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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(El Dorado)

Filed October 19, 2022

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.

FisherBroyles, Paul James Beard II, Matthew Howard Weiner for Plaintiff and Appellant.

Abbott & Kindermann, Glen C. Hansen; David Anthony Livingston, County Counsel for Defendant and Respondent.

This is a land-use regulation case. Plaintiff George Sheetz challenges the $23,420 traffic impact mitigation fee (TIM fee or fee) imposed by defendant El Dorado County (County) as a condition of issuing him a building permit for the construction of a single-family residence on his property in Placerville. Sheetz appeals from the judgment entered after the trial court sustained the County's demurrer without leave to amend and denied his verified petition for writ of mandate. He contends reversal is required because the TIM fee is invalid under both the Mitigation Fee Act (Gov. Code, § 66000 et seq.)[1] and the takings clause of the United States constitution, namely the special application of the "unconstitutional conditions doctrine" in the context of land-use exactions established in *Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825 (*Nollan*) and *Dolan v. City of Tigard* (1994) 512 U.S. 374 (*Dolan*). Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Factual Background

In July 2004, the County adopted a new general plan, titled "2004 El Dorado County General Plan A Plan for Managed Growth and Open Roads; A Plan for Quality Neighborhoods and Traffic Relief" (2004 General Plan or general plan). As relevant here, the general plan required that new development pay for road improvements necessary to mitigate the traffic impacts from such development.

In August 2006, the County permanently amended the general plan to include a traffic impact mitigation fee program (TIM fee program or program)

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[1] Undesignated statutory references are to the Government Code.

to finance the construction of new roads and the widening of existing roads within its jurisdiction. Under the program, the County is authorized to impose a TIM fee as a condition to the approval of a building permit to mitigate the traffic impacts on state and local roads from new development. The fee is comprised of two components: the Highway 50 component and the local road component. The amount of the fee is generally based on the location of the project (i.e., the specific geographic zone within the County) and the type of project (e.g., single-family residential, multi-family residential, general commercial). The program requires that new development pay the full cost of constructing new roads and widening existing roads without regard to the cost specifically attributable to the particular project on which the fee is imposed. In assessing the fee, the County does not make any "individualized determinations" as to the nature and extent of the traffic impacts caused by a particular project on state and local roads.

In February 2012, the County adopted new TIM fee rates, including the fee rate challenged in this case.

In July 2016, Sheetz applied for a building permit to construct a 1,854-square-foot single-family manufactured home on his property in Placerville, which is located in geographic Zone 6. The County agreed to issue the permit on the condition that Sheetz pay a TIM fee in the amount of $23,420, consisting of $2,260 for Highway 50 improvements and $21,160 for local road improvements. After Sheetz paid the fee, the project was approved and the building permit issued in August 2016.

In December 2016, Sheetz sent a letter to the County in which he protested the validity of the TIM

fee under the Mitigation Fee Act on various grounds. Thereafter, Sheetz sent the County additional letters reiterating his challenge to the fee and requesting a refund. The County did not respond to any of the letters.

Procedural Background

In June 2017, Sheetz filed a verified petition for writ of mandate and complaint for declaratory and injunctive relief, alleging seven causes of action challenging the validity of the TIM fee and the program that authorized it.[2] As for his state law claims, Sheetz asserted that the fee violated the Mitigation Fee Act because there is no "reasonable relationship" between both (1) the amount of the fee and the cost of the public facilities (i.e., road improvements) specifically attributable to his development project, and (2) the traffic impacts caused by his development project and the need for road improvements within the County. Sheetz further asserted that the fee violated the Mitigation Fee Act because it included costs attributable to existing deficiencies in the County's "traffic infrastructure." As for his federal claims, Sheetz asserted that the fee violated the takings clause of the United States constitution, specifically the special application of the "unconstitutional conditions doctrine" in the context of land-use exactions established in *Nollan* and *Dolan*, as the County failed to make an individualized determination that an "essential nexus" and "rough proportionality" existed between the traffic impacts caused by or attributable to his project and the need for improvements to state

[2] Friends of El Dorado County, a nonprofit organization representing the interests of citizens and taxpayers who live and work in the County, was also a named petitioner/plaintiff in this case but is not a party to this appeal.

and local roads. Finally, Sheetz asserted that the fee was invalid under state law because the County's decision to impose the fee as a condition of issuing him a building permit was not supported by legally sufficient findings, and the findings were not supported by legally sufficient evidence. Sheetz sought various relief, including the issuance of a peremptory writ of mandate directing the County to refund the fee, an order declaring that the County failed to demonstrate a "reasonable relationship" and/or "essential nexus" and "rough proportionality" between the fee and any adverse traffic impact caused by his development project, an order declaring invalid the County's policy of requiring new development to pay the full cost of constructing new roads and widening existing roads without regard to the cost specifically attributable to the particular project on which the fee is imposed, and an injunction preventing the County from enforcing this policy.

In April 2018, the trial court sustained the County's demurrer to the declaratory relief causes of action (second through seventh causes of action) without leave to amend, and overruled the demurrer to the petition for writ of mandate (first cause of action) on the ground that it stated a cognizable claim under the Mitigation Fee Act, specifically section 66001, subdivision (a). As relevant here, the court concluded the TIM fee was not subject to the requirements of *Nollan* and *Dolan* (and therefore did not violate the "unconstitutional conditions doctrine" as a matter of law) because it is a legislatively prescribed development fee that is generally applicable to a broad class of property owners. The court also concluded that Sheetz's declaratory relief causes of action, which sought a declaration that the fee and the program that authorized it violated the Mitigation Fee Act and the "unconstitutional conditions doctrine," failed as a matter of law because

the facial challenges were time-barred and the sole remedy for the "as applied" challenges is administrative mandamus, not declaratory relief.

After the administrative record was completed and the parties submitted additional briefing, the trial court denied the petition for writ of mandate in November 2020. As for the state law claim, the court concluded the County had met its burden to produce evidence showing that it used a valid method for imposing the TIM fee, one that established a reasonable relationship between the fee charged and the burden posed by Sheetz's development project. The court further concluded Sheetz had failed to cite evidence in the administrative record showing that the fee was arbitrary, capricious, entirely lacking in evidentiary support, or unlawfully or procedurally unfair. Sheetz did not show that the record before the County clearly did not support the underlying determinations regarding the reasonableness of the relationship between the fee and the development.[3] In rejecting Sheetz's constitutional challenge under state law, the court found the administrative record established that the fee bore a reasonable relationship, in both intended use and amount, to the deleterious public impact of the project. As for the federal claim, the trial court rejected Sheetz's constitutional challenge to the fee, concluding (as it did in ruling on the demurrer) that the fee was not subject to the requirements of Nollan and Dolan

[3] In denying the writ petition as to Sheetz's claim under the Mitigation Fee Act, the trial court initially rejected Sheetz's contention that a local agency cannot impose a development impact fee as a condition to the approval of a development project without an individualized evaluation of the impact of the particular project on public facilities. In so doing, the court concluded that only subdivision (a) of section 66001 applies, not both subdivision (a) and (b) of the statute, as Sheetz had argued.

because it is a legislatively prescribed development fee that is generally applicable to a broad class of property owners.

Sheetz timely appealed. He challenges the trial court's rulings with respect to his first (writ of mandate), fourth (declaratory relief), and fifth (declaratory relief) causes of action.

After delays in the briefing schedule, the case was fully briefed on May 4, 2022, and assigned to this panel on May 31, 2022. The court scheduled oral argument and the case was argued and submitted on September 21, 2022.

DISCUSSION

I
Governing Law

A. Unconstitutional Conditions Doctrine

The takings clause of the Fifth Amendment, made applicable to the states by the Fourteenth Amendment, "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*).)

The United States 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. 538.) 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 development permit. (*See Koontz v. St. Johns River Water Management Dist.* (2013) 570 U.S. 595, 599, 612, 616 (*Koontz*).) The leading examples of "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 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 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 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 pp. 604-605.) On the other hand, the government often has legitimate interests in controlling or mitigating the effects of a particular development project. "Where a building proposal would substantially increase traffic congestion, for example, officials might condition permit approval on the owner's agreement to deed over the land needed to widen a public road." (Id. at p. 605.) To accommodate these competing realities, *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 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." (*Id.* at pp. 605-606.) Put another way, "[u]nder *Nollan* and *Dolan* the government 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 governmental ends that lack an essential nexus and rough proportionality to those impacts." (Id. at p. 606.)

The standard established in *Nollan* and *Dolan* for assessing takings claims in the context of land-use exactions is commonly referred to as the

"*Nollan/Dolan* test," which is viewed as a type of " 'heightened scrutiny.' " (*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, i.e., there must be an "essential nexus" between the government's legitimate state interest and the exaction imposed. (*Nollan*, *supra*, 483 U.S. at p. 837.) The Dolan part of the test is the "rough proportionality" standard with regard to the "degree of connection between the exactions and the projected impact of the proposed development." (*Dolan*, *supra*, 512 U.S. at p. 386.) The *Dolan* court concluded, "No precise mathematical calculation is required, but the [government] must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." (*Id.* at p. 391.) In *Koontz*, the United States Supreme Court extended the *Nollan/Dolan* test to "so-called 'monetary exactions' " demanded by the government as a condition for a land-use permit, that is, a monetary condition that is a substitute for the property owner's dedication of real property to the public which is intended to mitigate the environmental impact of the proposed project. (*Koontz*, *supra*, 570 U.S. at pp. 612, 619.) Because these " 'in lieu of' fees are utterly commonplace" and "functionally equivalent to other types of land use exactions," the Supreme Court concluded that they too must satisfy the "essential nexus" and "rough proportionality" requirements of *Nollan* and *Dolan*. (Id. at p. 612.)

Under California law, only certain development fees are subject to the heightened scrutiny of the *Nollan/Dolan* test. Our Supreme Court has held that the requirements of *Nollan* and *Dolan* apply to development fees imposed as a condition of permit approval where such fees are " 'imposed . . . neither generally nor ministerially, but on an individual and

discretionary basis.' " (*San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th 643, 666-670 (*San Remo Hotel*); *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 859-860, 866-867, 876, 869, 881 (Ehrlich) (plur. opn. of Arabian, J.) [heightened scrutiny under the *Nollan/Dolan* test appropriate when monetary exactions are imposed ad hoc on an individual basis due to greater risk of arbitrariness and government abuse in such situations].) The requirements of *Nollan* and *Dolan*, however, do not extend to development fees that are generally applicable to a broad class of property owners through legislative action. As our Supreme Court has explained, "legislatively prescribed monetary fees"--as distinguished from a monetary condition imposed on an individual permit application on an ad hoc basis--"that are imposed as a condition of development are not subject to the *Nollan/Dolan* test." (*California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 459, fn. 11 (*CBIA*), citing *San Remo Hotel*, *supra*, 27 Cal.4th at pp. 663-671 ["The 'sine qua non' for application of *Nollan/Dolan* scrutiny is . . . the 'discretionary deployment of the police power' in 'the imposition of land-use conditions in individual cases' "], and *Santa Monica Beach, Ltd. v. Superior Court* (1999) 19 Cal.4th 952, 966-967 (*Santa Monica*) [only individualized development fees--as distinguished from legislatively mandated, generally applicable development fees--are subject to the *Nollan/Dolan* test].)

B. Mitigation Fee Act

Effective January 1, 1989, the Mitigation Fee Act (§ 66000 et seq.) provides "a statutory standard against which monetary exactions by local governments subject to its provisions are measured." (*Ehrlich*, *supra*, 12 Cal.4th at p. 865.) It was enacted by the Legislature " 'in response to concerns among

developers that local agencies were imposing development fees for purposes unrelated to development projects.' " (*Id.* at p. 864.) It provides uniform procedures for local agencies to follow in imposing development fees. (*Centex Real Estate Corp. v. City of Vallejo* (1993) 19 Cal.App.4th 1358, 1361.)

The Mitigation Fee Act 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 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).) Any party may protest the imposition of a development fee by tendering the payment under protest and serving the governing body of the entity with written notice of the payment and the factual and legal bases for the protest. (See § 66020, subd. (a).)

There are two ways that a local agency can satisfy the Mitigation Fee Act's "reasonable relationship" requirement for the imposition of development fees. Section 66001, subdivision (a) requires the local agency to determine how there is a "reasonable relationship" between both "the fee's use and the type of development project on which the fee is imposed" and "the need for the public facility and the type of development project on which the fee is

imposed." (§ 66001, subd. (a)(3), (4).)[4] Section 66001, subdivision (b) requires the more specific determination of 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."[5]

In *Ehrlich*, our Supreme Court concluded that the heightened scrutiny of the *Nollan/Dolan* test applies to ad hoc monetary exactions imposed as a condition of approving a development project by individual property owners. (*Ehrlich*, *supra*, 12 Cal.4th at pp. 881 (plur. opn. of Arabian, J).) There, the city had conditioned permits for the development of a condominium complex on the site of a former private tennis club on the owner's agreement to pay a $280,000 fee to be used for city recreational facilities. (Id. at pp. 861-863 (plur. opn. of Arabian, J.).) In

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[4] Section 66001, subdivision (a) provides: "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."

[5] Section 66001, subdivision (b) provides: "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."

holding that the fee at issue was subject to the *Nollan/Dolan* test, a plurality of our high court emphasized that because the city had exercised its discretionary powers in imposing and calculating the recreational impact fee, rather than doing so pursuant to a legislative mandate or formula, imposition of the fee bore much the same potential for illegitimate leveraging of private property as did the real property exactions in *Nollan* and *Dolan*. The court concluded that the heightened scrutiny of the *Nollan/Dolan* test is appropriate "[w]hen such exactions are imposed . . . neither generally nor ministerially, but on an individual and discretionary basis." (*Id.* at p. 876 (plur. opn. of Arabian, J.).)

However, as we have noted ante, while the *Nollan/Dolan* test applies to monetary land-use exactions which are imposed ad hoc on an individual and discretionary basis, it does not apply to generally applicable development impact fees imposed through legislative action. (*San Remo Hotel*, *supra*, 27 Cal.4th at pp. 666-667, 669-671.) In *San Remo Hotel*, our Supreme Court expressly declined to extend the *Nollan/Dolan* test to all development fees, "adhering instead to the distinction [drawn] in *Ehrlich* . . . between ad hoc exactions and legislatively mandated, formulaic mitigation fees." (*Id.* at pp. 670-671.) In doing so, the court explained: "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." (Id. at p. 671.)

The *San Remo Hotel* court emphasized that legislatively imposed development impact fees that are not subject to the *Nollan/Dolan* test remain subject to the means-end judicial review under the Mitigation Fee Act. (*San Remo Hotel*, *supra*, 27 Cal.4th at p. 671.) To be valid as a matter of both statutory and constitutional state law, such fees must satisfy the "reasonable relationship" test embodied in the Mitigation Fee Act. (*Ibid.*; *see Enrlich*, supra, 12 Cal.4th at pp. 865, 867 ["developers who wish to challenge a development fee on either statutory or constitutional grounds must do so via the statutory framework provided by the [Mitigation Fee] Act"].)

II
Demurrer

Sheetz contends the trial court erred in sustaining the demurrer as to his first, fourth, and fifth causes of action. He argues that his first and fifth causes of action state cognizable federal takings claims under the "unconstitutional conditions doctrine," and that his first and fourth causes of action state cognizable claims under the Mitigation Fee Act. As we shall explain, we find no error.

A. Standard of Review

The function of a demurrer is to test whether, as a matter of law, the facts alleged in the complaint state a cause of action under any legal theory. (*Intengan v. BAC Home Loans Servicing LP* (2013) 214 Cal.App.4th 1047, 1052.) We assume the truth of all facts properly pleaded, as well as facts of which the trial court properly took judicial notice. But we do not assume the truth of contentions, deductions, or

conclusions of law. Our review of the trial court's decision is de novo. (*Ibid*.)

A trial court's order sustaining a demurrer without leave to amend is reviewable for abuse of discretion. (*Mercury Ins. Co. v. Pearson* (2008) 169 Cal.App.4th 1064, 1072.) "If we find that an amendment could cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred." (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

B. First Cause of Action: Writ of Mandate

1. Unconstitutional Conditions Doctrine

Sheetz's first cause of action for writ of mandate alleges that the TIM fee effects an unlawful taking of property in violation of the special application of the "unconstitutional conditions doctrine" established in *Nollan* and *Dolan*. On appeal, Sheetz contends the trial court erred in concluding that the *Nollan*/*Dolan* test does not apply to the fee as a matter of law. We disagree.

We conclude the trial court properly determined that the TIM fee is not subject to the heightened scrutiny of the *Nollan*/*Dolan* test. The fee is not an "ad hoc exaction" imposed on a property owner on an individual and discretionary basis. Rather, it is a development impact fee imposed pursuant to a legislatively authorized fee program that generally applies to all new development projects within the County. The fee is calculated using a formula that considers various factors. Therefore, the validity of the fee and the program that authorized it is only subject to the deferential "reasonable relationship" test embodied in the Mitigation Fee Act. *(San Remo Hotel*, *supra*, 27 Cal.4th at p. 667; *Ehrlich*,

supra, 12 Cal.4th at pp. 865, 867 (plur. opn. of Arabian, J.).) Indeed, as our Supreme Court has explained, the heightened scrutiny of the *Nollan/Dolan* test does not apply to legislatively mandated development impact fees that, as here, generally apply to a broad class of permit applicants. (*CBIA*, *supra*, 61 Cal.4th at p. 459, fn. 11, citing *San Remo Hotel*, *supra*, 27 Cal.4th at pp. 663-671; *Santa Monica*, *supra*, 19 Cal.4th at pp. 966-967.)

We are unpersuaded by Sheetz's contention that *Koontz* compels a contrary result. We have carefully reviewed *Koontz* and agree with our Supreme Court that it "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." (*CBIA*, *supra*, 61 Cal.4th at p. 459, fn. 11.) *Koontz* involved an adjudicative, individual and discretionary land-use determination, and the majority opinion does not address whether the *Nollan/Dolan* test applies to legislatively mandated, generally applicable formulaic development fees. As such, we find Sheetz's reliance on *Koontz* misplaced.[6]

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[6] In rejecting the argument that subjecting monetary exactions to the *Nollan/Dolan* test would result in "no principled way of distinguishing impermissible land-use exactions from property taxes," the Koontz court explained that, because taxes and user fees are not takings, the decision "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*, *supra*, 570 U.S. at p. 615.) As Justice Mosk explained in his concurring opinion in *Ehrlich*, many development fees bear a close resemblance to various monetary exactions--excise taxes, assessment fees, and user fees--which courts have granted considerable discretion to local governments to impose and have upheld them against takings and related challenges. (*See Ehrlich*, *supra*, 12 Cal.4th at pp. 892-896 (conc. opn. of Mosk, J.) [reasoning that development fees "are perhaps

We are also unpersuaded by Sheetz's suggestion that a different result is warranted because *Nollan* and *Dolan* involved legislatively prescribed, generally applicable exactions. In *Lingle*, the United States Supreme Court characterized *Nollan* and *Dolan* as involving "Fifth Amendment takings challenges to adjudicative land-use exactions -- specifically, government demands that a landowner dedicate an easement allowing public access to her property as a condition of obtaining a development permit." (*Lingle*, *supra*, 544 U.S. at p. 546.) We find *Nollan* and *Dolan* to be of no assistance to Sheetz, as neither case involved legislatively mandated, formulaic development impact fees that applied to a broad class of proposed developments. Rather, both cases involved a real property dedication condition imposed on an ad hoc basis upon an individual permit application.

Equally misplaced is Sheetz's reliance on *Cedar Point Nursery v. Hassid* (2021) 141 S.Ct. 2063, a case he cites for the first time in his reply brief. In *Cedar Point*, a California regulation allowed representatives of a labor organization to enter an agricultural employer's property to solicit support for unionization

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best characterized as a special assessment placed on developing property" (*id.* at p. 896)].) As such, Justice Mosk concluded that the *Nollan/Dolan* test is generally not applicable to development fees; the test only applies "when the government engages in the physical taking or invasion of real and personal property, or singles out individual property owners by conditioning development permits on the payment of ad hoc fees not borne by a larger class of developers or property owners." (*Ehrlich*, at pp. 887-888 (conc. opn. of Mosk, J.).) In short, because the monetary exaction in Koontz was not a generally applicable development impact fee, the decision, in our view, cannot be read as compelling the application of the *Nollan/Dolan* test to the fee at issue here.

for up to three hours per day, 120 days per year. (*Id.* at p. 2069.) The United States Supreme Court held that the regulation violated the takings clause because it "appropriate[d] a right to invade the growers' property and therefore constitute[d] a per se physical taking." (*Id.* at p. 2072.) The court reasoned that the regulation violated the right to exclude, which is " 'one of the most treasured' rights or property ownership." (*Ibid.*) In concluding that the regulation constituted a physical taking as opposed to a regulatory taking, the court explained that the "essential question is not . . . whether the government action at issue comes garbed as a regulation (or statute, or ordinance, or miscellaneous decree). It is whether the government has physically taken property for itself or someone else—by whatever means—or has instead restricted a property owner's ability to use his own property." (*Ibid.*) "Thus, the Supreme Court has suggested that any government action, including administrative and legislative, that conditionally grants a benefit, such as a permit, can supply the basis for an exaction claim" under the unconstitutional conditions doctrine. (*Ballinger v. City of Oakland* (2022) 24 F.4th 1287, 1299 [concluding that " '[w]hat matters for purposes of *Nollan* and *Dolan* is not who imposes an exaction, but what the exaction does' "].)

Cedar Point is distinguishable. That case did not involve a generally applicable development impact fee imposed by a local agency as a condition for a land-use permit. Rather, it involved a state regulation that only applied to property owned by agricultural employers. And *Cedar Point* does not purport to address whether the heightened scrutiny of the *Nollan/Dolan* test applies to the circumstances presented here--a legislatively mandated, formulaic development impact fee that applies to a broad class of proposed developments. "It is axiomatic that cases

are not authority for propositions not considered." (*People v. Ault* (2004) 33 Cal.4th 1250, 1268, fn. 10.) Thus, contrary to Sheetz's contention, *Cedar Point* does not abrogate the rule--by which we are bound--that generally applicable development fees are not subject to the *Nollan/Dolan* test. (*See CBIA*, *supra*, 61 Cal.4th at p. 459, fn. 11, citing *San Remo Hotel*, *supra*, 27 Cal.4th at pp. 663-671; *Santa Monica*, *supra*, 19 Cal.4th at pp. 966-967.)

2. Mitigation Fee Act

Sheetz's first cause of action for writ of mandate alleges that the County violated the Mitigation Fee Act because there is no "reasonable relationship" between the public impact of his development project and the need for improvements to state and local roads. On appeal, he contends the trial court erred in concluding that he could only state a cognizable claim under subdivision (a) of section 66001, rather than under both subdivision (a) and (b) of the statute. In making this argument, Sheetz insists that the County was required to evaluate the specific traffic impacts attributable to his particular project before imposing the fee. We disagree.

As noted ante, there are two ways that a local agency can satisfy the Mitigation Fee Act's "reasonable relationship" requirement for the imposition of development fees. (§ 66001, subds. (a), (b).) Section 66001, subdivision (a) applies to quasi-legislative decisions to impose development impact fees on a class of development projects, whereas section 66001, subdivision (b) applies to adjudicatory, case-by-case decisions to impose a development impact fee on a particular development project. The difference between these subdivisions is that only subdivision (b) of section 66001 requires an individualized more specific determination of

reasonableness for each particular project. (*Tanimura & Antle Fresh Foods, Inc. v. Salinas Union High School Dist.* (2019) 34 Cal.App.5th 775, 791; *Garrick Development Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320, 334-336.) As a panel of this court recently explained in the context of development impact fees imposed to fund school facilities to accommodate the increase in students likely to accompany new development: "For a general fee applied to all new residential development, a site-specific showing is not required. Instead, this showing may be derived from districtwide estimations concerning new residential development and impact on school facilities. The school district is not required to evaluate the impact of a particular development project before imposing fees. Instead, the required nexus is established based on the justifiable imposition of fees on a class of development rather than particular projects." (*AMCAL Chico LLC v. Chico Unified School District* (2020) 57 Cal.App.5th 122, 127; *see also Cresta Bella, LP v. Poway Unified School Dist.* (2013) 218 Cal.App.4th 438, 447.) In short, we conclude the trial court properly determined that section 66001, subdivision (b) does not apply to Sheetz's development project.[7]

C. Fourth and Fifth Causes of Action: Declaratory Relief

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[7] Sheetz relies on *Ehrlich and Walker v. City of San Clemente* (2015) 239 Cal.App.4th 1350 in purported support of a contrary result. However, neither of those cases discussed, let alone disagreed with, the relevant statutory analysis in *Garrick*. Nor did either case expressly consider whether both subdivisions (a) and (b) of section 66001 apply to quasi-legislative local agency decisions to impose development impact fees on a class of development projects. These cases do not inform the outcome here. (*See People v. Ault*, *supra*, 33 Cal.4th at p. 1268, fn. 10.)

Sheetz's fourth and fifth causes of action for declaratory relief allege that the County's policy of requiring new development to pay the full cost of constructing new roads and widening of existing roads without regard to the cost specifically attributable to the particular project on which the fee is imposed resulted in an unlawful exaction of $23,420. According to Sheetz, the County's policy, "as applied" to him, violated the Mitigation Fee Act and the "unconstitutional conditions doctrine." On appeal, Sheetz contends the trial court erred in determining that his fourth and fifth causes of action failed as a matter of law because the sole remedy for "as applied" challenges to local agency action is administrative mandamus, not declaratory relief. We disagree.

We conclude the trial court properly sustained the demurrer to the fourth and fifth causes of action without leave to amend. It is well established that a declaratory relief cause of action is an appropriate method for challenging a statute, regulation, or ordinance as facially unconstitutional or otherwise invalid, but that administrative mandamus is "the proper and sole remedy" to challenge a local agency's application of the law (e.g., application of a zoning ordinance to a particular property). (*See, e.g., Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 13-14; *Tejon Real Estate, LLC v. City of Los Angeles* (2014) 223 Cal.App.4th 149, 154-155; *Rezai v. City of Tustin* (1994) 26 Cal.App.4th 443, 448; *City of Santee v. Superior Court* (1991) 228 Cal.App.3d 713, 718-719; *Taylor v. Swanson* (1982) 137 Cal.App.3d 416, 418.)[8]

[8] We need not and do not consider Sheetz's contention that his first, fourth, and fifth causes of action are timely. The trial court did not rule that any of those claims were time-barred.

III
Petition for Writ of Mandate

Sheetz contends reversal is required because the TIM fee is invalid under both the heightened scrutiny of the *Nollan/Dolan* test and the "reasonable relationship" test embodied in the Mitigation Fee Act. According to Sheetz, the County's failure to make an individualized determination as to the traffic impacts specifically attributable to his development project resulted in a violation of the takings clause of the federal and state constitutions as well as the Mitigation Fee Act.

For the reasons we have discussed, we reject this argument. The *Nollan/Dolan* test does not apply to the legislatively prescribed generally applicable development impact fee at issue here (*see CBIA*, *supra*, 61 Cal.4th at p. 459, fn. 11, citing *San Remo Hotel*, *supra*, 27 Cal.4th at pp. 663-671; *Santa Monica*, *supra*, 19 Cal.4th at pp. 966-967), and California law does not require an individualized or site-specific determination of reasonableness for each particular project subject to the fee (*see AMCAL Chico LLC v. Chico Unified School District*, *supra*, 57 Cal.App.5th at p. 127; *Cresta Bella, L.P. v. Poway Unified School Dist.*, *supra*, 218 Cal.App.4th at p. 447). As we next explain, we also reject Sheetz's remaining argument that the administrative record contains no evidence establishing that the fee satisfies the "reasonable relationship" test embodied in the Mitigation Fee Act.

A. Standard of Review

"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. [Citations.] '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.' [Citations.] 'The action will be upheld if the [local agency] adequately considered all relevant factors and demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.' " (*Boatworks, LLC v. City of Alameda* (2019) 35 Cal.App.5th 290, 298.) " 'This issue is a question of law. [Citation.] ' "On appeal, we independently review the agency's decision and apply the same standard of review that governs the superior court." ' " (*Walker v. City of San Clemente*, *supra*, 239 Cal.App.4th at p. 1362.)

"[T]he 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." (Home Builders Assn. of Tulare/Kings Counties, Inc. v. City of Lemoore (2010) 185 Cal.App.4th 554, 562 (City of Lemoore).) "However, the figures upon which the public agency 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 [agency] 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, LLC v. City of Alameda*, *supra*, 35 Cal.App.5th at p. 298.)

"If the local agency 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 local agency'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 . . . ." (*City of Lemoore*, *supra*, 185 Cal.App.4th at p. 562.) "In general, the imposition of various monetary exactions, such as . . . impact fees, is accorded substantial judicial deference. [Citation.] In the absence of a legislative shifting of the burden of proof, a plaintiff 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.*)

B. Analysis

We begin by noting that Sheetz relies only on a select few pages from the more than 5,000-page administrative record in support of his writ of mandate cause of action, as he did in the trial court. Having reviewed those portions as well as the broader administrative record, we find no error in the denial of the petition for writ of mandate.

As relevant here, the administrative record discloses that the 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.[9] 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.[10] Prior to the adoption of new fee rates

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[9] 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 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.

[10] In amending the 2004 General Plan to permanently adopt the TIM fee program, the County concluded that "[t]he facts and

in 2012, including the fee rate at issue here, the DOT explained the methodology it used to adjust the rates.

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 burden posed by Sheetz's development of a single-family residence in geographic Zone 6. The record reflects that the County considered the relevant factors and demonstrated a rational connection between those factors and the fee imposed. We further conclude Sheetz has failed to show that the record before the County clearly did not support the County's determinations regarding the reasonableness of the relationship between the fee and his development project. The limited portions of the record relied upon by Sheetz do not demonstrate that the fee was arbitrary, entirely lacking in evidentiary support, or otherwise invalid.

DISPOSITION

The judgment is affirmed. The County shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

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

/s/

Duarte, Acting P. J.

We concur:

/s/

Hoch, J.

/s/

Earl, J.

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 memoramdum 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, 207 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, § 6601 (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 circumstance 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 fundamental 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 plaintiffs 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. Citv 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)(8)), 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 postenactment 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 postenactment 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." (*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 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.

Constitutional Challenges to Fee—Exaction Doctrine / Unconstitutional Conditions Doctrine Causes of Action

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 (HOC) 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 .L 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 *Nol/an/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 *Nol/an/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 Nol/an/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 unconstitutional 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." 1; *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 declaratory 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 6601 (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 [sic].

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-Genera/ 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 plaintiffs 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 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.)" (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 for all development types 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 relationship 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, lnc.'s US 50 Strategic Corridor Operations Study), AR 2276-2432 (Dowling and Associates, lnc.'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 (Development 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 off-set 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 essentially 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 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, 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 11 [t]axes and user fees ... are not 'takings.' 11 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. on. 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.).

he 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

IN THE SUPREME COURT OF CALIFORNIA

NO. S277509

GEORGE SHEETZ,
Plaintiff and Appellant,

v.

COUNTY OF EL DORADO,
Defendant and Respondent.

Filed: February 1, 2023

ORDER

The petition for review is denied.

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

Plan Traffic Impact Mitigation Fee (TIM) Program on August 22, 2006, with Resolution 266-2006; and

WHEREAS Resolution 205-2008 adopted on July 29, 2008, provided that said fees shall be adjusted annually 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

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
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

Campground (per campsite)	$947	$2,300	$3,247
Bed & Breakfast (per rented room)	$469	$1,160	$1,629

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
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

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
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
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.