under the HCO are not subject to *Nollan/Dolan/Ehrlich* scrutiny. ¶ Plaintiffs argue that a legislative scheme of monetary exactions (i.e., a schedule of development mitigation fees) nevertheless should be subject to the same heightened scrutiny as the ad hoc fees we considered in *Ehrlich*, because of the danger a local legislative body will use such purported mitigation fees—unrelated to the impacts of development—simply to fill its coffers. Thus, plaintiffs hypothesize that absent careful constitutional scrutiny a city could "put zoning up for sale" by, for example, "prohibit[ing] all development except for one-story single-family homes, but offer[ing] a second story permit for $20,000, an apartment building permit for $10,000 per unit, a commercial building permit for $50,000 per floor, and so forth." [Footnote omitted.] ¶ We decline plaintiffs' invitation to extend heightened takings scrutiny to all development fees, adhering instead to the distinction we drew in *Ehrlich*, *supra*, 12 Cal.4th 854, 50 Cal.Rptr.2d 242, 911 P.2d 429, *Landgate*, *supra*, 17 Cal.4th 1006, 73 Cal.Rptr.2d 841, 953 P.2d 1188, and *Santa Monica Beach*, *supra*, 19 Cal.4th 952, 81 Cal.Rptr.2d 93, 968 P.2d 993, between ad hoc exactions and legislatively mandated, formulaic mitigation fees. While legislatively mandated fees do present some danger of improper leveraging, such

generally applicable legislation is subject to the ordinary restraints of the democratic political process. A city council that charged extortionate fees for all property development, unjustifiable by mitigation needs, would likely face widespread and well-financed opposition at the next election. Ad hoc individual monetary exactions deserve special judicial scrutiny mainly because, affecting fewer citizens and evading systematic assessment, they are more likely to escape such political controls. ¶ Nor are plaintiffs correct that, without *Nollan/Dolan/Ehrlich* scrutiny, legislatively imposed development mitigation fees are subject to no meaningful means-ends review. As a matter of both statutory and constitutional law, such fees must bear a reasonable relationship, in both intended use and amount, to the deleterious public impact of the development. (Gov.Code, § 66001; *Ehrlich*, *supra*, 12 Cal.4th at pp. 865, 867, 50 Cal.Rptr.2d 242, 911 P.2d 429 (plur. opn. of Arabian, J.); *id.* at p. 897, 50 Cal.Rptr.2d 242, 911 P.2d 429 (conc. opn. of Mosk, J.); *Associated Home Builders etc., Inc. v. City of Walnut Creek* (1971) 4 Cal.3d 633, 640, 94 Cal.Rptr. 630, 484 P.2d 606.) Plaintiffs' hypothetical city could only "put [its] zoning up for sale" in the manner imagined if the "prices" charged, and the intended use of the proceeds, bore a reasonable relationship to the impacts of the various development intensity levels on public resources and interests. While the relationship between means and ends need not be so close or so thoroughly established for legislatively imposed fees as for ad hoc fees subject to *Ehrlich*, the arbitrary and extortionate use of purported mitigation fees, even where legislatively mandated, will not pass constitutional muster. ¶ Finally, we should not lose sight of the constitutional

background. "To put the matter simply, the taking of money is different, under the Fifth Amendment, from the taking of real or personal property. The imposition of various monetary exactions—taxes, special assessments, and user fees—has been accorded substantial judicial deference." (*Ehrlich*, *supra*, 12 Cal.4th at p. 892, 50 Cal.Rptr.2d 242, 911 P.2d 429 (conc. opn. of Mosk, J.).) "There is no question that the takings clause is specially protective of property against *physical occupation* or invasion . . . . It is also true . . . that government generally has greater leeway with respect to noninvasive forms of land-use regulation, where the courts have for the most part given greater deference to its power to impose broadly applicable fees, whether in the form of taxes, assessments, user or development fees." (*Id.* at pp. 875-876, 50 Cal.Rptr.2d 242, 911 P.2d 429 (plur. opn. of Arabian, J.).) ¶ *Nollan* and *Dolan* involved the government's exaction of an interest in specific real property, not simply the payment of a sum of money from any source available; they have generally been limited to that context. (See, e.g., *Monterey v. Del Monte Dunes at Monterey, Ltd.* (1999) 526 U.S. 687, 703, 119 S.Ct. 1624, 143 L.Ed.2d 882 [*Dolan* "inapposite" to permit denial]; *Clajon Production Corp. v. Petera* (10th Cir.1995) 70 F.3d 1566, 1578 [heightened scrutiny limited to exaction of real property]; *Commercial Builders v. Sacramento* (9th Cir.1991) 941 F.2d 872, 875 [*Nollan* inapplicable to housing mitigation fee]; cf. *United States v. Sperry Corp.* (1989) 493 U.S. 52, 62, 110 S.Ct. 387, 107 L.Ed.2d 290, fn. 9 ["It is artificial to view deductions of a percentage of a monetary award as physical appropriations of property. Unlike real or personal property, money is fungible"].) In *Ehrlich*, we

extended *Nollan* and *Dolan* slightly, recognizing an exception to the general rule of deference on distribution of monetary burdens, because the ad hoc, discretionary fee imposed in that case bore special potential for government abuse. We continue to believe heightened scrutiny should be limited to such fees. (Accord, *Krupp v. Breckenridge Sanitation Dist.* (Colo.2001) 19 P.3d 687, 698 [to the extent *Nollan/Dolan* review applies to purely monetary fees, it is limited to "exactions stemming from adjudications particular to the landowner and parcel"].) Extending *Nollan* and *Dolan* generally to all government fees affecting property value or development would open to searching judicial scrutiny the wisdom of myriad government economic regulations, a task the courts have been loath to undertake pursuant to either the takings or due process clause. (See, e.g., *Dolan*, *supra*, 512 U.S. at p. 384, 114 S.Ct. 2309 [reiterating "the authority of state and local governments to engage in land use planning" even when such regulation diminishes individual property values); *Penn Central Transp. Co. v. New York City*, *supra*, 438 U.S. at p. 133, 98 S.Ct. 2646 [that landmarks law burdens have more severe impact on some landowners than others does not render its application a taking: "Legislation designed to promote the general welfare commonly burdens some more than others"]; *Usery v. Turner Elkhorn Mining Co.* (1976) 428 U.S. 1, 19, 96 S.Ct. 2882, 49 L.Ed.2d 752 [wisdom of particular cost-spreading scheme "not a question of constitutional dimension"].)" (Emphasis added.) (*San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th 643, 670-672.)

The U.S. Supreme Court's decision in *Koontz* is factually distinguishable in that it involved an ad-hoc, individualized, parcel specific determination of the monetary exaction, the case did not involve a fee amount set by legislative action, the fee imposed was not a fee amount generally applied, and the opinion did not discuss or set forth a legal proposition that the *Nollan/Dolan* test is applicable to legislatively prescribed monetary permit conditions that apply to a broad class of proposed developments. "An opinion is not authority for a point not raised, considered, or resolved therein. (E.g., *People v. Castellanos* (1999) 21 Cal.4th 785, 799, fn. 9, 88 Cal.Rptr.2d 346, 982 P.2d 211; *San Diego Gas & Elec. Co. v. Superior Court* (1996) 13 Cal.4th 893, 943, 55 Cal.Rptr.2d 724, 920 P.2d 669.)" (*Styne v. Stevens* (2001) 26 Cal.4th 42, 57-58.)

In fact, the California Supreme Court has held that the *Koontz* opinion did not disturb the case authorities that held legislative enactment of generally applicable development fees were not subject to the *Nollan/Dolan* test. The California Supreme Court stated: "An additional ambiguity arises from the fact that the monetary condition in *Koontz*, like the conditions at issue in *Nollan* and *Dolan*, was imposed by the district on an ad hoc basis upon an individual permit applicant, and was not a legislatively prescribed condition that applied to a broad class of permit applicants. In this respect, the money payment at issue in *Koontz* was similar to the monetary recreational-mitigation fee at issue in this court's decision in *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 50 Cal.Rptr.2d 242, 911 P .2d 429 (*Ehrlich*), where we held that because of the greater

risk of arbitrariness and abuse that is present when a monetary condition is imposed on an individual permit applicant on an ad hoc basis, the validity of the ad hoc fee imposed in that case should properly be evaluated under the *Nollan/Dolan* test. (*Ehrlich*, *supra*, at pp. 874-885, 50 Cal.Rptr.2d 242, 911 P.2d 429 (plur. opn. of Arabian, J.); *id.* at pp. 899-901, 50 Cal.Rptr.2d 242, 911 P.2d 429 (conc. opn. of Mask, J.); *id.* at pp. 903, 907, 50 Cal.Rptr.2d 242, 911 P .2d 429 (conc. & dis. opn. of Kennard, J.); *id.* at p. 912, 50 Cal.Rptr.2d 242, 911 P.2d 429 (conc. & dis. opn. of Werdegar, J.).) The *Koontz* decision does not purport to decide whether the *Nollan/Dolan* test is applicable to legislatively prescribed monetary permit conditions that apply to a broad class of proposed developments. (See *Koontz*, *supra*, 570 U.S. at p, , 133 S.Ct. at p. 2608, 186 L.Ed.2d at p. 723 (dis. opn. of Kagan, J.).) Our court has held that legislatively prescribed monetary fees that are imposed as a condition of development are not subject to the *Nollan/Dolan* test. (*San Remo Hotel*, *supra*, 27 Cal.4th at pp. 663-671, 117 Cal.Rptr.2d 269, 41 P.3d 87: see *Santa Monica Beach, Ltd. v. Superior Court* (1999) 19 Cal.4th 952, 966-967, 81 Cal.Rptr.2d 93, 968 P.2d 993 (*Santa Monica Beach*).)" (Emphasis added.) (*California Bldg. Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435,461, fn 11.)

The *Nollan/Dolan* unconstitutional conditions/ exactions test does not apply under the circumstances alleged and matters of which the court may take judicial notice of related to the legislative enactment of the subject TIM fee amount as part of the general plan. The 3rd and 5th causes of action fail to state causes of action for takings under the uncon-

stitutional conditions/exactions doctrine. Therefore, the demurrers to the 3rd and 5th causes of action are sustained. The question becomes whether leave to amend should be granted.

Although the *Nollan/Dolan* test does not apply, fee payers are not left without a means to challenge the fee. Legislatively enacted, generally applicable TIM fees are subject to a "reasonable relationship" level of judicial scrutiny.

"Here, the County made a legislative decision to condition approval of the conversion of land from agricultural to residential use on the project developer providing permanent protection of other agricultural land. Such a generally applicable requirement imposed as a condition of development is subject to a "reasonable relationship" level of judicial scrutiny, as opposed to the heightened scrutiny applied to the imposition of land-use conditions in individual cases as outlined in *Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 and *Dolan v. City of Tigard* (1994) 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304. (*San Remo Hotel v. City and County of San Francisco* (2002) 27 Cal.4th 643, 665-671, 117 Cal.Rptr.2d 269, 41 P.3d 87.) Thus, to be valid, this mitigation requirement must bear a reasonable relationship to the deleterious public impact of the development project. (*Id.* at p. 671, 117 Cal.Rptr.2d 269, 41 P.3d 87.)" (*Building Industry Assn. of Cent. California v. County of Stanislaus* (2010) 190 Cal.App.4th 582, 590.)

However, the exercise of discretion to grant leave to amend the 3rd and 5th causes of action for declaratory relief is subject to the court's ruling on the

demurrer to the declaratory relief causes of action discussed below.

Propriety of Declaratory Relief Causes of Action

Respondent/Defendant County demurs to the 2nd through 7th causes of action on the ground that declaratory relief is not an appropriate method to seek review of an administrative decision.

Petitioner/Plaintiff Sheetz opposes the demurrer on the ground that cases have held that declaratory relief is appropriate to test the validity of a statute or regulation and the 2nd and 3rd causes of action for declaratory relief were brought out of an abundance of caution and in the alternative to the petition for writ of mandate in the event the final administrative order or decision has not yet been issued.

"It is settled that an action for declaratory relief is not appropriate to review an administrative decision. (*Selby Realty Co. v. City of San Buenaventura* (1973) supra, 10 Cal.3d 110, 127, 109 Cal.Rptr. 799,514 P.2d 111; *Hostetter v. Alderson* (1952) 38 Cal.2d 499, 500, 241 P.2d 230; *Escrow Owners Assn. Inc. v. Taft Allen, Inc.* (1967) 252 Cal.App.2d 506, 510, 60 Cal.Rptr. 755; *Floresta, Inc. v. City Council* (1961) 190 Cal.App.2d 599, 612, 12 Cal.Rptr. 182.) Veta's attempt in the third cause of action to obtain review of the Commission's denial of the permit by means of declaratory relief is improper, and the demurrer should have been sustained insofar as Veta alleged that it met the requirements for issuance of the permit and that the Commission lacked jurisdiction to hear the appeal from the decision of the regional commission." (*State of California v. Superior Court* (1974) 12 Cal.3d 237, 249.)

"Section 1060 of the Code of Civil Procedure authorizes a party "who desires a declaration of his or her rights or duties with respect to another" to bring an original action "for a declaration of his or her rights and duties," and permits the court to issue "a binding declaration of these rights or duties." A declaratory relief action is an appropriate method for obtaining a declaration that a statute or regulation is facially unconstitutional, something appellant does not seek. (*Agins v. City of Tiburon* (1979) 24 Cal.3d 266, 272-273, 157 Cal.Rptr. 372, 598 P.2d 25, overruled on other grounds in *First English Evangelical Lutheran Church of Glendale v. Los Angeles County* (1987) 482 U.S. 304, 107 S.Ct. 2378, 96 L.Ed.2d 250.) Where, as here, the challenge is to a regulation's "*application* to the lands of the complaining part[y], . . . the proper and sole remedy [is] administrative mandamus." (*Agins*, at p. 273, 157 Cal.Rptr. 372, 598 P.2d 25; italics added; accord, *Taylor v. Swanson* (1982) 137 Cal.App.3d 416, 418, 187 Cal.Rptr. 111 ["If a landowner desires to attack the overall constitutionality of a zoning ordinance which impedes a desired use of his property, the remedy is an action for declaratory relief . . . ; . . . if the landowner . . . seeks only to obtain a ruling that the regulation as applied to his particular property is unconstitutional, that issue is properly raised before the agency and its adverse decision is reviewable by administrative mandate and not otherwise." (fn. & italics omitted)]; *State of California v. Superior Court* (1974) 12 Cal.3d 237, 248, 249, 115 Cal.Rptr. 497, 524 P.2d 1281 ["It is settled that an action for declaratory relief is not appropriate to review an administrative decision."]; *Tri-County Special Educ. Local Plan Area v. County of Tuolumne* (2004) 123 Cal.App.4th 563, 576, 19

Cal.Rptr.3d 884, quoting *Walker v. Munro* (1960) 178 Cal.App.2d 67, 72, 2 Cal.Rptr. 737 ["'The declaratory relief provisions do not independently empower the courts to stop or interfere with administrative proceedings by declaratory decree.'"]; see *Zetterberg v. State Dept. of Public Health* (1974) 43 Cal.App.3d 657, 663, 118 Cal.Rptr. 100 ["A difference of opinion as to the interpretation of a statute as between a citizen and a governmental agency does not give rise to a justiciable controversy [for declaratory relief . . .]."].) Courts have specifically held that "'the proper method to challenge the validity of conditions imposed on a building permit is administrative mandamus under Code of Civil Procedure section 1094.5.'" (*Rezai v. City of Tustin* (1994) 26 Cal.App.4th 443, 448-449, 31 Cal.Rptr.2d 559, quoting *City of Santee v. Superior Court* (1991) 228 Cal.App.3d 713, 718, 279 Cal.Rptr. 22.) ¶ Because appellant's complaint and FAC improperly sought declaratory relief to review a purported administrative decision, demurrer was properly sustained on that ground alone. (See *State of Calif v. Superior Court*, *supra*, 12 Cal.3d at pp. 248-249, 115 Cal.Rptr. 497, 524 P.2d 1281; *Selby Realty Company v. City of San Buenaventura* (1973) 10 Cal.3d 110, 126-127, 109 Cal.Rptr. 799,514 P.2d 111.)" (Emphasis added.) (*Tejon Real Estate, LLC v. City of Los Angeles* (2014) 223 Cal.App.4th 149, 154-155.)

As stated earlier in this ruling, petitioner's/ plaintiff's facial challenges to the TIM fee amount and program is time barred. That leaves the alleged as applied challenges to the TIM fee paid. Where the challenge is to the application of the TIM fee to the lands of the petitioner/plaintiff, the proper and sole remedy is administrative mandamus and not declar-

atory relief. (*Tejon Real Estate, LLC v. City of Los Angeles* (2014) 223 Cal.App.4th 149, 155.)

Earlier in this ruling the court sustained the statute of limitations demurrer to the 6th and 7th causes of action without leave to amend. The court now sustains the improper declaratory relief demurrer to the 2nd through 5th causes of action.

There does not appear to be a reasonable possibility that the 2nd through 5th causes of action for declaratory relief can be cured by amendment, the 2nd through 5th causes of action for declaratory relief appear to be incapable of amendment to cure the fatal defect, and petitioner/plaintiff has not demonstrated how the petition/complaint can be amended to cure the defect. (See *Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 322.) The demurrer to the 2nd through 5th causes of action is sustained without leave to amend.

TENTATIVE RULING# 4: THE DEMURER TO THE PETITION FOR WRIT OF MANDATE (1ST CAUSE OF ACTION) IS OVERRULED. THE DEMURER TO THE 2ND THROUGH 7TH CAUSES OF ACTION ARE SUSTAINED WITHOUT LEAVE TO AMEND. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS V. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE

BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 10:00 A.M. ON FRIDAY, APRIL 6, 2018 IN DEPARTMENT NINE UNLESS OTHERWISE NOTIFIED BY THE COURT. ALL OTHER LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ANOTHER DATE. (EL DORADO COUNTY SUPERIOR COURT LOCAL RULES, RULE 7.10.05, et seq.) SHOULD A LONG CAUSE HEARING BE REQUESTED, THE PARTIES ARE TO APPEAR AT 10:00 A.M. ON FRIDAY, APRIL 6, 2018 IN DEPARTMENT NINE WITH THREE MUTUALLY AGREEABLE DATES FALLING ON A FRIDAY MORNING AT 8:30 A.M.

SUPERIOR COURT OF THE
STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF EL DORADO

MINUTE ORDER

Case No: PC20170255	George Sheetz et al. v. County of El Dorado
Date: 05/28/19	Time: 4:00 Dept: 9

Ruling on Submitted Matter (HDEM 05/25/18 9:30 D9)

Honorable Judge Warren C. Stracener presiding. Clerk: Sherry Howe. Court Reporter: None.

Having considered the submitted matter, the Court rules as follows:

After careful review of the moving and opposing papers and further consideration of the arguments of the parties following oral argument, the Court adopts its tentative ruling as the final ruling on the submitted matter.

Demurrer to PETITION of SHEETZ as to COUNTY OF EL DORADO overruled as to 1st cause(s) of action only.

Demurrer to PETITION of SHEETZ as to COUNTY OF EL DORADO sustained without leave to amend as to 2nd through 7th cause(s) of action only.

The minute order was placed for collection/mailing in Cameron Park, California, either through United States Post Office, Inter-Departmental Mail, or Courthouse Attorney Box to those parties listed herein.

Executed on 05/29/18, in Cameron Park, California by S. Howe.

cc: Paul Beard, II, Esq., 1121 L Street, #700, Sacramento, CA 95814

cc: Glen C. Hansen, Esq., 2100 21st Street, Sacramento, CA 95818

EXHIBIT B

Law and Motion Calendar – November 30, 2020
Department Nine (1:30 p.m.)

1. Sheetz v. County of El Dorado PC-20170255

Hearing Re: Petition for Writ of Mandate.

The petition for writ of mandate alleges: the County does not make individualized determinations of each particular project regarding the nature and extent of each project's traffic impacts; instead the County looks to the non-individualized Traffic Impact Mitigation (TIM) Fee Program set forth in the County's General Plan; the TIM Fee program funds construction of new roads and widening of existing roads; the TIM Fee Program authorizes the County to impose traffic mitigation fees on a project applicant as a condition of a building permit without regard to the specific nature of the projected project's actual traffic impact and imposes the fees based on geographic zones where the property is located and the general category of development; the TIM fee program requires that all new development will pay the full cost of constructing new roads and widening existing roads regardless of the fact that existing residents and nonresidents also benefit from the new and widened roads; upon information and belief, the TIM Fee Program originated with the passage of Measure Y in 1998; in 2016 the County imposed a fee of $23,420 as a condition of issuing petitioner a building permit to construct a manufactured house on his property; the County's decision to impose a fee constitutes a prejudicial abuse of discretion, because respondent imposed a mitigation fee as a permit condition that did not have a reasonable relationship between the public impacts of respondent's proposed project to

construct a manufactured house and the need for improvements to the state and local road; respondent imposed a development fee as a permit condition in an amount that violated the Fifth and Fourteenth Amendments of the U.S. Constitution in that respondent did not make an individualized determination that an essential nexus and rough proportionality existed between the public impacts of the proposed project to construct the manufactured home and the need for improvements to state and local roads; respondent failed to make the required individualized determination and could not have demonstrated the requisite essential nexus and rough proportionality; respondent's decision to impose a fee of $23,420 as a condition of petitioner's building permit is not supported by legally sufficient findings and the findings are not supported by legally sufficient evidence; exacting $23,420 from petitioner as a condition of building a single manufactured home does not conform to the Mitigation Fee Act or the unconstitutional takings doctrine; and as a victim of the alleged unlawful action by County, petitioner has a clear, present and beneficial right in the performance of the County's lawful obligation to conform to the law and refund the fee. (Petition and Complaint, paragraphs 14-17, 19, 20, and 32-34.)

Petitioners' corrected opening brief filed on January 2, 2020 contends: the TIM fee set in 2012 and imposed on petitioner Sheetz in 2016 violated Government Code, § 66001(b) of the Mitigation Fee Act, because respondent County did not engage in an individual assessment in 2016 concerning the amount of the TIM fee to impose related to petitioner Sheetz building a single family manufactured house on the

property and did not establish on an individual basis that there was a reasonable relationship between the fee amount imposed on petitioner Sheetz and individualized costs for traffic improvements attributable to the single building to be placed on the petitioner's property; and, citing *San Remo Hotel L.P. v. City And County of San Francisco* (2002) 27 Cal.4th 643, 667, petitioners argue that the record before the court establishes that the amount of the TIM fee imposed on petitioner Sheetz violated the California Constitution as a matter of law, because respondent County did not establish the fee bears a reasonable relationship in both the intended use and amount of the deleterious impact of the development as the fee imposed is clearly the product of arbitrary factors other than the specific home's individual purported impacts on traffic.

Respondent County opposes the writ on the following grounds: the opening brief is essentially an untimely motion to reconsider the court's prior rulings that Section 66001(b) does not apply to the subject TIM fees; the setting of the amount of the TIM fees imposed as a condition of petitioner Sheetz obtaining a building permit complied with the constitutional standards articulated in *San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th 643; petitioner applies the incorrect standard for the alleged constitutional violation; the County has met its burden to prove with the evidence produced from the administrative record that the County used valid methods to satisfy the reasonable relationship standard and to set the TIM fee amount; petitioner Sheetz has not met his burden to prove that the record does not support the County's reasonableness

determinations; petitioner's argument concerning 9.2 vehicle trips is misleading; the TIM fees were established by factors that comply with Section 66001(a); and the refund remedy sought is improper.

Petitioners replied: respondent County failed to make any legislative findings when it adopted the 2012 TIM fee program as required by Section 66001(a); the Board made no findings about use and type of development upon which the fee is imposed regarding non-senior residential uses (AR 243-255.) or findings about the relationship between the need for construction and expansion of roads and the non-senior development; nothing in the court's prior rulings on the demurrers and the motion to augment the record precludes petitioner's argument that Section 66001(b) applies; the required determinations under both Sections 66001(a) and 66001(b) must be made in order to impose a TIM fee; the TIM fee imposed violates the constitutional requirements as articulated in *San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th 643; respondent has not supported its claim that it complied with Section 66001(a) with specific citations to the record; and a full refund of the fee is the appropriate remedy.

Prior Court Rulings

The prior rulings of the court on the motion to augment the record and on the demurrers to the complaint and petition are not rulings on the merits of the writ petition or a judgment that collaterally estops or bars petitioners from raising the issue of the applicability of Section 66001(b) to the process of setting the TIM fee.

Notice of Right to Protest TIM Fee

Citing Government Code, § 66020(d)(1), petitioners assert that the County failed to provide petitioner Sheetz with the statutorily mandated notice of his right to protest and legally challenge the TIM fee imposed upon him as a condition to obtaining a building permit.

Respondent County argues that the substance of the claim in the petition for writ of mandate and opening brief is not based upon any alleged lack of notice, because he did protest those fees.

Section 66020(d) sets forth the statute of limitations for filing a protest or filing an action to attack, review, set aside, void, or annul the imposition of the fee.

"(a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a development project, as defined in Section 66000, by a local agency by meeting both of the following requirements: ¶ (1) Tendering any required payment in full or providing satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition. ¶ (2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information: ¶ (A) A statement that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest. ¶ (B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest." (Government Code, § 66020(a).)

"(d)(1) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a development project. Each local agency shall provide to the project applicant a notice in writing at the time of the approval of the project or at the time of the imposition of the fees, dedications, reservations, or other exactions, a statement of the amount of the fees or a description of the dedications, reservations, or other exactions, and notification that the 90-day approval period in which the applicant may protest has begun. ¶ (2) Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a development project by a local agency within 180 days after the delivery of the notice. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings." (Government Code, § 66020(d).)

"Any party *who files a protest pursuant to subdivision (a)* may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a development project by a local agency *within 180 days after the delivery of the notice*." (§ 66020, subd.

(d)(2), italics added.) Thus, the 180-day limitations period under section 66020 does not commence running until written notice of the 90-day protest period has been delivered to a party complying with the protest provisions. [Footnote omitted.]" (Emphasis added.) (*Branciforte Heights, LLC v. City of Santa Cruz* (2006) 138 Cal.App.4th 914, 925.)

Even assuming for the sake of argument that the record reflects that respondent County did not provide petitioner Sheetz with notice of his right to protest the imposition of the fee and/or file an action related to that imposition, the remedy for failure to provide the mandated notice is that the statute of limitation for bringing the action does not commence to run. The failure to provide the mandated notice of right to protest and/or file litigation does not give rise to a remedy to invalidate the imposition of the fee and/or invalidate the amount of fee imposed.

In fact, petitioner Sheetz filed protest letters (AR 5081-5083 and AR 5086-5087.); and petitioners filed a legal action for review of the imposition of the TIM fee where the court is considering the petitioners' claims of invalidity of the setting of the amount of the TIM fee on the merits. The statute of limitations has not been raised as an issue in this case and, therefore, the remedy for any purported lack of notice of the right to protest has been applied.

Statutory Claims

Petitioners argue: that the language of Section 66001 creates a two stage process to the imposition of the TIM fee, first the quasi-legislative adoption of the development fees under Section 66001(a) and then Section 66001(b) applies to each and every specific fee

imposed on a specific development, which requires the local agency to determine how there is a reasonable relationship between the amount of the fee and cost of the public facility or portion of the public facility attributable to the specific development on which the fee is based; and the record reflects that respondent County did not engage in an individualized Section 66001(b) proceeding to determine the exact amount of the TIM fee to impose upon plaintiff Sheetz, which would determine how there is a reasonable relationship between the amount of the fee.

Petitioners/Plaintiffs object to the court taking judicial notice of these items on the sole ground that they are irrelevant to the proceeding.

The objection is overruled.

Statute of Limitations

"'A demurrer on the ground of the bar of the statute of limitations will not lie where the action may be, but is not necessarily barred.' (*Moseley v. Abrams* (1985) 170 Cal.App.3d 355, 359, 216 Cal.Rptr. 40; *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762, 775, 167 Cal.Rptr. 440.) It must appear clearly and affirmatively that, upon the face of the complaint, the right of action is necessarily barred. (*Valvo v. University of Southern California* (1977) 67 Cal.App.3d 887, 895, 136 Cal.Rptr. 865; *Mangini v. Aerojet-General/Corp.* (1991) 230 Cal.App.3d 1125, 1155, 281 Cal.Rptr. 827.) This will not be the case unless the complaint alleges every fact which the defendant would be required to prove if he were to plead the bar of the applicable statute of limitation as an affirmative defense. (*Farris v. Merritt* (1883) 63 Cal. 118, 119.)" (*Lockley v. Law Office of Cantrell, Green,*

Pekich, Cruz & McCort (2001) 91 Cal.App.4th 875, 881.)

Citing Government Code, § 65009(c)(1), respondent County contends that the challenge to the amount of the TIM fee paid by petitioner to obtain a construction permit for his parcel had to be brought within 90 days of the Board of Supervisor's (Board) adoption of the challenged general plan provision setting the amount of the TIM fee and that the time to bring that challenge expired on May 14, 2012, long before the filing of the action.

Petitioner argues in opposition that the applicable statute of limitations is the 180 day limitation to bring an action after the mitigation fee was imposed as a condition of issuance of a construction permit for petitioner's specific parcel under the provisions of Government Code, § 66020(d), the three year statute of limitations set forth in Code of Civil Procedure, § 338(a) for liability created by statute (the Mitigation Fee Act) and two or four year statutes of limitation for liability based upon constitutional claims (Code of Civil Procedure, §§ 335.1 and 343.), rather than the 90 day limitation set forth in Government Code, § 65009(c)(1).

Respondent County replied: the allegations of the petition establish that petitioner is not bringing an "as applied" challenge to the TIM fee imposed and, therefore, it is merely an untimely facial challenge to the Board's enactment on February 14, 2012; and even assuming petitioner Sheetz's has set forth a timely "as applied" challenge, petitioner Friends of El Dorado County have failed to allege any timely claim in this action and have not asserted an "as applied" claim.

The California Supreme Court resolved this particular issue and found that even where a governmental entity's legislative decision is being challenged, provided there is also an "as applied" challenge to the ordinance or fee enactment being first applied to a specific parcel, the proper statute of limitation to apply is the one whose limitation period commences upon imposition of the mitigation fee or exaction as a condition for development of the specific parcel and not the statute of limitation that commences to run upon legislative enactment of the statute or ordinance setting the fee or exaction.

"In the related context of local government development fees, the Court of Appeal has distinguished between a "legislative decision" adopting a generally applicable fee and an "adjudicatory decision" imposing the fee on a particular development. (*N. T. Hill Inc. v. City of Fresno* (1999) 72 Cal.App.4th 977, 986, 85 Cal.Rptr.2d 562.) Adjudicatory fee decisions, the court held, are subject to the protest procedures and limitations period set forth in Government Code section 66020: legislative fee decisions are subject only to the limitations period in Government Code section 66022. "Put slightly differently, section 66022 applies when the plaintiff's goal is a judicial finding that the legislative decision adopting the charge cannot be at p. 332, 4 Cal.Rptr.2d 897.) ¶ Moreover, HBA's concern that the standard-based fee "is a spinning turnstile for the collection of money" is unwarranted. Section 66001, subdivisions (c) through (e) require that collected fees be kept segregated from other funds; unexpended funds be accounted for yearly; and if a use for the collected fees cannot be shown, they must be refunded pro rata with

interest. (*Garrick Development Co. v. Hayward Unified School Dist.*, *supra*, 3 Cal.App.4th at p. 332, 4 Cal.Rptr.2d 897.) Thus, there is a mechanism in place to guard against unjustified fee retention. (*Ibid.*) ¶ Further, the standard-based method of calculating fees does not prevent there being a reasonable relationship between the fee charged and the burden posed by the development. There is no question that increased population due to new development will place additional burdens on the city-wide community and recreation facilities. Thus, to maintain a similar level of service to the population, new facilities will be required. It is logical to not duplicate the existing facilities, but rather, to expand the recreational opportunities. To this end, the City intends to construct an aquatic center, a gymnasium and fitness center, and a naval air museum. Since the facilities are intended for city-wide use, it is reasonable to base the fee on the existing ratio of community and recreation facility asset value to population. The fact that specific construction plans are not in place does not render the fee unreasonable. The public improvements are generally identified. The record, here the Colgan Report, need only provide a reasonable basis *overall* for the City's action. (*Garrick Development Co. v. Hayward Unified School Dist.*, *supra*, 3 Cal.App.4th at p. 333, 4 Cal.Rptr.2d 897.)" (Emphasis added) (*Home Builders Assn. of Tulare/Kings Counties, Inc. v. City of Lemoore* (2010) 185 Cal.App.4th 554, 564-565.)

"For a general fee applied to all new residential development, a site-specific showing is neither available nor needed. (*Garrick Development Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App.4th

320, 334, 4 Cal.Rptr.2d 897 (*Garrick*).) Instead, "[t]his showing may properly be derived from districtwide estimations concerning anticipated new residential development and impact on school facilities. [Citations.] The district is not required to evaluate the impact of a particular development project before imposing fees on a developer: rather, the required nexus is established based on the justifiable imposition of fees 'on a class of development projects rather than particular ones.'" (*Cresta Bella*, *supra*, 218 Cal.App.4th at p. 447, 160 Cal.Rptr.3d 437, quoting *Garrick*, *supra*, at p. 335, 4 Cal.Rptr.2d 897.)" (Emphasis added.) (*Tanimura & Antle Fresh Foods, Inc. v. Salinas Union High School Dist.* (2019) 34 Cal.App.5th 775, 786.)

"(a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency, the local agency shall do all of the following: ¶ (1) Identify the purpose of the fee. ¶ (2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged. ¶ (3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed. ¶ (4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed." (Government Code, § 66001(a).)

"(b) In any action imposing a fee as a condition of approval of a development project by a local agency, the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed." (Government Code, § 66001(b).)

Once the fee amount is imposed on a class of development projects by legislative action making the determinations required under Sections 66001(a), the County is not mandated by statute to hold an individualized adjudicatory hearing on each and every permit application in order to determine the impact of a single parcel development before imposing the class fee amount. "For a general fee applied to all new residential development, a site-specific showing is neither available nor needed." (*Tanimura & Antle Fresh Foods, Inc. v. Salinas Union High School Dist.* (2019) 34 Cal.App.5th 775, 786.) The plain language of the Statute and case law does not mandate a legislative determination under Section 66001(a) followed by individualized adjudicatory hearings under Section 66001(b). *Garrick*, *supra*, did not state a legal proposition that individualized adjudicatory hearings were required in all instances to determine the amount of the fee imposed pursuant to the requirements set forth in Section 66001(b) and, in fact, did not decide that issue at all, because the appellate court in *Garrick*, *supra*, determined that the issue of compliance with Section 66001(b) was not before them and did not apply in that case. ". . . we concur in the position of the district and court below-that subdivision (b) does not apply in this case."

(*Garrick Development Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320, 336.) "An opinion is not authority for a point not raised, considered, or resolved therein. (E.g., *People v. Castellanos* (1999) 21 Cal.4th 785, 799, fn. 9, 88 Cal.Rptr.2d 346, 982 P.2d 211; *San Diego Gas & Elec. Co. v. Superior Court* (1996) 13 Cal.4th 893, 943, 55 Cal.Rptr.2d 724, 920 P.2d 669.)" (*Styne v. Stevens* (2001) 26 Cal.4th 42, 57-58.)

Section 66001(a) applies to an action establishing, increasing, or imposing a fee as a condition of approval of a development project, while Section 66001(b) only applies where there is an action imposing a fee as a condition of approval of a development project. Once a TIM fee is established, increased, or imposed by quasi-legislative action, there is no express requirement that an individualized adjudicatory action be taken in order to impose the fee on applicants for building permits, because the local agency has already imposed the fee as a condition of the development by quasi-legislative action on a class of developments. As cited earlier, where a general fee is applied to all new residential development, ". . . a site-specific showing is neither available nor needed." and it "'. . . is not required to evaluate the impact of a particular development project before imposing fees on a developer; rather, the required nexus is established based on the justifiable imposition of fees 'on a class of development projects rather than particular ones.'" (*Tanimura & Antle Fresh Foods, Inc. v. Salinas Union High School Dist.* (2019) 34 Cal.App.5th 775, 786.) To hold that a TIM fee cannot be imposed on a development without individualized adjudicative hearings after such a fee was imposed on that

category of development by quasi-legislative action as provided in Section 66001(a) would render that portion of Section 66001(a) allowing the imposition of the fee by such quasi-legislative action mere surplusage. "Two cardinal rules of statutory construction are that: (1) a construction of a statute which makes some words surplusage is to be avoided, and (2) we do not presume the Legislature performs idle acts. (*Shoemaker v. Myers* (1990) 52 Cal.3d 1, 22, 276 Cal.Rptr. 303, 801 P.2d 1054; *People v. Craft* (1986) 41 Cal.3d 554, 560-561, 224 Cal.Rptr. 626, 715 P.2d 585.)" (*City of Huntington Park v. Superior Court* (1995) 34 Cal.App.4th 1293, 1300.)

"The trial court is limited in its review of the City's assessment of mitigation fees, and this court's review of the trial court's determination is de novo. Assessment of mitigation fees is a quasi-legislative action. The authority of the trial court is, therefore, "limited to determining whether the decision of the agency was arbitrary, capricious, entirely lacking in evidentiary support, or unlawfully or procedurally unfair." (*Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 786, 187 Cal.Rptr. 398, 654 P.2d 168.)" (Emphasis added.) (*City of San Marcos v. Loma San Marcos, LLC* (2015) 234 Cal.App.4th 1045, 1053.)

"The adoption of development impact fees under the Mitigation Fee Act is a quasi-legislative act, which we review under the standards of traditional mandate. (*Garrick Development Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320, 328, 4 Cal.Rptr.2d 897; Code Civ. Proc., § 1085.) "We determine only whether the action taken was arbitrary, capricious or entirely lacking in evidentiary

support, or whether it failed to conform to procedures required by law." (*Garrick Development Co.*, at p. 328, 4 Cal.Rptr.2d 897; *Warmington Old Town Associates v. Tustin Unified School Dist.* (2002) 101 Cal.App.4th 840, 861-862, 124 Cal.Rptr.2d 744.) "The action will be upheld if the City adequately considered all relevant factors and demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." (*Home Builders Assn. of Tulare/Kings Counties, Inc. v. City of Lemoore* (2010) 185 Cal.App.4th 554, 561, 112 Cal.Rptr.3d 7 (*City of Lemoore*).) ¶ In a challenge to development fees, the public agency bears the initial burden of producing evidence to show it used a valid method for imposing the fee in question. If it meets this burden, the plaintiff must establish that the fee is invalid, that is, that its use or the need for the public facility are not reasonably related to the development, or "the amount of the fee bears no reasonable relationship to the cost of the public facility attributable to the development." (*City of Lemoore*, *supra*, 185 Cal.App.4th at p. 562, 112 Cal.Rptr.3d 7.)" (*Boatworks, LLC v. City of Alameda* (2019) 35 Cal.App.5th 290, 298.)

"Review of local entities' legislative determinations is by ordinary mandamus under Code of Civil Procedure section 1085. Such review is limited to an inquiry into whether the action was arbitrary, capricious or entirely lacking in evidentiary support. (*Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 305, 223 Cal.Rptr. 18.) Legislative enactments are presumed to be valid, and to overcome the presumption of validity, the petitioner must produce evidence

"compelling the conclusion that the ordinance is, as a matter of law, unreasonable and invalid. [Citations.] There is also a presumption that the board ascertained the existence of necessary facts to support its action, and that the 'necessary facts' are those required by the applicable standards which guided the board. [Citations.]" (*Orinda Homeowners Committee v. Board of Supervisors* (1970) 11 Cal.App.3d 768, 775, 90 Cal.Rptr. 88.)" (Emphasis added.) (*Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 992-993.)

"If a fee subject to the Mitigation Fee Act "is challenged, the local agency has the burden of producing evidence in support of its determination. [Citation.] The local agency must show that a valid method was used for imposing the fee in question, one that established a reasonable relationship between the fee charged and the burden posed by the development." (*Homebuilders Assn. of Tulare/Kings Counties, Inc. v. City of Lemoore* (2010) 185 Cal.App.4th 554, 561, 112 Cal.Rptr.3d 7.) The "burden of producing evidence is not equivalent to the burden of proof." (*Id.* at p. 562, 112 Cal.Rptr.3d 7.) Rather, while the "agency has the obligation to produce evidence sufficient to avoid a ruling against it on the issue" (*ibid.*), the party "challenging an impact fee has to show that the record before the local agency clearly did not support the underlying determinations regarding the reasonableness of the relationship between the fee and the development." (*Ibid.*) ¶ "Accordingly, the local agency has the initial burden of producing evidence sufficient to demonstrate that it used a valid method for imposing the fee in question, one that established a reasonable relationship be-

tween the fee charged and the burden posed by the development. If the local agency does not produce evidence sufficient to avoid a ruling against it on the validity of the fee, the [party] challenging the fee will prevail. However, if the local agency's evidence is sufficient, the [challenging party] must establish a requisite degree of belief in the mind of the trier of fact or the court that the fee is invalid, e.g., that the fee's use and the need for the public facility are not reasonably related to the development project on which the fee is imposed or the amount of the fee bears no reasonable relationship to the cost of the public facility attributable to the development." (*Home-builders Assn. of Tulare/Kings Counties, Inc. v. City of Lemoore*, *supra*, 185 Cal.App.4th at p. 562, 112 Cal.Rptr.3d 7.)" (Emphasis added.) (*City of San Marcos v. Loma San Marcos, LLC* (2015) 234 Cal.App.4th 1045, 1058-1059.)

- Factors Considered While Setting the Amount of Fees Imposed

Petitioners essentially contend that the entire TIM Fee Program is fatally defective, because during the many years the program was discussed, analyzed and enacted, the issues of affordability of the impact fees for all development types and that the fees not discourage developers of affordable housing were raised, which petitioners contend resulted on non-residential developments being consistently favored over single family homes (Emphasis added.) (See Petitioners Corrected Opening Brief, page 7, line 21 to page 8, line 4.)

In reviewing the quasi-legislative enactment of the TIM fees the court is limited to determining whether

the decision of the agency was arbitrary, capricious, entirely lacking in evidentiary support, or unlawfully or procedurally unfair. ""The action will be upheld if the City adequately considered all relevant factors and demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." (Citation omitted.)" (*Boatworks, LLC v. City of Alameda* (2019) 35 Cal.App.5th 290, 298.)

As stated earlier in this ruling, the court presumes that the "[B]oard ascertained the existence of necessary facts to support its action, and that the 'necessary facts' are those required by the applicable standards which guided the board. (Citations omitted.)" (*Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 992-993.)

Therefore, if the relevant factors were considered and those relevant factors demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute, it is irrelevant that other factors were considered sometime during the long process that resulted in enactment of the TIM Fee Program and amendments adjusting the fee amounts.

Petitioners cite only two pages from the administrative record, AR 2464 and AR 2680, in support of the argument. AR 2464 is contained in a DOT memo to the Board, dated April 9, 2003. While the memo raised policy outcomes the Board was interested in, which included affordability of the impact fees <u>for all development types</u> and that the fees not discourage developers of affordable housing, the memo did not state that such considerations were to disfavor single family residential development when

considering fees for non-residential developments and single family residential developments, nor does the memo express a policy that single family residential development was to pay more than could be established as a reasonable relationship between the fee charged and the burden posed by the single family residence development. In fact, the memo discussed the fact that while the impact fees should and will play a major role in financing the General Plan road infrastructure, it is also possible that other funding sources would be needed to completely fund the road infrastructure improvements. (AR 2469.) In other words, nearly 13 years prior to enactment of the amended fees that were imposed on petitioner Sheetz, this DOT memo did not state that the Board's only course of action or recommended course of action was to disfavor single family residential development to the advantage of non-residential developments when setting fee amounts or that single family residential development should pay more TIM fees than could be established as a reasonable relationship between the fee charged and the burden posed by the single family residence development. The memo also fully acknowledged and recognized the operation of Government Code, § 66001(a) and the constitutional requirements to set the fees; and expressly conceded: "For the purposes of this memorandum, State Law, and the Federal Constitution "nexus" requirements establish the maximum the County can charge to a new development (e.g. the ceiling)." (AR 2473.)

Petitioner also cites page AR 2680, which is contained in a May 25, 2004 DOT memo to the Board solely related to the El Dorado Hills/Salmon Falls Road Impact Fee. The memo recommends at AR 2680

that the Board defer an interim increase in the non-residential Road Impact Fee (RIF) due to the complexities associated with non-residential development and the necessary analysis required to determine the interim revised fee amount. (Emphasis the court's.) The DOT also stated that it was advisable to defer any changes to these fees pending creation of the new comprehensive fee program Post General Plan. The Final TIM fee program was adopted by the Board by Resolution 266-2006 years later. (See AR 119-138.)

The recommendation to defer any increase in non-residential development was expressly premised on difficulties in calculation of the interim fee increase for non-residential development in order to meet the statutory and constitutional requirements. It was not recommended to defer an increase in non-residential TIM fees in order to favor non-residential development or to shift costs to residential developments from non-residential developments. In addition, the deferment for whatever reason was not relevant to the issues of whether the Board set a rock solid foundation for the TIM fee program when the Final TIM Fee Program was enacted in 2006 and whether the fees imposed by the County on petitioner Sheetz under the 2012 schedule, enacted by the Board nearly nine years later in February 2012 when the prior schedule amounts were decreased, met the statutory and constitutional requirements. Petitioners have not cited any portion of the administrative record that establishes that the deferral of tees due to difficulties in calculation at the moment that an interim fee increase was proposed resulted in the fee imposed on petitioner Sheetz 13 years later as being in excess of the amount that represented the reasonable relation-

ship between the fee charged and the burden posed by the placement of a single family residence on his property.

In short, the petitioner has not cited evidence in the administrative record that established the decision of the Board was arbitrary, capricious, entirely lacking in evidentiary support, or unlawfully or procedurally unfair concerning the issue of the factors considered.

- Review of Quasi-Legislative Action by Board

The administrative record establishes that the County enacted the TIM Fee program by quasi-legislative actions, set TIM Fee amounts by categories of development and identified projects that the different fees imposed applied to, and made adjustments to the fee amounts by category of development over the years, including the 2012 fee schedule enacted by Board Resolution 021-2012 on February 14, 2012. Petitioner admits in his verified petition that the Fee Zone 6 TIM fees for Highway 50 improvements and local road improvements were imposed in the amounts set forth in the 2012 schedule of fees as a condition for issuance of petitioner's building permit on July 13, 2016 (Verified Petition, paragraphs 18-2; and AR 4338.). (Also see AR 0001-0256 and AR 4330-4343.)

Therefore, the subject 2012 schedule of TIM fees for Zone 6 imposed on petitioner Sheetz for Highway 50 improvements and local road improvements was premised upon a foundation of Board resolutions and quasi-legislative actions that goes back to at least 2006 when the Final TIM fee program was adopted by the Board by Resolution 266-2006. (See AR 119-138.) This is acknowledged in Board Resolution 021-2012 at

AR 4330. In addition, that Resolution acknowledges that the Board by prior resolution provided that the TIM fees shall be adjusted annually, thereby confirming that the Board takes into consideration the current costs of the identified improvements that are needed due to the development projects in determining the fee imposed on each class of development project. (AR 4330.)

The County DOT prepared and submitted a report to the Board prior to approval of the final TIM Fee Program in 2006, which set forth in sufficient detail the purpose of the fee, identified the traffic improvement projects to which the fee is to be used, the methodology of determination and determination of the reasonable relationship between the fee's use and the type of development project on which the fee is imposed, and a determination that there is a reasonable relationship between the need for the identified road improvements and the type of development project on which the fee is imposed. (AR 3512-3538.) As reflected in the report and list of attachments at the conclusion of the report, the supporting Final Supplement to the 2004 General Plan EIR, reports, and studies were attached to the DOT report. (AR 3538.) Those reports, studies, and EIR Supplement are found at AR 1261-1425 (Final TIM Fee Program EIR Supplement), AR 2117-2180 (Dowling and Associates, Inc.'s US 50 Strategic Corridor Operations Study), AR 2276-2432 (Dowling and Associates, Inc.'s Traffic Impact Mitigation Fee Update 2005), and AR 2339-2432 (URS Transportation Mitigation Impact Fee Program Project Update, May 2006.). Furthermore the administrative record includes a 2004 General Plan TIM Program Final Report (Develop-

ment Fee Technical Report), dated September 14, 2005. (AR 2109-2116.)

Over the years the Board considered and enacted amendments to the fees imposed by category of development and zone location after considering increased or decreased costs per road improvement projects as applied to each category of building development and zone. The methodologies of how these costs were determined were included in the documents before the Board. (See AR 0139-0215; AR 0243-0256; AR 3648-3686; AR 3691-3715; AR 3951-3967; and AR 3969-3990.)

In addition, during the proceedings leading up to approval of the amendment of the TIM Fee Schedule amounts in 2012, the Board had before it various documents in the administrative record, such as the Impact Fee Program Report for 2010-2011, the 2011 DOT Annual Traffic Count Summary and the 2007-2011 DOT Five Year Traffic Summary. (AR 4165-4212.)

The Master Report relating to the adoption of Board Resolution 021-2012 on February 14, 2012 stated the DOT reported at the December 13, 2011 meeting that there are extra funds available to reduce the TIM Fee amounts across all categories and to offset any revenue shortfall associated with the creation of a category for age restricted residential; the 2012 schedule will be less than the currently effective 2010 fee amounts; and a DOT Staff presentation concerning the 2012 TIM Fee Update explaining the methodology applied to the reduction of the fees in the zones was attached. (AR 4344-4357.) The 2012 TIM Fee Update presented to the Board stated the methodology for calculating the reduction of the TIM

fees for 2012 due to costs savings from review of the Capital Improvement Program cost estimates, deleting projects that are unnecessary for loss of service mitigation, deleting the remaining HOV lane project, and reducing the traffic signal line item in the TIM fee program. (AR 4322-4329.)

As stated earlier, the standard the court applies when reviewing the quasi-legislative enactment of the TIM fees is whether the decision of the agency was arbitrary, capricious, entirely lacking in evidentiary support, or unlawfully or procedurally unfair. ""The action will be upheld if the City adequately considered all relevant factors and demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." (Citation omitted.)" (*Boatworks, LLC v. City of Alameda* (2019) 35 Cal.App.5th 290, 298.)

The court also presumes that the "[B]oard ascertained the existence of necessary facts to support its action, and that the 'necessary facts' are those required by the applicable standards which guided the board. (Citations omitted.)" (*Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 992-993.)

The evidence in the administrative record establishes that the Board considered all relevant factors and demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute; and the decision of the Board was supported by the evidence before it and not arbitrary, capricious, or unlawfully or procedurally unfair.

Petitioner's reply asserts that the Board failed to make required findings concerning the Section 6601

requirements for enacting TIM Fees. In enacting the Final TIM fee program by the Board by Resolution 266-2006 the Board made the following findings in that Resolution: studies were conducted to analyze the impacts of contemplated future development on existing public facilities in the County, and to determine the need for new public facilities and improvements required by the new development; said studies set forth the relationship between new development, the needed facilities, and the estimated costs of these improvements; the County has conducted a full review of the project pursuant to the California Environmental Quality Act (CEQA) and has, through Resolution 265-2006, certified a Supplement to the 2004 General Plan Environmental Impact Report which documents the potential increase in the severity of one impact identified in the 2004 General Plan Environmental Impact Report; the facts and evidence presented in the reports, analyses, and a public hearing at the Board of Supervisors establish that there is a reasonable relationship between the need for the described public facilities and the impacts of the types of development described, for which the corresponding fee is charged; and the facts and evidence presented in the reports, analyses, and a public hearing at the Board of Supervisors establish there is a reasonable relationship between the fee's use and the type of development for which the fee is charged (document package on file with the Clerk of the Board of Supervisors and at the Department of Transportation). (AR 120.) As stated earlier in this ruling, the subject 2012 schedule of TIM fees for Zone 6 imposed on petitioner Sheetz for Highway 50 improvements and local road improvements was premised upon a foundation of Board

resolutions and quasi-legislative actions that goes back to at least 2006 when the Final TIM fee program was adopted by the Board by Resolution 266-2006. (AR 243.) Board Resolution 021- 2012, which reduced the TIM fees, found that on December 19, 2011 the Board directed the lowering of the fee amounts based upon the balance of savings identified in the TIM Fee Program project costs report, after the creation of the age-restricted category. (AR 244.) There are sufficient findings to support the quasi-legislative action establishing and imposing the fee.

Citing AR 2019 and AR 2114, petitioners take issue with the use of trip length generation rate calculations as not being supported by the record and essentially argues that this invalidates the entire calculation of the TIM Fees costs from 2005 to the present as they purportedly have no reasonable relationship between the fee charged and the burden posed by the development. (Petitioners' Opening Brief, page 7, lines 9-20.) AR 2019 is the first page of the County Department of Transportation's (DOT's) 2004 General Plan TIM Program Final Report (Development Fee Technical Report), dated September 14, 2005. The citation to that page by petitioners generally states that the "technical report" made certain findings relating to traffic impacts by different classes of development and then references AR 2114. AR 2114 is page six of the County DOT's Report. The report expressly states actual trip generation rates for single family residences was recently measured from approximately 5 trips per household to little more than 12 trips per household; and that a trip generation rate of 9.2 vehicle trips per household was used for single family residences. Petitioners essen-

tially argue that this trip generation rate is invalid and can not form the basis for the County's decision, because there is no indication how 9.2 trips per single family residence was calculated and what analysis supports the statement that there were recently 5-12 trips per household.

The County has a Department that is an expert in transportation, called the DOT. That expert organization stated to the County Board in an official report that actual trip generation measurements were recently done that established that there were 5-12 vehicle trips per single family residence. The recent actual trip generation measurements are sufficient to support an expert opinion setting forth a reasonable basis for finding that there was 9.2 vehicle trips per single family residence to be used in calculating the reasonable relationship between the fee charged and the burden posed by the development of single family residences. It has not been established that the decision of the Board was arbitrary, capricious, entirely lacking in evidentiary support, or unlawfully or procedurally unfair concerning the trip generation issue.

As for the remainder of the statutory challenges to the enactment, respondent County has met its initial burden of producing evidence sufficient to demonstrate that it used a valid method for imposing the fee on petitioner Sheetz—one that established a reasonable relationship between the fee charged and the burden posed by the development.

Petitioners have not established with matters contained in the administrative record before the Board the requisite degree of belief in the mind of the court that the fee is invalid as the evidence does not

establish that the fee's use and the need for the public facility are not reasonably related to the development project on which the fee is imposed or the amount of the fee bears no reasonable relationship to the cost of the public facility attributable to the petitioner's placement of a single family residence on his property. In other words, the respondent County having met its burden, petitioners have not established the use or the need for the public road facilities are not reasonably related to the development of single family residences in zone 6, or the amount of the fee bears no reasonable relationship to the cost of the public facility attributable to the development of single family residences in zone 6.

The court will now consider petitioner's constitutional challenge to the imposition of the TIM fee.

Constitutional Challenge to Fee

Petitioner Sheetz argues: the California Supreme Court in its opinion in *San Remo Hotel L.P. v. City And County of San Francisco* (2002) 27 Cal.4th 643, 667 and 671, determined that legislatively imposed development mitigation fees as matter of constitutional law must bear a reasonable relationship in both the intended use and amount to the deleterious public impact of the development; there is insufficient evidence in the administrative record to support the amount of the TIM fee imposed on single family home developments; and that the single family home development fees were established according to factors having nothing to do with the new homes' actual impact on traffic, such as in 2003 there was a desire to keep impact fees affordable for all development types in order to create jobs and

contribute significantly to the County's tax base, expressing a desire to make sure the impact fees did not discourage developers of affordable housing, and deferring increases in non-residential developments and not residential development, which favor non-residential development over single family homes.

Respondent County argues in opposition that petitioner applies the wrong standard in discussing his constitutional claim under *San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th 643; and the setting of the amount of the TIM fees imposed as a condition of petitioner Sheetz obtaining a building permit complied with the constitutional standards articulated in the *San Remo Hotel* appellate opinion.

In finding that a residential hotel conversion and demolition ordinance (HCO) is not subject to the *Nollan/Dolan* test, because the HCO does not provide City staff or administrative bodies with any discretion as to the imposition or size of a housing replacement fee, the City did not single out plaintiffs for payment of a housing replacement fee and the HCO is generally applicable legislation in that it applies, without discretion or discrimination, to every residential hotel in the city, an appellate court stated: "The "sine qua non" for application of *Nollan/Dolan* scrutiny is thus the "discretionary deployment of the police power" in "the imposition of land-use conditions in individual cases." (*Ehrlich*, supra, 12 Cal.4th at p. 869, 50 Cal.Rptr.2d 242, 911 P.2d 429 (plur. opn. of Arabian, J.).) Only "individualized development fees warrant a type of review akin to the conditional conveyances at issue in *Nollan* and *Dolan*." (*Santa Monica Beach*, *supra*, 19 Cal.4th at pp. 966-967, 81 Cal.Rptr.2d 93,

968 P.2d 993; see also *Landgate, Inc. v. California Coastal Com.* (1998) 17 Cal.4th 1006, 1022, 73 Cal.Rptr.2d 841, 953 P.2d 1188 (*Landgate*) [heightened scrutiny applies to "development fees imposed on a property owner on an individual and discretionary basis"].) ¶ Under our precedents, therefore, housing replacement fees assessed under the HCO are not subject to *Nollan/Dolan/Ehrlich* scrutiny. ¶ Plaintiffs argue that a legislative scheme of monetary exactions (i.e., a schedule of development mitigation fees) nevertheless should be subject to the same heightened scrutiny as the ad hoc fees we considered in *Ehrlich*, because of the danger a local legislative body will use such purported mitigation fees—unrelated to the impacts of development—simply to fill its coffers. Thus, plaintiffs hypothesize that absent careful constitutional scrutiny a city could "put zoning up for sale" by, for example, "prohibit[ing] all development except for one-story single-family homes, but offer[ing] a second story permit for $20,000, an apartment building permit for $10,000 per unit, a commercial building permit for $50,000 per floor, and so forth." [Footnote omitted.] ¶ We decline plaintiffs' invitation to extend heightened takings scrutiny to all development fees, adhering instead to the distinction we drew in *Ehrlich*, *supra*, 12 Cal.4th 854, 50 Cal.Rptr.2d 242,911 P.2d 429, *Landgate*, *supra*, 17 Cal.4th 1006, 73 Cal.Rptr.2d 841, 953 P.2d 1188, and *Santa Monica Beach*, *supra*, 19 Cal.4th 952, 81 Cal.Rptr.2d 93, 968 P.2d 993, between ad hoc exactions and legislatively mandated, formulaic mitigation fees. While legislatively mandated fees do present some danger of improper leveraging, such generally applicable legislation is subject to the ordinary restraints of the democratic political process.

A city council that charged extortionate fees for all property development, unjustifiable by mitigation needs, would likely face widespread and well-financed opposition at the next election. Ad hoc individual monetary exactions deserve special judicial scrutiny mainly because, affecting fewer citizens and evading systematic assessment, they are more likely to escape such political controls. ¶ Nor are plaintiffs correct that, without *Nollan/Dolan/Ehrlich* scrutiny, legislatively imposed development mitigation fees are subject to no meaningful means-ends review. As a matter of both statutory and constitutional law, such fees must bear a reasonable relationship, in both intended use and amount, to the deleterious public impact of the development. (Gov.Code, § 66001; *Ehrlich*, *supra*, 12 Cal.4th at pp. 865, 867, 50 Cal.Rptr.2d 242, 911 P.2d 429 (plur. opn. of Arabian, J.); *id.* at p. 897, 50 Cal.Rptr.2d 242, 911 P.2d 429 (cone. opn. of Mosk, J.); *Associated Home Builders etc., Inc. v. City of Walnut Creek* (1971) 4 Cal.3d 633, 640, 94 Cal.Rptr. 630, 484 P.2d 606.) Plaintiffs' hypothetical city could only "put [its] zoning up for sale" in the manner imagined if the "prices" charged, and the intended use of the proceeds, bore a reasonable relationship to the impacts of the various development intensity levels on public resources and interests. While the relationship between means and ends need not be so close or so thoroughly established for legislatively imposed fees as for ad hoc fees subject to *Ehrlich*, the arbitrary and extortionate use of purported mitigation fees, even where legislatively mandated, will not pass constitutional muster. ¶ Finally, we should not lose sight of the constitutional background. "To put the matter simply, the taking of money is different, under the Fifth Amend-

ment, from the taking of real or personal property. The imposition of various monetary exactions—taxes, special assessments, and user fees—has been accorded substantial judicial deference." (*Ehrlich*, *supra*, 12 Cal.4th at p. 892, 50 Cal.Rptr.2d 242, 911 P.2d 429 (conc. opn. of Mosk, J.).) "There is no question that the takings clause is specially protective of property against *physical occupation* or invasion . . . . It is also true . . . that government generally has greater leeway with respect to noninvasive forms of land-use regulation, where the courts have for the most part given greater deference to its power to impose broadly applicable fees, whether in the form of taxes, assessments, user or development fees." (*Id.* at pp. 875-876, 50 Cal.Rptr.2d 242, 9i 1 P.2d 429 (plur. opn. of Arabian, J.).) ¶ *Nollan* and *Dolan* involved the government's exaction of an interest in specific real property, not simply the payment of a sum of money from any source available; they have generally been limited to that context. (See, e.g., *Monterey v. Del Monte Dunes at Monterey, Ltd.* (1999) 526 U.S. 687, 703, 119 S.Ct. 1624, 143 L.Ed.2d 882 [*Dolan* "inapposite" to permit denial]; *Clajon Production Corp. v. Petera* (10th Cir.1995) 70 F.3d 1566, 1578 [heightened scrutiny limited to exaction of real property]; *Commercial Builders v. Sacramento* (9th Cir.1991) 941 F.2d 872, 875 [*Nollan* inapplicable to housing mitigation fee]; cf. *United States v. Sperry Corp.* (1989) 493 U.S. 52, 62, 110 S.Ct. 387, 107 L.Ed.2d 290, fn. 9 ["It is artificial to view deductions of a percentage of a monetary award as physical appropriations of property. Unlike real or personal property, money is fungible"].) In *Ehrlich*, we extended *Nollan* and *Dolan* slightly, recognizing an exception to the general rule of deference on

distribution of monetary burdens, because the ad hoc, discretionary fee imposed in that case bore special potential for government abuse. We continue to believe heightened scrutiny should be limited to such fees. (Accord, *Krupp v. Breckenridge Sanitation Dist.* (Colo.2001) 19 P.3d 687, 698 [to the extent *Nollan/Dolan* review applies to purely monetary fees, it is limited to "exactions stemming from adjudications particular to the landowner and parcel"].) Extending *Nollan* and *Dolan* generally to all government fees affecting property value or development would open to searching judicial scrutiny the wisdom of myriad government economic regulations, a task the courts have been loath to undertake pursuant to either the takings or due process clause. (See, e.g., *Dolan*, *supra*, 512 U.S. at p. 384, 114 S.Ct. 2309 [reiterating "the authority of state and local governments to engage in land use planning" even when such regulation diminishes individual property values]; *Penn Central Transp. Co. v. New York City*, *supra*, 438 U.S. at p. 133, 98 S.Ct. 2646 [that landmarks law burdens have more severe impact on some landowners than others does not render its application a taking: "Legislation designed to promote the general welfare commonly burdens some more than others"]; *Usery v. Turner Elkhorn Mining Co.* (1976) 428 U.S. 1, 19, 96 S.Ct. 2882, 49 L.Ed.2d 752 [wisdom of particular cost-spreading scheme "not a question of constitutional dimension".)" (Emphasis added.) (*San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th 643, 670-672.)

In summary, in order to meet constitutional requirements the legislatively enacted development fees imposed pursuant to Government Code, § 66001

must meet the standard that " . . . such fees must bear a reasonable relationship, in both intended use and amount, to the deleterious public impact of the development. (Citations omitted.)" (*San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th 643, 671.) In addition, the ". . . government generally has greater leeway with respect to noninvasive forms of land-use regulation, where the courts have for the most part given greater deference to its power to impose broadly applicable fees, whether in the form of taxes, assessments, user or development fees. (Citations omitted.)". (*San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th 643, 671.)

The previously cited portions of the administrative record establishes that the amount of the TIM fees imposed for zone 6 single family residences bear a reasonable relationship, in both intended use and amount, to the deleterious public impact of the development of single family residences in zone 6. Therefore, the TIM fee amounts enacted and imposed by the Board's quasi-legislative amendment on all single family residences within zone 6 is not unconstitutional.

The petition for writ of mandate is denied.

TENTATIVE RULING # 1: THE PETITION FOR WRIT OF MANDATE IS DENIED. APPEARANCES ARE REQUIRED AT 1:30 P.M. ON MONDAY, NOVEMBER 30, 2020 IN DEPARTMENT NINE. NOTE: NO PERSONAL APPEARANCES WILL BE ALLOWED DUE TO THE ONGOING PUBLIC HEALTH CRISIS. APPEARANCES VIA ZOOM ARE REQUIRED AND

MEETING INFORMATION WILL BE PROVIDED. PARTIES TO CONTACT THE COURT IMMEDIATELY AT 530-621-5867 TO PROVIDE THEIR CONTACT INFORMATION IN ORDER FOR THE COURT TO SEND ZOOM INVITES TO ATTENDEES.

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF EL DORADO

MINUTE ORDER

Case No: PC20170255	George Sheetz et al. v. County of El Dorado
Date: 11/30/20	Time: 4:00 Dept: 9

Ruling on Submitted Matter (H2)

Honorable Judge Dylan Sullivan presiding. Clerk: Sherry Howe. Court Reporter: None.

Having considered the submitted matter, the Court rules as follows:

In San Remo Hotel the state constitution is congruent with the Takings Clause of the Fifth Amendment on these facts. "By virtue of including "damage[]" to property as well as its "tak[ing]," the California clause "protects a somewhat broader range of property values" than does the corresponding federal provision. (Hensler v. City. of Glendale (1994) 8 Cal.4th 1, 9, fn. 4, 32. Cal.Rptr.2d 244, 876 P.2d 1043; accord, Varjabedian v. City of Madera (1977) 20 Cal.3d 285, 298, 142 Cal.Rptr. 429, 572 P.2d 43; see Bacich v. Board of Control (1943) 23 Cal.2d 343, 350, 144 P.2d 818; Reardon v. San Francisco (1885) 66 Cal. 492, 501, 6 P. 317.) But aside from that difference, not pertinent here, we appear to have construed the clauses congruently. (See, e.g., Santa Monica Beach, Ltd. v. Superior Court (1999) 19 Cal.4th 952, 957, 962-975, 81 Cal.Rptr.2d 93, 968 P.2d 993 (Santa Monica Beach) [takings challenge to rent control regulation

under both clauses considered without separate discussion of the state clause]; Hensler v. City of Glendale, supra, at p. 9, fn. 4, 32 Cal.Rptr.2d 244, 876 P.2d 1043 [conclusion that U.S. Const., 5th Amend. was not violated "applies equally" to Cal. Const. art. I, § 19].) Despite plaintiffs' having sought relief in this court only for a violation of article I, section 19 of the California Constitution, therefore, we will analyze their takings claim under the relevant decisions of both this court and the United States Supreme Court." (San Remo Hotel L.P. v. County and City of San Francisco (2002) 27 Cal. 4th 643, 644.)

San Remo Hotel finds the constitution scrutiny tracts with the Government Code § 66001. "Nor are plaintiffs correct that, without Nollan/Dolan/Ehrlich scrutiny, legislatively imposed development mitigation fees are subject to no meaningful means-ends review. As a matter of both statutory and constitutional law, such fees must bear a reasonable relationship, in both intended use and amount, to the deleterious public impact of the development. (Gov.Code, § 66001; Ehrlich, supra, 12 Cal.4th at pp. 865, 867, 50 Cal.Rptr.2d 242, 911 P.2d 429 Ehrlich, supra, 12 Cal.4th at pp. 865, 867, 50 Cal.Rptr.2d 242, 911 P.2d 429 (plur. opn. of Arabian, J.); id. at p. 897, 50 Cal.Rptr.2d 242, 911 P.2d 429 (conc. opn. of Mosk, J.); Associated Horne Builders etc., Inc. v. City of Walnut Creek (1971) 4 Cal.3d 633, 640, 94 Cal.Rptr. 630, 484 P.2d 606.) 11 (San Remo Hotel (2002) 27 Cal. 4th at 671.)

The facts of this case are distinguishable from Koontz. In Koontz, the respondent would approve the permit if petitioner would give part of his land. The specific facts in Koontz trigger Nollan/Dolan. (Koontz 133

S.Ct. at p. 2596.). Our facts do not trigger Nollan/Dolan because this a mitigation fee program where the El Dorado County Board of Supervisors studied and approved this fee. "It is beyond dispute that "[t]axes and user fees . . . are not 'takings.'" Brown, supra, at 243, n. 2, 123 S.Ct. 1406 (SCALIA, J., dissenting). We said as much in County of Mobile v. Kimball, 102 U.S. 691, 703, 26 L.Ed. 238 (1881), and our cases have been clear on that point ever since. United States v. Sperry Corp., 493 U.S. 52, 62, n. 9, 110 S.Ct. 387, 107 L.Ed.2d 290 (1989); see A. Magnano Co. v. Hamilton, 292 U.S. 40, 44, 54 S.Ct. 599, 78 L.Ed. 1109 (1934); Dane v. Jackson, 256 U.S. 589, 599, 41 S.Ct. 566, 65 L.Ed. 1107 (1921); Henderson Bridge Co. v. Henderson City, 173 U.S. 592, 614-615, 19 S.Ct. 553, 43 L.Ed. 823 (1899). This case therefore does not affect the ability of governments to impose property taxes, user fees, and similar laws and regulations that may impose financial burdens on property owners." (Koontz 133 S.Ct. at pp. 2600, 2601.)

This court's ruling on the demurrer cited the California Supreme Court's finding Nollan/Dolan scrutiny did not apply to legislative enactments of generally applicable development fees even considering Koontz. After reviewing the administrative record, the court still finds Koontz does not apply.

The California Supreme Court has held the Koontz opinion did not disturb the case authorities that held legislative enactment of generally applicable development fees were not subject to the Nollan/Dolan test. The California Supreme Court stated: "An additional ambiguity arises from the fact that the monetary condition in Koontz, like the conditions at issue in

Nollan and Dolan, was imposed by the district on an ad hoc basis upon an individual permit applicant, and was not a legislatively prescribed condition that applied to a broad class of permit applicants. In this respect, the money payment at issue in Koontz was similar to the monetary recreational-mitigation fee at issue in this court's decision in Ehrlich v. City of Culver City (1996) 12 Cal.4th 854, 50 Cal.Rptr.2d 242, 911 P.2d 429 (Ehrlich), where we held that because of the greater risk of arbitrariness and abuse that is present when a monetary condition is imposed on an individual permit applicant on an ad hoc basis, the validity of the ad hoc fee imposed in that case should properly be evaluated under the Nollan/Dolan test. (Ehrlich, supra, at pp. 874-885, 50 Cal.Rptr.2d 242, 911 P.2d 429 (plur. opn. of Arabian, J.); id. at pp. 899-901, 50 Cal.Rptr.2d 242, 911 P.2d 429 (conc. opn. of Mosk, J.); id. at pp. 903, 907, 50 Cal.Rptr.2d 242, 911 P.2d 429 (conc. & dis. opn. of Kennard, J.); id. at p. 912, 50 Cal.Rptr.2d 242, 911 P.2d 429 (conc. & dis. opn. of Werdegar, J.) .) The Koontz decision does not purport to decide whether the Nollan/Dolan test is applicable to legislatively prescribed monetary permit conditions that apply to a broad class of proposed developments. (See Koontz, supra, 570 U.S. at p. ----, 133 S.Ct. at p. 2608, 186 L.Ed.2d at p. 723 (dis. opn. of Kagan, J.) .) Our court has held that legislatively prescribed monetary fees that are imposed as a condition of development are not subject to the Nollan/Dolan test. (San Remo Hotel, supra, 27 Cal.4th at pp. 663-671, 117 Cal.Rptr.2d 269, 41 P.3d 87; see Santa Monica Beach, Ltd. v. Superior Court (1999) 19 Cal.4th 952, 966-967, 81 Cal.Rptr.2d 93, 968 P.2d 993 (Santa Monica Beach).)" (Emphasis added.) (California Bldg. Industry Assn. v. City of San Jose

(2015) 61 Cal.4th 435, 461, fn 11.).

The Petition for Writ of Mandate is denied.

All parties, complaints and case now dispositioned.

The minute order was placed for collection/mailing in Cameron Park, California, either through United States Post Office, Inter-Departmental Mail, or Courthouse Attorney Box to those parties listed herein.

Executed on 12/08/20, in Cameron Park, California by S. Howe.

cc: Paul J. Beard, II, Esq., 1121 L Street, #700, Sacramento, CA 95814

cc: David Livingston, County Counsel, 330 Fair Lane, Placerville, CA 95667

cc: Glen C. Hansen, Esq., 2100 21st Street, Sacramento, CA 95818

cc: William Abbott, Esq., 2100 21st Street, Sacramento, CA 95818

cc: Kathleen Markham, Esq., 330 Fair Lane, Placerville, CA 95667

* * *

Court of Appeal, Third Appellate District
Colette M. Bruggman, Clerk
Electronically FILED on 8/18/2025 by
R. Raff, Deputy Clerk

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

GEORGE SHEETZ,
Plaintiff and Appellant,
v.
COUNTY OF EL DORADO,
Defendant and Respondent.

C093682
El Dorado County
No. PC20170255

BY THE COURT:
Appellant's petition for rehearing is denied.

EARL, P.J.

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cc: See Mailing List

* * *

Court of Appeal, Third Appellate District - No. C093682

S292822

IN THE SUPREME COURT OF CALIFORNIA

En Banc

GEORGE SHEETZ, Plaintiff and Appellant,

v.

COUNTY OF EL DORADO, Defendant and Respondent.

The application to appear as counsel pro hac vice is granted. (Cal. Rules of Court, rule 9.40(a).)

The petition for review is denied. On the court's own motion, the Reporter of Decisions is directed not to publish in the Official Appellate Reports the opinion in the above-entitled appeal filed July 29, 2025, which appears at 113 Cal.App.5th 113. (Cal. Const., art. VI, section 14; Cal. Rules of Court, rule 8.1125(c)(2).)

GUERRERO
Chief Justice

RESOLUTION NO. 021-2012

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO

Amending the 2004 General Plan Traffic Impact Mitigation (TIM) Fee Program and Adopting TIM Fee Rates

WHEREAS, the County Board of Supervisors has long recognized the need for new development to help fund the roadway and bridge improvements necessary to serve that new development; and

WHEREAS, starting in 1984 and continuing until the present time, the Board has adopted and updated various fee resolutions to ensure that new development on the western slope pay to fund its fair share of the costs of improving the county and state roadways necessary to serve that new development; and

WHEREAS, the County prepared a new General Plan entitled "2004 El Dorado County General Plan: A Plan for Managed Growth and Open Roads; A Plan for Quality Neighborhoods and Traffic Relief, and in July of 2004 adopted that plan; and

WHEREAS pursuant to Public Resources Code Section 21000 et seq., on August 22, 2006, with Resolution 265-2006, the County certified the Traffic Impact Mitigation Fee Program Supplement to the 2004 General Plan Environmental Impact Report, issued a Supplemental Statement of Overriding Considerations, and made Supplement Findings of Fact; and

WHEREAS pursuant to Government Code Section 66001 et seq., the County adopted the 2004 General

by an increase or decrease in the project costs by updating improvement cost estimates using actual construction costs of ongoing and completed projects, the most current cost estimates for those projects that are far enough along in the project development cycle to have project specific cost estimates, and for all other projects, the Engineering News Record-Building Cost Index; and

WHEREAS Resolution 114-2009 adopted on June 2, 2009, amended the 2004 General Plan Traffic Impact Mitigation Fee Program and left the TIM Fee Rates unchanged from 2008; and

WHEREAS Resolution 070-2010 adopted on June 8, 2010, amended the 2004 General Plan Traffic Impact Mitigation Fee Program and left the TIM Fee Rates unchanged from 2009; and

WHEREAS the County presently has only two categories of fees for residential projects; single family and multi-family, and does not consider the age of the residents when assessing the fees; and

WHEREAS Senior Citizen Housing Developments (as defined in the California Civil Code Sections 51.2 and 51.3) have been shown to generate fewer trips than non-Senior Citizen Housing Developments; and

WHEREAS the County Board of Supervisors on October 28, 2008, directed separate fee categories for single family and multi-family Age Restricted housing (also known as Senior Citizen housing in California Civil Code Sections 51.2 and 51.3) be established for the Traffic Impact Mitigation Fee Program; and

WHEREAS the County Board of Supervisors on December 19, 2011, directed single family and multi-family Age Restricted fee categories in Zone 8, and for

all zones which are within community regions and have infrastructure in place, be established for the Traffic Impact Mitigation Fee Program at 38% of the fee for single and multi-family residential categories, respectively; and that Age Restricted single family and multi-family housing shall be that as defined in California Civil Code Section 51.3;

WHEREAS the County Board of Supervisors on December 19, 2011, directed a lowering of the TIM fees by the balance of the savings identified in the annual review of the TIM Fee Program project costs, after the creation of Age Restricted categories;

WHEREAS after a full public hearing during which the fee structure was studied and reviewed the Board determined to adopt the updated fee structure as presented by staff at the public hearing;

NOW THEREFORE, BE IT RESOLVED:

A. The Board of Supervisors hereby adopts the amended 2004 General Plan Traffic Impact Mitigation Fee Program and the fees as shown in the attached Exhibit A within each of the areas of benefit shown on the map in Exhibit C.

B. The Age Restricted Categories (Single Family and Multi-Family within community regions with public infrastructure in place) shall apply to Zones 2, 3, and 8 exclusively.

C. Those building permit applicants that have final applications submitted and accepted after the effective date of the amended 2004 General Plan TIM Fee Program (April 13, 2012) will pay the fee rate(s) listed in the attached Exhibit A.

D. Those building permit applicants that have final applications submitted and accepted prior to

April 13, 2012, and the permit has not been issued, will pay the fee rate(s) listed in the attached Exhibit A.

E. The fees listed in the attached Exhibit A will not apply to any permit issued prior to adoption of this Resolution.

F. All TIM Fee Program receipts are to be expended on projects shown on Exhibit B; the proportions paid for each project by the West Slope TIM account, the El Dorado Hills TIM account, and the Highway 50 TIM account are also shown on Exhibit 8.

G. All references to earlier programs in agreements, conditions of approval, mitigation measures, etc., will be assumed to apply to the new TIM Fee Program where:

1. References to the former RIF are assumed to also include the new 2004 EDH TIM
2. References to the former TIM are assumed to also include the new 2004 TIM
3. References to the former State TIM and the former Interim Highway 50 programs are assumed to also include the new 2004 Highway 50 TIM.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held on the 14 day of February, 2012. by the following vote of said Board:

Ayes: Briggs, Nutting, Knight, Sweeney, Santiago
Noes: none
Absent: none

ATTEST
Suzanne Allen de Sanchez
Clerk of the Board of Supervisors
By_____ _____
Deputy Clerk First Vice - Chair, Board of Supervisors Ron Briggs

I certify that:

The foregoing instrument is a correct copy of the original on file in this office.

By_____ Date: _____
Deputy Clerk

Appendix 156a

EXHIBIT A

To Resolution 021-2012 Setting the 2004 General Plan Traffic Impact Mitigation Fee

FEE ZONE NUMBER 1

Project	Highway 50 Component	Local Road Component	Fee Total
Single-family Residential	$3,060	$11,580	$14,640
Multi-family Residential	$2,000	$7,530	$9,530
Single-family Age Restricted Residential	N/A	N/A	N/A
Multi-family Age Restricted Residential	N/A	N/A	N/A
High-Trip Commercial (per sq. foot)	$2.08	$14.37	$16.45
General Commercial (per sq. ft.)	$0.97	$6.69	$7.66
Office (per sq. ft.)	$0.25	$1.72	$1.97
Industrial (per sq. ft.)	$0.16	$1.09	$1.25

Warehouse (per sq. ft.)	$0.08	$0.55	$0.63
Church (per sq. ft.)	$0.08	$0.55	$0.63
Gas station (per pump)	$980	$6,750	$7,730
Golf course (per hole)	$796	$5,490	$6,286
Campground (per campsite)	$315	$2,190	$2,505
Bed & Breakfast (per rented room)	$159	$1,100	$1,259

FEE ZONE NUMBER 2

Project	Highway 50 Component	Local Road Component	Fee Total
Single-family Residential	$9,970	$25,770	$35,740
Multi-family Residential	$6,410	$16,890	$23,300
Single-family Age Restricted Residential	$3,790	$9,790	$13,580

Appendix 158a

Multi-family Age Restricted Residential	$2,430	$6,420	$8,850
High-Trip Commercial (per sq. foot)	$6.45	$15.85	$22.30
General Commercial (per sq. ft.)	$3.02	$7.40	$10.42
Office (per sq. ft.)	$0.77	$1.89	$2.66
Industrial (per sq. ft.)	$0.50	$1.20	$1.70
Warehouse (per sq. ft.)	$0.25	$0.61	$0.86
Church (per sq. ft.)	$0.25	$0.61	$0.86
Gas station (per pump)	$2,860	$7,000	$9,860
Golf course (per hole)	$2,496	$6,090	$8,586
Camp-ground (per campsite)	$947	$2,300	$3,247
Bed & Breakfast (per rented room)	$469	$1,160	$1,629

Appendix 159a

FEE ZONE NUMBER 3

Project	Highway 50 Component	Local Road Component	Fee Total
Single-family Residential	$9,970	$25,770	$35,740
Multi-family Residential	$6,410	$16,890	$23,300
Single-family Age Restricted Residential	$3,790	$9,790	$13,580
Multi-family Age Restricted Residential	$2,430	$6,420	$8,850
High-Trip Commercial (per sq. foot)	$3.81	$18.63	$22.44
General Commercial (per sq. ft.)	$1.78	$8.71	$10.49
Office (per sq. ft.)	$0.45	$2.23	$2.68
Industrial (per sq. ft.)	$0.28	$1.42	$1.70

Warehouse (per sq. ft.)	$0.15	$0.71	$0.86
Church (per sq. ft.)	$0.15	$0.71	$0.86
Gas station (per pump)	$1,690	$8,240	$9,930
Golf course (per hole)	$1,474	$7,160	$8,634
Campground (per campsite)	$553	$2,720	$3,273
Bed & Breakfast (per rented room)	$278	$1,360	$1,638

FEE ZONE NUMBER 4

Project	Highway 50 Component	Local Road Component	Fee Total
Single-family Residential	$1,920	$11,410	$13,330
Multi-family Residential	$1,250	$7,370	$8,620
Single-family Age Restricted Residential	N/A	N/A	N/A

Appendix 161a

Multi-family Age Restricted Residential	N/A	N/A	N/A
High-Trip Commercial (per sq. foot)	$2.50	$15.41	$17.91
General Commercial (per sq. ft.)	$1.17	$7.16	$8.33
Office (per sq. ft.)	$0.30	$1.84	$2.14
Industrial (per sq. ft.)	$0.20	$1.17	$1.37
Warehouse (per sq. ft.)	$0.11	$0.58	$0.69
Church (per sq. ft.)	$0.11	$0.58	$0.69
Gas station (per pump)	$1,170	$7,140	$8,310
Golf course (per hole)	$964	$5,860	$6,824
Campground (per campsite)	$375	$2,300	$2,675
Bed & Breakfast (per rented room)	$188	$1,160	$1,348

Appendix 162a

FEE ZONE NUMBER 5

Project	Highway 50 Component	Local Road Component	Fee Total
Single-family Residential	$2,850	$10,620	$13,470
Multi-family Residential	$1,860	$6,860	$8,720
Single-family Age Restricted Residential	N/A	N/A	N/A
Multi-family Age Restricted Residential	N/A	N/A	N/A
High-Trip Commercial (per sq. foot)	$2.22	$15.67	$17.89
General Commercial (per sq. ft.)	$1.04	$7.27	$8.31
Office (per sq. ft.)	$0.26	$1.86	$2.12
Industrial (per sq. ft.)	$0.17	$1.18	$1.35

Warehouse (per sq. ft.)	$0.08	$0.60	$0.68
Church (per sq. ft.)	$0.08	$0.60	$0.68
Gas station (per pump)	$1,040	$7,260	$8,300
Golf course (per hole)	$848	$5,970	$6,818
Campground (per campsite)	$333	$2,340	$2,673
Bed & Breakfast (per rented room)	$167	$1,190	$1,357

FEE ZONE NUMBER 6

Project	Highway 50 Component	Local Road Component	Fee Total
Single-family Residential	$2,260	$21,160	$23,420
Multi-family Residential	$1,480	$13,760	$15,240

Appendix 164a

Single-family Age Restricted Residential	N/A	N/A	N/A
Multi-family Age Restricted Residential	N/A	N/A	N/A
High-Trip Commercial (per sq. foot)	$1.98	$16.02	$18
General Commercial (per sq. ft.)	$.92	$7.40	$8.32
Office (per sq. ft.)	$0.23	$1.89	$2.12
Industrial (per sq. ft.)	$0.15	$1.20	$1.35
Warehouse (per sq. ft.)	$0.07	$0.61	$0.68
Church (per sq. ft.)	$0.07	$0.61	$0.68
Gas station (per pump)	$920	$7,390	$8,310
Golf course (per hole)	$757	$6,090	$6,847
Campground (per campsite)	$297	$2,390	$2,687

Bed & Breakfast (per rented room)	$149	$1,210	$1,359

FEE ZONE NUMBER 7

Project	Highway 50 Component	Local Road Component	Fee Total
Single-family Residential	$3,080	$11,670	$14,750
Multi-family Residential	$2,010	$7,570	$9,580
Single-family Age Restricted Residential	N/A	N/A	N/A
Multi-family Age	N/A	N/A	N/A
Restricted Residential			
High-Trip Commercial (per sq. foot)	$7.26	$10.27	$17.53
General Commercial (per sq. ft.)	$3.39	$4.78	$8.17
Office (per sq. ft.)	$0.86	$1.24	$2.10
Industrial (per sq. ft.)	$0.55	$0.77	$1.32

Warehouse (per sq. ft.)	$0.27	$0.39	$0.66
Church (per sq. ft.)	$0.27	$0.39	$0.66
Gas station (per pump)	$3,390	$4,780	$8,170
Golf course (per hole)	$2,784	$3,960	$6,744
Campground (per campsite)	$1,095	$1,550	$2,645
Bed & Breakfast (per rented room)	$547	$770	$1,317

FEE ZONE NUMBER 8

Project	Highway 50 Component	Local Road Component	Fee Total
Single-family Residential	$4,800	$23,340	$28,140
Multi-family Residential	$3,130	$15,240	$18,370
Single-family Age Restricted Residential	$1,830	$8,870	$10,690
Multi-family Age Restricted Residential	$1,190	$5,790	$6,980

Appendix 167a

High-Trip Commercial (per sq. foot)	$2.00	$16.29	$18.29
General Commercial (per sq. ft.)	$0.95	$7.65	$8.60
Office (per sq. ft.)	$0.24	$1.96	$2.20
Industrial (per sq. ft.)	$0.15	$1.25	$1.40
Warehouse (per sq. ft.)	$0.08	$0.63	$0.71
Church (per sq. ft.)	$0.08	$0.63	$0.71
Gas station (per pump)	$930	$7,380	$8,310
Golf course (per hole)	$777	$6,290	$7,067
Campground (per campsite)	$321	$2,610	$2,931
Bed & Breakfast (per rented room)	$161	$1,300	$1,461

Notes:

1. All 2004 General Plan Traffic Impact Mitigation Fee Program fees for all projects shall be paid at the building permit stage. The fees charged will be the

fees in effect on the date a completed building permit application is accepted by the Development Services Department's Building Services. Pursuant to the terms of the Board of Supervisors Policy B-15 for fee deferral, some residential projects may be eligible to elect to pay the fee over a five-year period.

2. No fee shall be required for remodeling of existing residential units that were built pursuant to a valid building permit from County of El Dorado's Development Services Department's Building Services.

3. The fees for non-residential structures shall be based on the projected use of structures, as determined by plans submitted for building permits, and shall be paid prior to the issuance of a building permit. Pursuant to the terms of Board of Supervisors Policy B-3 for fee deferral, some non-residential projects may be eligible to defer payment of the fee until issuance of the certificate of occupancy, or pursuant to the terms of Board of Supervisors Policy B-3, may elect to pay a portion of the fee over a five-year period.

4. Mobile homes on permanent foundations shall be subject to the single-family residential fee.

5. Second dwelling as defined under County Code Chapter 17.15.020 shall be subject to the multi-family fee.

6. Fees for Age Restricted housing (also know [sic] as Senior Citizen housing) are applicable to developments that meet the following:

   a. Definitions in California Civil Code Sections 51.2 and 51.3;
   b. Are within community regions that have or will be served by public infrastructure (including

but not limited to sewer, water, and transportation).

7. Single-family Age Restricted Residential fee is 38% of the Single-family Residential fee rate as defined in the appropriate TIM Fee Zone. Multi-family Age Restricted Residential fee is 38% of the Multi-family Residential fee rate as defined in the appropriate TIM Fee Zone. The Age Restricted fees have been established based upon trip generation rates for land use categories 251 and 252 from the Institute of Transportation Engineers' Trip Generation, 8th Edition.

8. A gas pump (defined) is a customer service location with a fuel delivery device containing fuel dispensing hose(s), which may or may not be located on an island or other raised platform.

9. At the discretion of the Director of Transportation, an applicant required to pay a fee calculated on the basis of the above schedule may receive a full or partial waiver of the fee or may receive credits against future fee obligations, and/or future reimbursements for any road improvement expenditures in excess of applicants fee obligation, if the Director of Transportation certifies that the applicant has constructed improvements included in the 2004 General Plan Traffic Impact Mitigation Fee Program through other funding mechanisms.

10. For circumstances wherein a building permit withdrawal is approved by the appropriate County department(s) and a refund is requested and approved, the refund will be made payable to the owner(s) of record of the parcel on the date the application for the refund is submitted, or whomever

the aforementioned owner(s) of record legally designates.

11. The fees set forth above in this Exhibit A will be adjusted annually with any revised fees taking effect on, or about, July 1st of each year, by updating improvement cost estimates using actual construction costs of ongoing and completed projects, the most current cost estimates for those projects that are far enough along in the project development cycle to have project specific cost estimates, and for all other projects, the Engineering News Record Building Cost Index (ENR-BCI) (20 Cities). The Department of Transportation will also incorporate any changes to the land use forecasts should new General Plan land use forecasts become available.

Court of Appeal, Third Appellate District
Colette M. Bruggman, Clerk
Electronically FILED on 5/24/2024 by B. Reece, Deputy Clerk

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

GEORGE SHEETZ et al.,
Plaintiffs and Appellants,
v.
COUNTY OF EL DORADO,
Defendant and Respondent.

C093682
El Dorado County
No. PC20170255

BY THE COURT:

This court has reviewed the record, the briefing on appeal, this court's previous opinion (*Sheetz v. County of El Dorado* (2022) 84 Cal.App.5th 394, judg. vacated & cause remanded *sub nom. Sheetz v. County of El Dorado, California* (2024) 601 U.S. 267), and the opinion issued on April 12, 2024, by the United States Supreme Court (*Sheetz v. County of El Dorado, California*, *supra*, 601 U.S. 267). At the conclusion of this court's review, it appears the sole issue remaining unresolved in this case is whether appellant George Sheetz is entitled to relief on his first cause of action

for writ of mandate to the extent that it challenges the $23,420 traffic impact mitigation fee imposed by El Dorado County as a condition of issuing Sheetz a building permit as an unlawful "exaction" of money in violation of the takings clause of the Fifth Amendment of the United States Constitution.

The trial court determined that Sheetz's federal takings clause claim failed as a matter of law. Relying on precedent from the California Supreme Court, as this court was required to do, see *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, this court agreed. The original opinion concluded that, under California law, the legislatively prescribed development fee at issue here was not subject to the "essential nexus" and "rough proportionality" test established by the United States Supreme Court in *Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825 and *Dolan v. City of Tigard* (1994) 512 U.S. 374. (See *Sheetz v. County of El Dorado*, *supra*, 84 Cal.App.5th at pp. 406-407 [generally applicable legislatively prescribed development fees—as distinguished from administrative development fees imposed on an individual permit application on an ad hoc basis—are not subject to the *Nollan/Dolan* test].) The California Supreme Court denied review.

Observing that state courts had reached different conclusions on the question of whether the takings clause of the Fifth Amendment recognized a distinction between legislative and administrative conditions on land-use permits, the United States Supreme Court granted review. (*Sheetz v. County of El Dorado*, *supra*, 601 U.S. at p. 273.) In reversing the decision of this court, the *Sheetz* court held that the takings clause does not distinguish between legis-

lative and administrative permit conditions. (*Sheetz*, at p. 270.) In other words, the Court concluded the *Nollan/Dolan* test for determining whether a fee imposed as a condition for a land use permit constitutes an unconstitutional taking under the Fifth Amendment applies to both legislative and administrative permit conditions. (See *Sheetz*, at p. 279.)

Given that the trial court understandably followed state law and thus failed to apply the *Nollan/Dolan* test to the fee at issue here, and after considering the *Sheetz* court's holding, it appears the proper procedure is to remand the matter with directions for the trial court to consider Sheetz's federal constitutional claim in the first instance. That is, the trial court must consider whether the fee constitutes an impermissible taking in violation of the Fifth Amendment under the *Nollan/Dolan* test. As part of that analysis, the trial court should also consider the threshold question raised by Justice Sotomayor in her concurring opinion in *Sheetz*; namely, "whether the traffic impact fee would be a compensable taking if imposed outside the permitting context and therefore could trigger *Nollan/Dolan* scrutiny." (*Sheetz v. County of El Dorado, California*, *supra*, 601 U.S. at pp. 280-281 (conc. opn. of Sotomayor, J.)

The parties are directed to submit simultaneous letter briefs addressing the proper procedure going forward. As discussed, *ante*, this court is considering remand for consideration of Sheetz's claim in the trial court in the first instance. This court strongly recommends that the parties meet and confer regarding the remaining issues in this case and whether remand for further proceedings is proper *prior* to filing their letter briefs. If the parties agree on the proper procedure

going forward, the submission of a joint letter brief is acceptable.

The parties' supplemental letter briefs, whether individual or joint, are to be served and filed on or before June 13, 2024. Optional reply letter briefs are due no later than seven days after the initial briefing is complete. Pursuant to California Rules of Court, rule 8.256(d), the case will be submitted upon the filing of the last supplemental brief or the expiration of time in which to do so.

DUARTE, Acting P.J.

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cc: See Mailing List

* * *

Court of Appeal, Third Appellate District
Colette M. Bruggman, Clerk
Electronically FILED on 6/24/2024 by
B. Reece, Deputy Clerk

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

GEORGE SHEETZ et al.,

Plaintiffs and Appellants,

v.

COUNTY OF EL DORADO,

Defendant and Respondent.

C093682

El Dorado County
No. PC20170255

BY THE COURT:

This case was remanded by the United States Supreme Court on April 12, 2024, with directions to vacate this court's prior decision. The court solicited briefing from the parties regarding whether remand would be the appropriate remedy in light of the United States Supreme Court's decision. In their joint supplemental letter brief, the parties agreed the proper procedure would not be remand, but because the record is complete, asked this court to invite briefing on all remaining substantive issues based on the record. (See Cal. Rules of Court, rule 8.200(b)(2).)

Accordingly, submission of the case is ordered vacated. Appellant is to serve and file his supple-

mental opening brief, as to any remaining substantive issues, regardless of whether the issues were previously raised, on or before August 5, 2024. (Cal. Rules of Court, rule 8.200(b).) Respondent is to serve and file its supplemental respondent's brief, if any, within 30 days of the filing of the appellant's supplemental opening brief. Appellant's supplemental reply brief, if any, is to be served and filed within 20 days of the filing of the supplemental respondent's brief.

As new arguable issues may be identified in the briefing, the court directs the matter to be set for oral argument within 90 days after the last supplemental brief is filed. (See Cal. Rules of Court, rule 8.256(e).)

EARL, P.J.

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cc: See Mailing List

* * *

September 14, 2005

2004 GENERAL PLAN TRAFFIC IMPACT MITIGATION (TIM) FEE PROGRAM FINAL REPORT (DEVELOPMENT FEE TECHNICAL REPORT)

Overview

As part of the implementation of the 2004 General Plan, during the summer of 2004 the El Dorado County Board of Supervisors began a process to revise and update the County's road development fee program.

Currently, the County has four independent, and sometimes overlapping, road development fee programs. The direction of this fee update process was to simplify, integrate and update the current programs and to ensure that the fees conform with all of the policies in the 2004 General Plan.

During the past year, the Department of Transportation (DOT) has worked closely with a Citizens Advisory Committee to explore development fee options. The General Plan policies and findings affecting the fee program were extensively discussed and dozens of alternative fee scenarios were developed for consideration.

This report outlines the major policies and findings resulting from this process, and sets forth DOT's recommendation for an interim road development fee program for the unincorporated area of Western El Dorado County.

Road System / Analysis Zones

The attached Exhibit A shows the road system and analysis zones considered as part of the development fee program update process. Several variations of the zones were evaluated at the offset, and it was recognized that these zones might serve as building blocks for the ultimate fee zones. The recommended fee scenario combines zones 2 (Cameron Park) and 3 (Missouri Flat).

Growth Projections

The County retained the firm of Muni Financial to develop the growth projections used for this development fee update. These projections are contained in the attached Exhibit B.

While this development fee update is based on a horizon year of 2015, these projections are complimentary to and consistent with the projections made by the firm Economic and Planning Systems (EPS) as part of 2004 General Plan preparation process.

Because the 2004 Plan was the subject of a referendum at the time the initial growth projections were developed, staff developed two sets of growth projections—those likely to occur if the referendum passed and the writ remained in place, and those likely to occur if future growth was guided by the 2004 General Plan. However, by the time the alternative development fee proposals were prepared the referendum election had occurred and the 2004 Plan was validated by the voters. Therefore, all proposals evaluated assumed that County would grow under the land use designations, policies and standards in the 2004 General Plan and in rough accord with the economic assumptions used to develop that plan.

Traffic Projections / Improvement Needs / Projected Costs

The County retained the firm of Fehr & Peers to develop the traffic projections based on the 2015 growth projections and to identify the basic road system improvement needs resulting from this growth. These projections and system needs are contained in the attached Exhibit C.

Supplementing this analysis, the County identified major intersection improvement needs, examined roadways less than 24-feet of pavement, and identified left turn lane needs on two-lane roadways.

Additionally, the County retained the firm of URS to examine specific improvement needs at several major interchanges along Hwy 50. This analysis is attached as Exhibit D.

The improvement needs identified in the above processes were combined; specific projects were scoped; and cost estimates for those projects were prepared. Exhibit E, attached, summarizes the improvement needs and costs for both the Writ and the 2004 General Plan growth projections. However, as previously indicated, the alternative development fee proposals were prepared based on the 2004 General Plan growth projections and assumptions and were evaluated under the standards and policies contained in that Plan.

The project cost estimates are detailed in the attached Exhibit G and are summarized for the eight analysis zones as follows:

Appendix 180a

Zone #	Location of the Zone	Program Costs Within Zone ($ Millions)
# 1	Area east of Pollock Pines	0.1
# 2	Cameron Park and Rescue	224.5
# 3	Area west of Placerville along Highway 50	115.0
# 4	Northwest area of the County	7.1
# 5	Area along Highway 50 east of Placerville	3.0
# 6	Area southeast of Placerville	2.2
# 7	Southwest corner of the County	2.0
# 8	El Dorado Hills	275.7
	TOTAL	629.6

Of this amount, $365.4 million is attributable to the HOV lanes, auxiliary lanes and eight interchange projects along Hwy 50 between Placerville and the Sacramento County line.

Non-Development Fee Revenues

Other than the development fees, the major source of revenues available to the County for roadway improvements are Federal and State grant funds. All Federal / State transportation funds are project specific grant allocation of Federal / State. The El Dorado County Transportation Commission has provided the following estimate of these funds:

Appendix 181a

Description	Cost ($ Millions)
STIP & RTIP	74.8
CMAQ	20.0
Regional STIP Rural	1.1
Regional STIP Urban	9.2
STIP ITIP share-State	41.2
STP Guarantee (For FAS)	2.2
Total to be Received:	**148.5**

Of this amount, it's estimated that the unincorporated portion of the County will receive 2/3's or $98.9 million, and the City of Placerville will receive 1/3 or $49.6 million. The anticipation is that these project specific grant funds will be allocated for the Hwy 50 HOV lane and the interchange improvements along Hwy 50 between Placerville and Sacramento County. These Federal and State transportation grant funds have been applied to reduce the costs to the program of those projects seen as eligible for these grants and likely to receive these grant funds.

Another source of non-development fee revenue for the County is the Master Circulation and Funding Plan (MC&FP) for the Missouri Flat area. These funds are to be used for the Missouri Flat interchange and the Pleasant Valley Connector. The net available revenue from MC&FP over the next ten years for these projects is estimated to be $10.3 million.

Currently Available Development Fee Revenues

Early in the process to update the development fees, it was estimated that $122.6 million of fee revenues were currently available for projects. However, on further review, it was found that this amount must be reduced to $89.4 million as follows:

Fund Balances

Fund	Fund Balances	Encum-brances Outstanding	Net Available
RIF	$15,474,452	-$13,440,000	$2,034,452
Silva Valley Parkway	$16,767,213		$16,767,213
County TIM	$21,038,378		$21,038,378
State TIM	$21,319,671	-$1,775,000	$19,544,671
Interim Hwy 50	$14,756,872		$14,756,872
	$89,356,586	-$15,215,000	$74,141,586

Also noted in the above table are current encumbrances outstanding against these available funds. The resultant net available fund balances total approximately $74,142,000.

As closely as possible, the available balances were allocated or credited to the costs of those projects in the original programs remaining in the current program.

Cost Summary

Accounting for anticipated non-development fee revenues over the next ten years and the currently available development fee revenues, the revenue needed to fully fund the project list is as follows:

($ Millions)

Project Cost	629
Fund Balances	- 74
MCFP Funds	- 10
Fed/State$	- 99
Remainder	446

As a point of comparison, over the next ten years (through 2015) the current fee structure would be estimated to generate approximately $169 million.

Potential Alternative Funding

As part of the process to identify ways to fully fund the program, the firm Economic and Planning Systems (EPS) briefly investigated on the County's behalf alternative funding sources. They identified four potential funding options: 1) general obligation bonds, 2) increased sales tax, 3) assessment district, and 4) Mello-Roos CFO. None of the four options are seen as holding potential within the immediate future, without a more thorough examination. Such an examination will take place over the next year.

Basic Cost Allocation Methodology

The travel demand modeling used for this effort to update / revise the County's development fee program is able to account for individual vehicle trips, from their origin to their destination. Therefore, on any

given road segment, it is possible to determined [sic] where the trips using this road segment came from and are destine [sic] to, by analysis zone. These model runs are termed "nexus allocations". This information was utilized for cost allocation purposes.

When a road segment is identified as needing improvements, the costs of these improvements are allocated equally to each of the vehicle trips using this road segment; generally half of the costs are allocated to each end (the origin and the destination) of each vehicle trip.

For purposes of this effort, two separate "nexus allocations" were prepared and compared.

With the first approach, when one end of a vehicular trip was outside of the County's unincorporated area, the total costs of this trip (costs which would normally be equally split to each of the two trip ends for cost allocation purposes) were assigned to the end of the trip located within the unincorporated area. Under this approach, the only project costs assigned external to the unincorporated area were in those instances where both ends of the vehicular trip are outside of the County's unincorporated area. This approach minimizes costs being allocated external to the jurisdiction of the County, and therefore potentially contributing to an un-funded element within the program.

With the second approach, the project costs were allocated strictly according to the trip ends, irrespective of whether these trip ends were located outside of the jurisdiction of the County. This approach is seen as having a stronger nexus, in other

words, the allocated project costs are more closely tied to the cause generating these project costs.

Under the first cost allocation approach, approximately $20 million of the total $630 million program costs are allocated "external" to the jurisdiction of the County. Under the second cost allocation approach, approximately $150 million of the total $630 million program costs are allocated "external" to the County.

For purposes of this interim fee, the second approach has been selected. While this approach creates an unfunded element, this approach fully mitigates the transportation system impacts associated with growth occurring within the unincorporated area of El Dorado County. During the ensuing year, alternative funding approaches will be further examined to address this unfunded element.

Costs Attributable to Residential vs. Non-Residential Development

The growth projections are for total households and employment (jobs). These projections were converted to vehicle trips for cost allocation purposes.

For example, a trip generation rate of 9.2 vehicle trips per household was used for single family homes. Recently measured actual trip generation rates for single-family homes ranged from approximately 5 trips per household to a little more than 12 trips per household.

Based on the trip generation rates used within this analysis, approximately 60% of the total project costs are directly attributable to trips to and from residential land uses with the remaining 40% attributable to trips to or from non-residential uses.

However, EPS reports that a substantial portion (65%) of the anticipated new non-residential uses is directly attributable to the newly anticipated residential growth in the County. Without developing new non-residential land uses to serve that growth, the new residential uses would cause significantly more traffic on the roads. Thus, this 65% portion of the project costs that would have been other wise seen as attributable to non-residential trips that serve the new residential growth were re-allocated to the residential uses. This resulted in a cost distribution with approximately 84% of the total project costs being allocated to residential growth, and the remaining 16% allocated to non-residential growth.

EPS conducted market based studies to determine the extent to which increased fees might suppress the occurrence of these land uses; thereby changing the allocations. EPS noted that there was no market tolerance for fee increases to office fees, a modest tolerance for fee increases for high end retail, and that there was an bility [sic] for residences over $500,000 to tolerate increased fees in the range of our alternatives. These reports are Exhibits K and L.

With these results indicating limited tolerance of non-residential uses to absorb increased fees, the 35% of the non-residential jobs growth was revisited. The original 84/16 split was based on the fact that 65% of the anticipated growth in jobs was directly tied to the increased retail and service needs of the new residential development.

Upon review, it was determined that well over half of the remaining anticipated growth in jobs is within the "finance/insurance/real estate", construction, trans-

portation, entertainment and wholesale trade sectors, all of which are also directly attributable to the new anticipated residential growth in the County. This coupled with the realization that if these non-residential uses are economically priced out of western El Dorado County due to the lack of market tolerance for fee increases and given that residences would then have to drive further for these goods and services thereby causing greater transportation impacts, it is seen as justified to hold the non-residential fees generally at their current levels.

In recognition of the fact that increased fees on non-residential uses would suppress anticipated growth, thereby worsening road conditions while stymieing the County's ability to achieve many of the other goals contained in the General Plan, the interim fees do not increase the non-residential fees from current levels. As a result, a portion of the costs previously allocated to non-residential have been reallocated to residential uses to reflect this added element of jobs also being directly attributable to residential thereby creating a split between residential / non-residential uses approximating 94 / 6 versus the original 84 / 16 split.

Additionally, the existing fees are seen as disproportionately allocating costs to office uses. The existing fee programs did not differentiate between fees for retail and office.

However, retail uses generate substantially more traffic than office uses. As noted previously, the EPS study noted that office uses had no flexibility to absorb increased fees, and that in fact, the County's fees were already high enough to suppress the development of office uses. In the updated interim program, retail use

fees are held, and the fees for other non-residential uses are proportioned back from these fees in direct proportion to their traffic impacts.

"20-year" Projects vs. "10-year" Projects

Most of the projects identified as part of this process to update the development fee program are scoped to handle 10 years of growth. However, several large interchange projects on the project list are scoped to handle 20 years of anticipated growth. This includes interchange improvement projects at:

- El Dorado Hills Blvd.
- Silva Valley
- Bass Lake
- Cambridge
- Cameron Park, and
- Ponderosa / S. Shingles

Each of these interchange projects are anticipated to be constructed as a series of incremental improvements over the next 20 years. The delivery increments will be identified within subsequent, more detailed planning / design processes for these improvements. It is expected that these more detailed project planning efforts will allow delivery of critical incremental improvements in a timely fashion so as to minimize levels of service falling below community expectations.

For the purposes of these interim development fees, the total improvement costs for these large projects scoped to handle 20 years of growth were spread over

the projected growth expected within the next 20 years (through 2025).

Potential Financing

The County retained the firm of the firm Economic and Planning Systems (EPS) to briefly investigate the potential for financing part of the program. The focus was on potentially financing over 20 years, those projects noted above as sized to handle 20 years of growth. EPS determined that it would be feasible to finance the cost of these improvements. Further, they indicated that to do so, would add approximately 10% to the expected fees over the next ten years. However, the proposed financing arrangement would have the County's General Fund as ultimate security, and as such, further consideration is necessary before advancing this as a recommended approach. This potential financing arrangement will be investigated more thoroughly during the ensuing year.

Fee Calculations

The attached Exhibit M describes the fee calculations. Basically, three fee components are individually calculated, a local component for El Dorado Hills, a local component for the remaining areas within the County's west slope, and a State Highway component for the whole of the unincorporated area of the County's west slope.

Accounting for anticipated non-development fee revenues over the next ten years and the currently available development fee revenues, the program cost reduction associated with incremental delivery of the 20-year projects, and the unfunded element associated with external trips the remainder is revenue

anticipated within the proposed development fees is as follows:

	($ Millions)
Project Cost	629
Fund Balances	- 74
MCFP Funds	- 10
Fed/State$	- 99
Cost reduction for incremental delivery of 20-year projects	- 128
Unfunded element associated with external trios	- 77
Remainder	241

Recommendation

It is recommended that the Board of Supervisors approve the attached resolution (Exhibit N) adopting interim development fees to remain in place while potential alternative funding alternatives are more thoroughly explored and potential financing options are considered during the ensuing year.