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Attorneys for Petitioners and Plaintiffs
**GEORGE SHEETZ AND FRIENDS OF
EL DORADO COUNTY**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

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**

**VERIFIED PETITION FOR WRIT OF
MANDATE; COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

[Code of Civil Procedure §§ 1085, 1094.5,
1060, 526]

FILED BY FAX

EL DORADO CO. SUPERIOR CT.

**FILED JUN 05 2017
Randi Corrasa**

BY _____
Deputy

Assigned to
Judge Warren C. Stracener
For all purposes

1 Petitioner and Plaintiff George Sheetz, and Plaintiff Friends of El Dorado County, seek
2 relief against Respondent and Defendant County of El Dorado, and allege as follows:

3 **THE PARTIES**

4 1. Petitioner and Plaintiff George Sheetz is a California citizen and taxpayer, who
5 owns property in the County. In 2016, he applied for and obtained a permit to construct a
6 manufactured house on his property. As a condition of obtaining that permit, the County
7 demanded that he pay a fee to fund improvements to state and local roads, in the amount of
8 \$23,420. He protested the fee under the Mitigation Fee Act, which went unanswered. To date,
9 he has not obtained a substantive response to his protest or a refund from the County. Mr.
10 Sheetz brings this action, not only to vindicate his own rights, but to vindicate the rights of his
11 fellow County residents to be free from unlawful and unconstitutional exactions.

12 2. Plaintiff Friends of El Dorado County (hereinafter, "Friends") is a nonprofit,
13 section 501(c)(3) organization incorporated in 1994 for the purpose of promoting and
14 protecting the rights of property owners who have been and are required to pay impact fees to
15 the County as the condition of obtaining permits. Friends represents the interests of citizens
16 and taxpayers who live and work in the County of El Dorado, at least one of whom has been
17 required to pay impact fees to the County in the course of obtaining a permit. Consistent with
18 its mission, Friends brings this action in the public interest, in order to vindicate the rights of
19 property owners to be free from unlawful and unconstitutional exactions.

20 3. Respondent and Defendant County of El Dorado is a county organized under
21 the laws, and is a political subdivision, of the State of California. It can sue and be sued. The
22 County acts through and is ultimately responsible for the official acts and decisions of its
23 agencies and employees.

24 4. Sheetz and Friends do not know the true names or capacities of the persons or
25 entities sued as Respondents and Defendants DOES 1 through 20, inclusive, and therefore sue
26 those parties by their fictitious names. Sheetz and Friends will amend this pleading to set forth
27 the names and capacities of the DOE Respondents and Defendants, along with any additional
28 appropriate allegations, if and when such information is ascertained.

1 **JURISDICTION AND VENUE**

2 5. This Court has jurisdiction in this case pursuant to Code of Civil Procedure
3 sections 1085, 1094.5, 1060, and 526, and section 66000, et seq. of the Government Code.

4 6. All of the actions or events described herein occur or have occurred in the
5 County of El Dorado, and this is an action against the County. Therefore, venue is proper in
6 the Superior Court for the County of El Dorado. Code of Civ. Proc. § 394(a).

7 **LEGAL BACKGROUND**

8 7. Under the Takings Clause of the Fifth Amendment to the United States
9 Constitution, no government agency may take private property for a public use without paying
10 just compensation. U.S. Const. amend. V (Takings Clause); XIV (applying Takings Clause to
11 state and local governments). As the United States Supreme Court famously held, the Takings
12 Clause is “designed to bar Government from forcing some people alone to bear public burdens
13 which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v.*
14 *U.S.*, 364 U.S. 40, 49 (1960). Consequently, a government agency imposing a land-use permit
15 condition that requires the dedication of private property, including money, “must make some
16 sort of individualized determination that the required dedication is related both in nature and
17 extent to the impact of the proposed development.” *Dolan v. City of Tigard*, 512 U.S. 374,
18 391; *see also Koontz v. St. Johns River Water Mngmt. Dist.*, 133 S.Ct. 2586 (2013) (holding
19 that monetary exactions are subject to the same constitutional requirement). Specifically, the
20 agency has the burden of showing that the exaction bears an “essential nexus” and “rough
21 proportionality” to the public impacts of the proposed project, or the exaction is nothing more
22 than “out-and-out plan of extortion” and unconstitutional. *Nollan v. California Coastal*
23 *Comm’n*, 483 U.S. 825, 837 (1987); *Dolan*, 512 U.S. at 391.

24 8. Property owners have protection against unlawful exactions, not just under
25 federal constitutional law, but under California law as well. The California Legislature passed
26 the Mitigation Fee Act “in response to concerns among developers that local agencies were
27 imposing development fees for purposes unrelated to development projects.” *Ehrlich v. City*
28 *of Culver City*, 12 Cal. 4th 854, 864 (1996) (internal citation and quotation marks omitted)).

1 The Act defines a development fee as “a monetary exaction other than a tax or special
2 assessment that is charged by a local agency to the applicant in connection with approval of a
3 development project for the purpose of defraying all or a portion of the cost of public facilities
4 related to the development project.” Gov’t Code § 66000(b). The Act creates uniform
5 procedures for local agencies to follow in establishing, imposing, collecting, using and
6 accounting for development fees. *Id.* § 66000, *et seq.*

7 9. For example, under the Act, “[a] fee shall not include the costs attributable to
8 existing deficiencies in public facilities, but may include the costs attributable to the increased
9 demand for public facilities reasonably related to the development project in order to (1)
10 refurbish existing facilities to maintain the existing level of service or (2) achieve an adopted
11 level of service that is consistent with the general plan.” *Id.* § 66001(g). “Public facilities’
12 includes public improvements, public services, and community amenities.” *Id.* § 66000(d).

13 10. To establish a development fee a local agency must identify “the purpose of the
14 fee” and “the use to which the fee is to be put.” *Id.* § 66001(a). The agency also must
15 determine that both “the fee’s use” and “the need for the public facility” are reasonably related
16 to “the type of development project on which the fee is imposed.” *Id.* “The Act thus codifies,
17 as the statutory standard applicable by definition to nonpossessory monetary exactions, the
18 ‘reasonable relationship’ standard employed in California and elsewhere to measure the
19 validity of required dedications of land (or fees in lieu of such dedications) that are challenged
20 under the Fifth and Fourteenth Amendments.” *Ehrlich*, 12 Cal. 4th at p. 865.

21 11. To impose a development fee as the condition of approval for a specific
22 development project, a local agency must “determine how there is a reasonable relationship
23 between the amount of the fee and the cost of the public facility or portion of the public facility
24 attributable to the development on which the fee is imposed.” Gov’t Code § 66001(b). The
25 agency also must “identify the public improvement that the fee will be used to finance.” *Id.* §
26 66006(f).

27 12. A party may protest a local agency’s decision to establish or impose a
28 development fee by tendering any required payment and serving the agency with notice of the

1 protest within 90 days of the fee being established or imposed. *Id.* § 66020(a), - (d)(1). Any
2 party who timely serves a protest may file an action to “attack, review, set aside, void, or
3 annul” the fee within 180 days of serving that protest. *Id.* § 66020(d)(2). The Act allows an
4 applicant to “challenge a permit condition . . . while proceeding with development.” *Hensler*
5 *v. City of Glendale*, 1 Cal. 4th 1, 19-20 (1994).

6 13. The 90-day and 180-day periods do not begin to run until the agency complies
7 with the statutory notice requirement under the Act. Specifically, “[e]ach local agency shall
8 provide to the project applicant a notice in writing at the time of the approval of the project or
9 at the time of the imposition of the fees, dedications, reservations, or other exactions, a
10 statement of the amount of the fees or a description of the dedications, reservations, or other
11 exactions, and notification that the 90-day approval period in which the applicant may protest
12 has begun.” *Id.* § 66020(d)(1). The requirement of written notice exists to ensure that an
13 applicant is made fully aware of his rights and the time within which to assert those rights.
14 Consequently, the running of that 90-day protest period is entirely contingent on the local
15 government’s first providing timely written notice that the time within which to file a protest
16 has begun to run. Without timely written notice, as the Act mandates, neither the 90-day
17 protest period, nor the 180-day limitations period, begins to run. *See, e.g., Branciforte Heights,*
18 *LLC v. City of Santa Cruz*, 138 Cal. App. 4th 914, 925 (2006) (“[T]he 180–day limitations
19 period under section 66020 does not commence running until written notice of the 90–day
20 protest period has been delivered to a party complying with the protest provisions.”).

21 GENERAL ALLEGATIONS

22 **A. Measure Y, the General Plan, and the County’s Traffic Impact Mitigation Fee** 23 **Program**

24 14. When issuing building permits, the County does not make “individualized
25 determinations” about the nature and extent of each particular project’s traffic impacts to state
26 and local roads. Instead, the County looks to its non-individualized, Traffic Impact Mitigation
27 (“TIM”) Fee Program, which is a part of its General Plan. The TIM Fee Program finances
28 the County’s construction of new roads and widening of existing roads.

1 15. Among other things, the TIM Fee Program authorizes the County to impose a
2 traffic-impact fee on a project applicant, as the condition of pulling a building permit, without
3 regard to the specific nature or extent of the proposed project’s actual traffic impacts (if any).
4 Rather, the applicable fee is based on (1) the geographic zone of the County in which the
5 property lies (Fee Zones Nos. 1-8) and (2) the general category of development being applied
6 for (e.g., single-family residential, multi-family residence, general commercial, etc.). The fee
7 is comprised of two components: the Highway 50 Component and the Local Road Component.

8 16. Significantly, the TIM Fee Program requires that all new development will pay
9 *the full cost* of constructing new roads and widening existing roads—regardless of the fact
10 that existing residents of the County and that non-resident motorists from outside the County
11 use and benefit from new and/or widened roads.

12 17. On information and belief, the TIM Fee Program’s requirement that all new
13 development fund the full cost of traffic improvements, as described above, originated with
14 the passage in 1998 of Measure Y (“Control Traffic Congestion Initiative”). The County
15 implemented Measure Y’s mandate that new development bear the full cost of new roads and
16 the widening of existing roads through amendments to its General Plan, including General
17 Plan Policy TC-X and TC-Xf, which was given specific expression in the TIM Fee Program.

18 **B. Mr. Sheetz Is Forced to Pay a Fee of \$23,420 As the Condition of a Permit To Build**
19 **His House**

20 18. Mr. Sheetz owns the property located at 3699 Fort Jim Road, Placerville,
21 California. The property is located in the Fee Zone No. 6. Under the TIM Fee Program in
22 effect at the time of Mr. Sheetz’s application, a single-family project triggered a traffic-impact
23 fee of \$23,420—\$2,260 for Highway 50 improvements and \$21,160 for local road
24 improvements.

25 19. On July 13, 2016, Mr. Sheetz applied for a building permit from the County to
26 construct a modest 1,854-square-foot manufactured house on his property for his family. The
27 permit issued on August 25, 2016.

28 20. As a condition of issuing the building permit, the County demanded that Mr.

1 Sheetz first pay the \$23,420 fee, ostensibly to mitigate for the manufactured house's alleged
2 traffic impacts on state and local roads. He reluctantly paid the fee and obtained the permit.

3 21. The County did not make, and has not ever made, an individualized
4 determination that the public impacts of Mr. Sheetz's manufactured house bears any
5 relationship, let alone an essential nexus and rough proportionality, to the need for
6 improvements to state and local roads. Nor can it. Mr. Sheetz' construction of one
7 manufactured house on his property did not cause public impacts that justify imposition of the
8 \$23,420 fee demanded by and paid to the County.

9 22. The County did not provide, and has not ever provided, Mr. Sheetz with written
10 or oral notice of his right to administratively protest the fee or to challenge the fee in Court.

11 23. Nevertheless, Mr. Sheetz ultimately did learn (not from the County or any of its
12 agencies or officials) that state law guaranteed his right to protest the fee and, ultimately, to
13 challenge it in Court. As soon as he learned of his rights, he asked the County to whom he
14 should direct his protest. He was told that he should direct his protest to Ms. Sheri Woodford,
15 with the El Dorado County Department of Transportation.

16 24. Mr. Sheetz sent a protest letter to Ms. Woodford, dated December 7, 2016. The
17 letter protests the validity of the fee under the Mitigation Fee Act on various grounds and
18 demands that the \$23,420 paid to the County be refunded. A true and correct of the December
19 7, 2016, protest letter is attached hereto as Exhibit A and incorporated by reference herein.

20 25. Mr. Sheetz sent a follow-up protest letter to Ms. Woodford, dated December
21 13, 2016, that reiterated his challenge to the fee, but clarified that "he was NOT given notice
22 of the right to protest or appeal the transportation impact fees." A true and correct of the
23 December 13, 2016, protest letter is attached hereto as Exhibit B and incorporated by reference
24 herein.

25 26. Receiving no response to his protest letters from anyone at the County, Mr.
26 Sheetz followed up with a letter dated May 22, 2017, demanding a refund or at least *some*
27 substantive response to his protest. A true and correct of the May 22, 2017, letter is attached
28 hereto as Exhibit C. As of the date of the filing of this lawsuit, the County has provided no

1 substantive response to any of Mr. Sheetz's communications.

2 **C. Standing Allegations**

3 27. Mr. Sheetz has standing as a permit applicant who has been subjected to the
4 County's unlawful policy of requiring new development to fully fund new roads and/or the
5 widening of existing roads, and as a result of that policy has been forced to pay an unlawful
6 fee as the condition of obtaining a building permit for a modest project.

7 28. Further, as taxpayers, Mr. Sheetz and Friends' members have the right to
8 restrain or prevent an illegal expenditure of public money by the County in its application and
9 enforcement of unlawful County policies, including the County policy requiring new
10 development to fully fund new roads and/or the widening of existing roads. Civ. Proc. Code
11 § 526a; *Connerly v. State Personnel Bd.*, 92 Cal. App. 3d 16, 29 (2001).

12 29. Moreover, as citizens, Mr. Sheetz and Friends' members have a clear, present,
13 and beneficial right to the County's performance of its public duty to apply only lawful policies
14 within its jurisdiction, including lawful policies related to traffic-impact mitigation. *Connerly*,
15 92 Cal. App. 3d at 29.

16 30. Mr. Sheetz and Friends have no plain, speedy, or adequate remedy at law
17 available for the County's unlawful actions other than mandamus (with respect to Mr. Sheetz),
18 and/or declaratory and injunctive relief (with respect to Mr. Sheetz and Friends). With respect
19 to the non-writ claim below, Mr. Sheetz will be irreparably injured if the property that was
20 unlawfully taken from him (\$23,420) is not returned. Moreover, if the County is not
21 permanently enjoined from enforcing its illegal policy requiring new development to fully
22 fund construction of new roads and the widening of existing roads, without regard to the
23 standards set forth in the Mitigation Fee Act or under the unconstitutional conditions doctrine,
24 it will result in a waste and illegal expenditure of taxpayer money, and cause Mr. Sheetz and
25 Friends to suffer great and irreparable injury that cannot be adequately remedied by pecuniary
26 compensation.

27
28

1 FIRST CAUSE OF ACTION

2 FOR WRIT OF MANDATE

3 (by Petitioner Sheetz)

4 31. Mr. Sheetz incorporates herein by reference each of the preceding paragraphs.

5 32. As set forth above, the County imposed a fee of \$23,420 as the condition of
6 issuing Mr. Sheetz a building permit to construct a manufactured house on his property.

7 33. The County's decision to impose said fee constitutes a prejudicial abuse of
8 discretion including, without limitation, for the following reasons:

9 a. Respondent failed to proceed in the manner required by law, because a
10 development fee may be imposed as a permit condition under the Mitigation
11 Fee Act, only if there is a reasonable relationship between the public impacts
12 of Mr. Sheetz's proposed project and the need for improvements to state and
13 local roads. Here, there is no reasonable relationship between the public
14 impacts of Mr. Sheetz's construction of a manufactured house and the need
15 for improvements to state and local roads.

16 b. Respondent failed to proceed in the manner required by law, because a
17 development fee may be imposed as a permit condition under the federal
18 unconstitutional conditions doctrine, as applied in the context of the Fifth
19 and Fourteenth Amendments to the U.S. Constitution, only if Respondent
20 makes an individualized determination that an essential nexus and rough
21 proportionality exist between the public impacts of Mr. Sheetz's proposed
22 project and the need for improvements to state and local roads. Here,
23 Respondent failed to make such an individualized determination and, even
24 if it had done so, it could not have demonstrated the requisite essential
25 nexus and rough proportionality.

26 c. Respondent's decision to impose a fee of \$23,420 as a condition of Mr.
27 Sheetz's building permit is not supported by legally sufficient findings, and
28 the findings are not supported by legally sufficient evidence.

1 34. In the alternative, the County has a clear, present, and ministerial duty to
2 conform its actions to the standards and requirements of the law. Exacting \$23,420 from Mr.
3 Sheetz as the condition of building one manufactured house on his property does not conform
4 to the Mitigation Fee Act or the unconstitutional conditions doctrine. As the victim of the
5 County's unlawful action, Mr. Sheetz has a clear, present, and beneficial right in the
6 performance of the County's lawful obligation to conform to the law and refund said fee.

7 35. The County's decision to require payment of \$23,420 in exchange for Mr.
8 Sheetz's building permit for one manufactured house is final. Mr. Sheetz either has exhausted
9 all available administrative remedies or the County has offered no remedies for him to exhaust,
10 making his challenge to the fee ripe for judicial review.

11 36. Mr. Sheetz's action is timely. The 180-day statute of limitations for challenging
12 a fee under the Mitigation Fee Act begins to run from the date of delivery of the permit
13 agency's written notice of an applicant's right to protest and sue over the fee. Gov't Code §
14 60020(d)(2); *Branciforte*, 138 Cal. App. 4th at 925. Here, the County never delivered the
15 statutory required notice, so the limitations period has not begun to run. In the alternative, this
16 action was brought within 180 days of the date when Mr. Sheetz filed his first protest letter.

17 37. Mr. Sheetz has no plain, speedy, or adequate remedy in the ordinary course of
18 law. Mr. Sheetz therefore is entitled to a writ of mandate, pursuant to Code of Civil Procedure
19 section 1085 and/or section 1094.5, directing and commanding the County to refund the
20 unlawfully exacted fee to Mr. Sheetz.

21 **SECOND CAUSE OF ACTION**

22 **FOR A DECLARATION THAT THE EXACTION VIOLATES GOV. CODE § 66001**

23 (By Plaintiff Sheetz)

24 38. Mr. Sheetz incorporates herein by reference each of the preceding paragraphs.

25 39. To impose a development fee as the condition of approval for a specific
26 development project, a local agency must "determine how there is a reasonable relationship
27 between the amount of the fee and the cost of the public facility or portion of the public facility
28 attributable to the development on which the fee is imposed." Gov't Code § 66001(b).

1 Moreover, “[a] fee shall not include the costs attributable to existing deficiencies in public
2 facilities, but may include the costs attributable to the increased demand for public facilities
3 reasonably related to the development project in order to (1) refurbish existing facilities to
4 maintain the existing level of service or (2) achieve an adopted level of service that is
5 consistent with the general plan.” *Id.* § 66001(g).

6 40. The County exacted from Mr. Sheetz a fee in the amount of \$23,420 as the
7 condition of issuing a building permit.

8 41. The County failed to establish, and cannot establish, that the fee bears a
9 reasonable relationship to traffic impacts purportedly caused by Mr. Sheetz’s manufactured
10 house. Moreover, the fee includes costs attributable to existing deficiencies in the traffic
11 infrastructure that the County required Mr. Sheetz to fund.

12 42. As a consequence, the County’s imposition of the \$23,420 fee violates section
13 66001 of the Government Code.

14 43. An actual controversy has arisen and now exists between Mr. Sheetz and the
15 County concerning the validity of the exaction. Mr. Sheetz contends that the exaction violates
16 section 66001 of the Government Code. He is informed and believes, and on that basis alleges,
17 that the County contends otherwise. A judicial determination and declaration as to the legality
18 and validity of the exaction are therefore necessary and appropriate. Civ. Proc. Code § 1060.

19 **THIRD CAUSE OF ACTION**

20 **FOR A DECLARATION THAT THE EXACTION VIOLATES THE**
21 **UNCONSTITUTIONAL CONDITIONS DOCTRINE (U.S. CONST. AMENDS. V &**
22 **XIV)**

23 (By Plaintiff Sheetz)

24 44. Mr. Sheetz incorporates herein by reference each of the preceding paragraphs.

25 45. The County has the burden of making an individualized determination that a
26 permit exaction bears an “essential nexus” and “rough proportionality” to the public impacts
27 caused by the proposed project. *Nollan v.*, 483 U.S. at 837; *Dolan*, 512 U.S. at 391. If no such
28 finding is or can be made, the exaction violates the unconstitutional conditions doctrine, as

1 applied in the context of the Takings Clause of the Fifth Amendment to the United States
2 Constitution (as applied to local government via the Fourteenth Amendment's Due Process
3 Clause).

4 46. The County exacted from Mr. Sheetz a fee in the amount of \$23,420 as the
5 condition of issuing a building permit.

6 47. The County failed to make an individualized determination (and cannot make
7 an individualized determination) that the fee bears an essential nexus or rough proportionality
8 to the public impacts caused by the proposed project.

9 48. As a consequence, the County's imposition of the \$23,420 fee violates the
10 unconstitutional conditions doctrine, as applied in the context of the Takings Clause of the
11 Fifth Amendment to the United States Constitution (as applied to local government via the
12 Fourteenth Amendment's Due Process Clause).

13 49. An actual controversy has arisen and now exists between Mr. Sheetz and the
14 County concerning the validity of the exaction. Mr. Sheetz contends that the exaction violates
15 the unconstitutional conditions doctrine. He is informed and believes, and on that basis
16 alleges, that the County contends otherwise. A judicial determination and declaration as to the
17 legality and validity of the exaction are therefore necessary and appropriate. Civ. Proc. Code
18 § 1060.

19 **FOURTH CAUSE OF ACTION**

20 **FOR A DECLARATION THAT THE COUNTY POLICY AND AUTHORIZING**
21 **LAWS RE: NEW DEVELOPMENT VIOLATE GOV'T CODE § 66001**

22 (As-Applied Challenge by Plaintiff Sheetz)

23 50. Mr. Sheetz incorporates herein by reference each of the preceding paragraphs.

24 51. To impose a development fee as the condition of approval for a specific
25 development project, a local agency must "determine how there is a reasonable relationship
26 between the amount of the fee and the cost of the public facility or portion of the public facility
27 attributable to the development on which the fee is imposed." Gov't Code § 66001(b).
28 Moreover, "[a] fee shall not include the costs attributable to existing deficiencies in public

1 facilities, but may include the costs attributable to the increased demand for public facilities
2 reasonably related to the development project in order to (1) refurbish existing facilities to
3 maintain the existing level of service or (2) achieve an adopted level of service that is
4 consistent with the general plan.” *Id.* § 66001(g).

5 52. The County enforces a policy that new development bear the **full cost** of
6 constructing new roads and/or widening of existing roads without regard to the cost
7 specifically attributable to the development on which the fee is imposed (hereinafter, “County
8 Policy”). As long as *some* causal connection between a new development and the need for a
9 new road or roads, or widening of an existing road or roads, is found, the County requires the
10 new development to pay *the entire cost* of the improvement(s).

11 53. That County Policy is purportedly authorized by Measure Y’s mandate that new
12 development fund the full cost of new roads and the widening of existing roads, regardless of
13 the cost specifically attributable to the development on which the fee is imposed; County
14 General Plan Policies that implement Measure Y’s mandate, including General Plan Policy
15 TC-X and TC-Xf; and the TIM Fee Program.

16 54. On information and belief, the County applied the County Policy, including the
17 authorizing laws and program authorized above, to Mr. Sheetz’s application for construction
18 of a manufactured house, which resulted in an exaction of \$23,420. As applied to Mr. Sheetz,
19 the County Policy, and authorizing provisions of Measure Y, the General Plan, and the TIM
20 Fee Program, violate section 66001 of the Government Code.

21 55. An actual controversy has arisen and now exists between Mr. Sheetz and the
22 County concerning the validity of the County Policy, including Measure Y, the General Plan,
23 and the TIM Fee Program to the extent that they authorize said County Policy, as applied to
24 Mr. Sheetz. Mr. Sheetz contends that, as applied to him, they violate section 66001 of the
25 Government Code. He is informed and believes, and on that basis alleges, that the County
26 contends otherwise. A judicial determination and declaration as to the legality and validity of
27 the County Policy and authorizing provisions of County law are therefore necessary and
28 appropriate. Civ. Proc. Code § 1060.

1 FIFTH CAUSE OF ACTION
2 FOR A DECLARATION THAT THE COUNTY POLICY AND AUTHORIZING
3 LAWS RE: NEW DEVELOPMENT VIOLATE THE UNCONSTITUTIONAL
4 CONDITIONS DOCTRINE (U.S. CONST. AMENDS. V & XIV)

5 (As-Applied Challenge by Plaintiff Sheetz)

6 56. Mr. Sheetz incorporates herein by reference each of the preceding paragraphs.

7 57. The County has the burden of making an individualized determination that a
8 permit exaction bears an “essential nexus” and “rough proportionality” to the public impacts
9 caused by the proposed project. *Nollan v.*, 483 U.S. at 837; *Dolan*, 512 U.S. at 391. If no such
10 finding is or can be made, the exaction violates the unconstitutional conditions doctrine, as
11 applied in the context of the Takings Clause of the Fifth Amendment to the United States
12 Constitution (as applied to local government via the Fourteenth Amendment’s Due Process
13 Clause).

14 58. The County enforces a policy that new development bear the **full cost** of
15 constructing new roads and/or widening of existing roads without regard to the cost
16 specifically attributable to the development on which the fee is imposed (hereinafter, “County
17 Policy”). As long as *some* causal connection between a new development and the need for a
18 new road or roads, or widening of an existing road or roads, is found, the County requires the
19 new development to pay *the entire cost* of the improvement(s).

20 59. That County Policy is purportedly authorized by Measure Y’s mandate that new
21 development fund the full cost of new roads and the widening of existing roads, regardless of
22 the cost specifically attributable to the development on which the fee is imposed; County
23 General Plan Policies that implement Measure Y’s mandate, including General Plan Policy
24 TC-X and TC-Xf; and the TIM Fee Program—which authorizing laws and program violate
25 the unconstitutional conditions doctrine.

26 60. On information and belief, the County applied the County Policy to Mr.
27 Sheetz’s application for construction of a manufactured house, which resulted in an exaction
28 of \$23,420. As applied to Mr. Sheetz, the County Policy, and authorizing provisions of

1 Measure Y, the General Plan, and the TIM Fee Program, violate the unconstitutional
2 conditions doctrine.

3 61. An actual controversy has arisen and now exists between Mr. Sheetz and the
4 County concerning the validity of the County Policy, including Measure Y, the General Plan,
5 and the TIM Fee Program to the extent that they authorize said County Policy, as applied to
6 Mr. Sheetz. Mr. Sheetz contends that, as applied to him, they violate the unconstitutional
7 conditions doctrine. He is informed and believes, and on that basis alleges, that the County
8 contends otherwise. A judicial determination and declaration as to the legality and validity of
9 the County Policy and authorizing provisions of County law are therefore necessary and
10 appropriate. Civ. Proc. Code § 1060.

11 **SIXTH CAUSE OF ACTION**

12 **FOR A DECLARATION THAT THE COUNTY POLICY AND AUTHORIZING**
13 **LAWS RE: NEW DEVELOPMENT VIOLATE GOV'T CODE § 66001**

14 (Facial Challenge by Plaintiffs Sheetz and Friends)

15 62. Mr. Sheetz and Friends incorporate herein by reference each of the preceding
16 paragraphs.

17 63. To impose a development fee as the condition of approval for a specific
18 development project, a local agency must “determine how there is a reasonable relationship
19 between the amount of the fee and the cost of the public facility or portion of the public facility
20 attributable to the development on which the fee is imposed.” Gov’t Code § 66001(b).
21 Moreover, under the Act, “[a] fee shall not include the costs attributable to existing
22 deficiencies in public facilities, but may include the costs attributable to the increased demand
23 for public facilities reasonably related to the development project in order to (1) refurbish
24 existing facilities to maintain the existing level of service or (2) achieve an adopted level of
25 service that is consistent with the general plan.” *Id.* § 66001(g).

26 64. The County enforces a policy that new development bear the **full cost** of
27 constructing new roads and/or widening of existing roads without regard to the cost
28 specifically attributable to the development on which the fee is imposed (hereinafter, “County

1 Policy”). As long as *some* causal connection between a new development and the need for a
2 new road or roads, or widening of an existing road or roads, is found, the County requires the
3 new development to pay *the entire cost* of the improvement(s).

4 65. That County Policy is purportedly authorized by Measure Y’s mandate that new
5 development fund the full cost of new roads and the widening of existing roads, regardless of
6 the cost specifically attributable to the development on which the fee is imposed; County
7 General Plan Policies that implement Measure Y’s mandate, including General Plan Policy
8 TC-X and TC-Xf; and the TIM Fee Program.

9 66. The County Policy, and authorizing provisions of Measure Y, the General Plan,
10 and the TIM Fee Program, on their face violate section 66001 of the Government Code. There
11 are no circumstances under which such a policy and authorizing provisions can be applied
12 lawfully.

13 67. An actual controversy has arisen and now exists between Mr. Sheetz and
14 Friends, on the one hand, and the County, on the other, concerning the validity of the County
15 Policy, including Measure Y, the General Plan, and the TIM Fee Program to the extent that
16 they authorize said County Policy. Mr. Sheetz and Friends contend that they facially violate
17 section 66001 of the Government Code. Mr. Sheetz and Friends are informed and believe,
18 and on that basis allege, that the County contends otherwise. A judicial determination and
19 declaration as to the facial legality and validity of the County Policy and authorizing provisions
20 of County law are therefore necessary and appropriate. Civ. Proc. Code § 1060.

21 **SEVENTH CAUSE OF ACTION**

22 **FOR A DECLARATION THAT THE COUNTY POLICY AND AUTHORIZING**

23 **LAWS RE: NEW DEVELOPMENT VIOLATE THE UNCONSTITUTIONAL**

24 **CONDITIONS DOCTRINE**

25 (Facial Challenge by Plaintiffs Sheetz and Friends)

26 68. Mr. Sheetz and Friends incorporate herein by reference each of the preceding
27 paragraphs.

28 69. The County has the burden of making an individualized determination that a

1 permit exaction bears an “essential nexus” and “rough proportionality” to the public impacts
2 caused by the proposed project. *Nollan v*, 483 U.S. at 837; *Dolan*, 512 U.S. at 391. If no such
3 finding is or can be made, the exaction violates the unconstitutional conditions doctrine, as
4 applied in the context of the Takings Clause of the Fifth Amendment to the United States
5 Constitution (as applied to local government via the Fourteenth Amendment’s Due Process
6 Clause).

7 70. The County enforces a policy that new development bear the **full cost** of
8 constructing new roads and/or widening of existing roads without regard to the cost
9 specifically attributable to the development on which the fee is imposed (hereinafter, “County
10 Policy”). As long as *some* causal connection between a new development and the need for a
11 new road or roads, or widening of an existing road or roads, is found, the County requires the
12 new development to pay *the entire cost* of the improvement(s).

13 71. That County Policy is purportedly authorized by Measure Y’s mandate that new
14 development fund the full cost of new roads and the widening of existing roads, regardless of
15 the cost specifically attributable to the development on which the fee is imposed; County
16 General Plan Policies that implement Measure Y’s mandate, including General Plan Policy
17 TC-X and TC-Xf; and the TIM Fee Program.

18 72. The County Policy, and authorizing provisions of Measure Y, the General Plan,
19 and the TIM Fee Program, on their face violate the unconstitutional conditions doctrine. There
20 are no circumstances under which such a policy and authorizing provisions can be applied
21 lawfully.

22 73. An actual controversy has arisen and now exists between Mr. Sheetz and
23 Friends, on the one hand, and the County, on the other, concerning the validity of the County
24 Policy, including Measure Y, the General Plan, and the TIM Fee Program to the extent that
25 they authorize said County Policy. Mr. Sheetz and Friends contend that they facially violate
26 the unconstitutional conditions doctrine. Mr. Sheetz and Friends are informed and believe,
27 and on that basis allege, that the County contends otherwise. A judicial determination and
28 declaration as to the facial legality and validity of the County Policy and authorizing provisions

1 of County law are therefore necessary and appropriate. Civ. Proc. Code § 1060.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Sheetz and Friends respectfully request relief as follows:

4 1. Issuance of a peremptory writ of mandate, directing and commanding the
5 County to refund to Mr. Sheetz the \$23,420 that it unlawfully exacted from him.

6 2. A declaration that the County has failed to demonstrate a reasonable
7 relationship, and/or an essential nexus and rough proportionality, between its \$23,420 exaction
8 and any adverse traffic impact caused by Mr. Sheetz's project;

9 3. A mandatory injunction requiring the County to refund to Mr. Sheetz the
10 \$23,420 that it unlawfully exacted from him.

11 4. A declaration that the County Policy referenced above, and those provisions of
12 Measure Y, the General Plan, and the TIM Fee Program that authorize it, are invalid and of no
13 force and effect as against Mr. Sheetz;

14 5. An injunction preventing enforcement against Mr. Sheetz of the County Policy
15 referenced above, and those provisions of Measure Y, the General Plan, and the TIM Fee
16 Program that authorize it;

17 6. A declaration that the County Policy referenced above, and those provisions of
18 Measure Y, the General Plan, and the TIM Fee Program that authorize it, are facially invalid
19 and of no force and effect;

20 7. An injunction preventing enforcement of the County Policy referenced above,
21 and those provisions of Measure Y, the General Plan, and the TIM Fee Program that authorize
22 it, both now and in the future;

23 8. For costs of suit and attorneys' fees under CCP § 1021.5 or any other applicable
24 statute; and

25 9. For such other and further relief as the Court deems just and equitable.

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DATED: June 5, 2017

PAUL BEARD
CLYNTON NAMUO
ALSTON & BIRD LLP



Paul Beard
Petitioners and Plaintiffs
**GEORGE SHEETZ AND FRIENDS OF EL DORADO
COUNTY**

VERIFICATION


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I, George Sheetz, declare as follows:

1. I am a resident of El Dorado County, and make this verification on my behalf. I have read the foregoing Verified Petition for Writ of Mandate; Complaint for Declaratory and Injunctive Relief ("Petition") and know the contents thereof. I certify that the allegations contained in the Petition are true of my own knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 2nd day of June, 2017, in El Dorado County, California.


George Sheetz
June 2 - 2017 *GS*

VERIFICATION

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I, Bernard Carlson, Jr., declare as follows:

1. I am the CEO of Friends of El Dorado County, and am authorized to make this verification on its behalf. I have read the foregoing Verified Petition for Writ of Mandate; Complaint for Declaratory and Injunctive Relief ("Petition") and know the contents thereof. I certify that the allegations contained in the Petition are true of my own knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5th day of June, 2017, in El Dorado County, California.



Bernard Carlson, Jr.

Exhibit A



Transportation Impact Fees Protest Letter

Date 12-7-2016

Sheri Woodford
Sheri.Woodford@edcgov.us
El Dorado County Department of Transportation
2850 Fairlane Court
Placerville, CA 95667

RECEIVED

DEC 07 2016

EL DORADO COUNTY
BUILDING DEPARTMENT

Jess Melcher
JESS MELCHER
12:35 PM
12/7/16

Dear Mrs. Woodford,

The County DOT staff was contacted regarding how to submit impact fee protest letters and claims. You were given as the contact person. I also inquired about a form to submit with the letter and was informed there are no forms to submit. Attached is a generic government claim form used for making claims in California.

I am protesting the transportation impact fees for local and state highways for the following reasons:

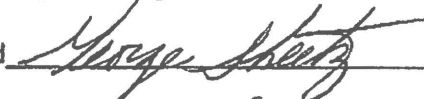
- 1) The county has not completed the required 5-year update required by mitigation law government code 66001 (see Walker v City of San Clemente). The county is not justified in collecting impact fees without a valid nexus update.
- 2) The county charges impact fees for existing deficiencies such as parallel capacity, bike lanes, auxiliary lanes, and replacing a 46 year old freeway interchange (functionally obsolete and structurally deficient in 2012- CalTrans bridge inspection for Cameron Park Interchange) at the entire expense of new development. The county wishes new residents to fully fund deficiencies created by depreciation or regulatory changes such as fixing underpass clearance hazards. I think this is a violation of the Mitigation Fee Act.
- 3) The Level of Service (LOS) on our roads determines transportation impact fees at 2035. The total of existing residents trips, external trips, and new development's trips triggers fees based on capacity thresholds - LOS. External trips should be removed from calculating LOS for impact fee purposes. (External trips are removed from LOS calculations in Rancho Cordova's nexus study). Even though the county funds externals to LOS "E" on state highways, external trips do consume significant capacity (over 50% near Placerville) of the available total capacity. If external trips were mitigated to LOS "A", then space would be available for new development on the highways. The county mitigates external trips only to LOS "E" which burdens new residents with the LOS "E" hurdle predominately created by external impacts. If external impacts were removed from LOS computations it would allow for additional capacity likely reducing fees. I believe this is a regulatory takings and a violation of the Mitigation Fee Act.

This letter contains the reason for the protest and the legal theories associated with it. The amount of \$ 23420⁰⁰ was tendered for the impact fees for state and local roads and is submitted with the protest letter.

Address of this property is 3699 Fort Jim Rd. Placerville Ca.

APN for this property is 077-030-49-1

This document is signed under penalty of perjury and the information within is true and correct to the best of my knowledge.

Signed 

Date 12-7-2016

EL DORADO COUNTY
DEVELOPMENT SERVICES

RECEIPT #: 203065
PAYMENT DATE: 08/25/2016

=====

RECEIVED FROM: GEORGE SHEETZ
PARCEL ID: 077-030-49-1

PERMIT ID: 249873

BLD FEE-PERMD	1,591.31	
PLNG SFD SITE REV	0.00	
DEVELOPMENT SERVICES - PLACERVILLE	\$	1,591.31
FIRE-EDC-SPRINK	2,225.30	
EL DORADO COUNTY FIRE PROTECTION DISTRICT	\$	2,225.30
SEPTIC-NEW SF	820.00	
ENVIRONMENTAL MANAGEMENT	\$	820.00
GEN PLAN IMPL FEE	59.65	
LONG RANGE PLANNING	\$	59.65
SMIP	29.82	
STRONG MOTION INSTITUTE	\$	29.82
CA GREEN FEE	10.00	
STATE OF CALIFORNIA GREEN BUILDING FEE	\$	10.00
TECH FEE	80.30	
CDA ADMINISTRATION	\$	80.30
DOT 04GP TIM ZN 1	21,160.00	
TRAFFIC IMPACT MITIGATION FEES	\$	21,160.00
DOT 04GP HWY50 TI	2,260.00	
TRAFFIC IMPACT MITIGATION FEES HWY 50	\$	2,260.00
	RECEIPT TOTAL:	\$ 28,236.38
RECEIVED BY: BLLLW	<u>zu</u> INITIALS	CHECK# 1014 \$ 28,236.38
BLLLW-08/25/2016-09:20:25		CASH \$ 0.00

**** ATTENTION APPLICANT ****

THIS PERMIT APPLICATION IS AUTOMATICALLY ROUTED TO OTHER AGENCIES WHOSE APPROVAL MAY BE REQUIRED PRIOR TO ISSUANCE OF YOUR PERMIT. AFTER ALL AGENCIES HAVE ENTERED EITHER "APPROVED" OR "NOT APPLICABLE", YOUR PERMIT IS READY TO BE ISSUED. YOU CAN CHECK THE STATUS OF YOUR PERMIT ON OUR WEBSITE AT [HTTP://EDCAPPS.EDCGOV.US/BUILDING/STATUS_REQUEST.ASP](http://EDCAPPS.EDCGOV.US/BUILDING/STATUS_REQUEST.ASP)

EL DORADO COUNTY
DEVELOPMENT SERVICES

RECEIPT #: 203065
PAYMENT DATE: 08/25/2016

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RECEIVED FROM: GEORGE SHEETZ
PARCEL ID: 077-030-49-1

PERMIT ID: 249873

BLD FEE-PERMD	1,591.31	
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DOT 04GP HWY50 TI	2,260.00	
TRAFFIC IMPACT MITIGATION FEES HWY 50	\$	2,260.00
RECEIVED BY: BLLLW		
BLLLW-08/25/2016-09:20:25		
	RECEIPT TOTAL:	\$ 28,236.38
	INITIALS	CHECK# 1014 \$ 28,236.38
		CASH \$ 0.00

**** ATTENTION APPLICANT ****

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Exhibit B

~~SECRET~~

Transportation Impact Fees Protest Letter

Date 12-13-2016

Sheri Woodford
Sheri.Woodford@edcgov.us
El Dorado County Department of Transportation
2850 Fairlane Court
Placerville, CA 95667

Dear Mrs. Woodford,

The County DOT staff was contacted regarding how to submit impact fee protest letters and claims. You were given as the contact person. I also inquired about a form to submit with the letter and was informed there are no forms to submit. Attached is a generic government claim form used for making claims in California.

I am protesting the transportation impact fees for local and state highways for the following reasons:

- 1) The county has not completed the required 5-year update required by mitigation law government code 66001 (see Walker v City of San Clemente). The county is not justified in collecting impact fees without a valid nexus update.
- 2) The county charges impact fees for existing deficiencies such as parallel capacity, bike lanes, auxiliary lanes, and replacing a 46 year old freeway interchange (functionally obsolete and structurally deficient in 2012- CalTrans bridge inspection for Cameron Park Interchange) at the entire expense of new development. The county wishes new residents to fully fund deficiencies created by depreciation or regulatory changes such as fixing underpass clearance hazards. I think this is a violation of the Mitigation Fee Act.
- 3) The Level of Service (LOS) on our roads determines transportation impact fees at 2035. The total of existing residents trips, external trips, and new development's trips triggers fees based on capacity thresholds - LOS. External trips should be removed from calculating LOS for impact fee purposes. (External trips are removed from LOS calculations in Rancho Cordova's nexus study). Even though the county funds externals to LOS "E" on state highways, external trips do consume significant capacity (over 50% near Placerville) of the available total capacity. If external trips were mitigated to LOS "A", then space would be available for new development on the highways. The county mitigates external trips only to LOS "F" which burdens new residents with the LOS hurdle - predominately created by external impacts. If external impacts were removed from LOS computations it would allow for additional capacity reducing fees. I believe this is a regulatory takings and a violation of the Mitigation Fee Act.
- 4) By signing this line George Stutz the fee payer states he was NOT given notice of the right to protest or appeal the transportation impact fees.

Permit 249873

This letter contains the reason for the protest and the legal theories associated with it. The amount of \$ 23,420.⁰⁰ was tendered for the impact fees for state and local roads and is submitted with the protest letter.

Address of this property is 3699 Fort Jim Rd. Placerville Ca. 95667

APN for this property is 077-030-491.

This document is signed under penalty of perjury and the information within is true and correct to the best of my knowledge.

Signed George Steub

Date 12-13-2016

Exhibit C

RECEIVED
BOARD OF SUPERVISORS
EL DORADO COUNTY

2017 MAY 23 AM 8:54

May 23, 2017

23/SL

Via PERSONAL DELIVERY

Mr. James S. Mitrissin
Clerk of the Board of Supervisors
County of El Dorado

Michael Ciccozzi, Esq.
County Counsel
County of El Dorado

Re: Unlawful Fee Imposed on Permit No. 249873 (3699 Fort Jim Rd., Placerville)

Dear Honorable Supervisors and Mr. Ciccozzi,

On December 7 and 13, 2016, I submitted letters to the County's Department of Transportation protesting the imposition and payment of an unlawful fee in the amount of \$23,420 as the condition of obtaining a building permit for a single manufactured house. The two letters are attached hereto for your reference.

Among other things, the fee is unlawful, because the County has not made (and cannot make) the necessary showing that my modest project caused the need for improvements to state and local roads, let alone to the tune of \$23,420. There's simply no reasonable relationship, or essential nexus and rough proportionality, between my project and the need for those improvements. The County may point to the "but for" standard embodied in Measure Y, but even if it could be shown that my project was the "but for" cause of the needed improvements (which it can't), no local measure can trump state statutory and federal constitutional requirements.

It's important to note that the fee was imposed without any written notice by the Department, or other County body or official, of my right to protest the fee, as required by the Mitigation Fee Act. It was just good fortune that I learned from a third party that state law protects my rights to protest the fee -- and, if necessary, bring a legal action to secure a refund. I now know that state law also required the County to notify me, in writing, of my rights when it imposed the fee, which it did not do.

To date, I have not received a refund or even a response to my protest letters. Please respond to the protest letters by close of business this Friday, May 26, and let me know if the County will refund the fee that I paid or -- short of that -- if there are further administrative procedures that the County makes available for me to exhaust. If I do not hear anything by then, I will assume that the decision to impose the fee on my permit is final and that there are no further administrative remedies. In that case, I will be reluctantly forced to file a lawsuit to secure a refund.

Sincerely,



George Sheetz