

NORCAL INVESTMENT PARTNERS, L.P. v. CITY OF REDDING

NORCAL INVESTMENT PARTNERS, L.P., Plaintiff and Appellant,
v.
CITY OF REDDING et al., Defendants and Respondents.

C061070.

Court of Appeals of California, Third Appellate District, Shasta.

February 18, 2010.

SIMS, J.

The City of Redding (the City) has ambitious plans for developing a 665-acre area around the intersection of Oasis Road and Interstate 5. Over the next two decades, the City anticipates development of 3.1 million square feet of commercial floor space and 2,183 housing units within the area. To accommodate expected traffic increases, the City plans to widen Oasis Road, reconstruct a freeway interchange, and oversee construction of roadside infrastructure such as curbs, gutters, and sidewalks. The planned traffic infrastructure upgrades are expected to cost \$55.3 million.

The Redding City Council (the City Council) adopted Ordinance No. 2398 to establish a fee program to fund the improvements by exacting fees from three classes of developers. The first class of developers comprises those owning properties adjacent to the widened portion of Oasis Road. These developers pay for the major improvements adjoining their properties but receive reimbursement for part of the cost. The second class of developers encompasses those whose properties fall within an area determined by the City to benefit most from the Oasis Road infrastructure improvements. This area has been labeled the North Redding Traffic Benefit District (NRTBD). Developers of properties within the NRTBD pay the same level of fees as the first class. The third class includes developers of properties elsewhere in the City. The third class pays a lower level of fees than the first two classes.

Appellant NorCal Investment Partners, L.P. (NorCal) owns property in the NRTBD and filed a petition for writ of mandate and complaint for declaratory relief seeking invalidation of Ordinance No. 2398. The trial court concluded that respondents, the City and the City Council, did not violate the Mitigation Fee Act (the Act) (Gov. Code, §§ 66000, et seq.)^[1] in establishing the fee program to fund improvements to Oasis Road and the freeway interchange.

On appeal, NorCal contends Ordinance No. 2398 violates the Act by (1) departing from the City's long-standing practice of making developers pay for their own infrastructure improvements, (2) exacting a fee without sufficient evidence supporting the fee program's stated purposes, (3) forcing some developers to subsidize the costs of other developers, and (4) failing to establish a nexus between the planned infrastructure improvements and the fee to be collected under Ordinance No.

2398. Respondents argue NorCal's action is barred by the statute of limitations set forth in subdivision (c)(1) of section 65009.

We affirm the trial court's judgment. Respondents failed to preserve the statute of limitations issue for appeal. On the merits, we conclude that respondents' establishment of the fee program to fund Oasis Road improvements was a quasi-legislative act that was not arbitrary, capricious, or lacking in evidentiary support.

FACTUAL AND PROCEDURAL HISTORY

The Oasis Road Specific Plan

In September 2006, the City adopted the Oasis Road Specific Plan (the specific plan). The specific plan announces "the Oasis Road/Interstate 5 (I-5) area as Redding's next major regional commercial area. Among this area's many attributes are good freeway and arterial street access, predominately gentle topography, and ample undeveloped land. These and other attributes make the Oasis Road area the logical choice for accommodating the region's retail needs over the next 20 years. These characteristics also make the area attractive for providing residential lands for market rate and affordable housing that will be needed as Redding's population grows."

The specific plan "provides a framework for development of approximately 665 acres surrounding the Oasis Road and Interstate 5 interchange." Development is anticipated to create "approximately 3.1 million square feet of commercial floor area and 2,183 potential housing units within the Plan boundaries."

The Fee Study

Following adoption of the specific plan, the City began the process of establishing a fee program for funding infrastructure costs required by the planned development. To help with the process, the City retained a consultant to prepare a fee study.

On August 13, 2007, the City Council was presented with the "North Redding Traffic Benefit District Traffic Impact Fee Study" (the fee study). The fee study "documents the necessary calculations and findings for the City of Redding, California to establish traffic impact fees to fund the reconstruction of the interchange at Interstate 5 and Oasis Road as well as several associated improvements. The traffic impact fee will be assessed in a benefit district that includes the Oasis Road Specific Plan Area (ORSP) and a surrounding area that will directly benefit from the proposed improvements, referred to herein as the North Redding Traffic Benefit District (NRTBD)."

The fee study explains, "the boundaries of the NRTBD [were drawn] to include all land with significant development potential in the immediate vicinity of the intersection of Oasis Road and I-5. The size of the District reasonably corresponds to the travel shed likely to generate trips on the reconstructed interchange and related improvements." The eastern boundary of the district corresponds with the limits of extant sewer infrastructure. The western and southern boundaries marked the limits of property developments likely to occur by 2025. The northern boundary corresponds to the city limit "as well as the northern edge of the City's sphere of influence"

The study describes the process by which costs were apportioned as follows: "The allocation of costs between these two zones (the NRTB[D] and the rest of the City) are based on the Shasta County Traffic Demand Model which estimates the origins and destinations of all trips using the expanded interchange and improved road segments in 2025. This 'select link' analysis ensures that the fees charged in a given zone are proportionate to the actual benefit derived by new development within that zone. [¶] The fair share cost burden for the remainder of the City will be incorporated into the existing citywide traffic impact fee program. Developments within the NRTBD shall be granted partial credits against the citywide fee to avoid double-charging those payers for the Oasis Road improvements outlined in this study."

The fee study concludes, "There is a reasonable relationship between the traffic impact fee for a specific development project and the cost of the facilities attributable to that development based on the estimated vehicle trips the development will add to the project areas. . . . Larger projects of a certain land use type will have a higher trip generation and pay a higher fee than smaller projects of the same land use type. Thus, the fee schedule ensures a reasonable relationship between the traffic impact fee for a specific development project and the cost of the facilities attributable to that project."

The "Full," "Light," and "Minimum" Fee Options

The fee study presented the City Council with three options for funding: "full," "light," and "minimum." The City's Development Services Department summarized these options as follows:

"Full Transportation Improvements Alternative [¶] The 'full improvement' approach assumes that fees are collected which reflect the projected costs of developing all Phase I transportation improvements in the program at their ultimate size and configuration. This alternative represents the 'maximum legally justifiable fee.' Improvement costs for this alternative are approximately \$71 million. Of this amount, \$16.9 million is projected to be funded by tax increment revenues from the Buckeye Redevelopment Area.^[21] In addition, \$7.5 million must be funded by future development outside the fee area boundary via Citywide Traffic Impact Fee program or other mechanism. Under this alternative, the Citywide TIF fee would increase by \$516 per unit, and the NRTBD traffic benefit fee would be approximately \$5,900 per residential dwelling unit, or equivalent. Fee credits would be provided to developments which construct normal frontage improvements as part of an approved project.

"Reduced (Light) Transportation Improvements Alternative [¶] This version provides the same basic improvements as the 'full' version, but shifts typical frontage improvements (curb, gutter, sidewalk, and a travel lane) to the adjacent property at the time it is developed, which is consistent with the current practice in the City of Redding. No NRTBD fee credit would be provided for these improvements. Consistent with past Council direction, an exception to this is retaining the full street improvements on Oasis Road between Cascade Boulevard and Gold Hills Drive. Costs for this alternative are approximately \$55.3 million, of which \$16.9 million is projected tax increment and \$5.7 million would be the obligation of the Citywide TIF program. Under this scenario, the TIF fee increase drops to \$395 per dwelling unit equivalent, and the impact fee would be reduced to \$4,156 per dwelling unit — about \$1,800 per dwelling unit less than the full improvements scenario.

"Minimum Improvement Alternative [¶] A third possible alternative represents what can be considered the 'Minimum Financing' alternative. This alternative simply reflects the costs for

development of the minimum improvements needed to: [¶] . . . Reconstruct the I-5 and Oasis interchange. [¶] . . . Relocate the Twin View Boulevard (south) and Cascade Boulevard (north and south) intersections. [¶] . . . Widen bridges for two crossings of Churn Creek (Oasis Road and Twin View Boulevard) and widen Salt Creek bridge. [¶] . . . Construct Oasis Road at four lanes with median. [¶] . . . Construct traffic signals at intersections and freeway ramps between Cascade Boulevard and Gold Hills Drive. [¶] Frontage improvements (curb, gutter, sidewalk, and a travel lane) would be constructed by adjacent property at the time it is developed, and it excludes improvements for North Twin View Boulevard and North Cascade beyond the minimum needed to address their relocation as part of reconstruction of the interchange. [¶] This alternative would not satisfy past Council direction to establish the fee in an amount that would allow reimbursement or credits for construction of full improvements with property development."

Adoption of the "Light" Fee Option

The City Council expressed interest in the "light" fee option and directed City staff to receive and consider public comments regarding the option. City staff held public meetings and received comments from various individuals and entities — including NorCal.

Two comments directly addressed the issues of fee magnitude and allocation. The first concerned the "light" option's reimbursement of only a few developers for their costs for improvements to Oasis Road. The comment and City staff response were:

"Comment 7. The City should eliminate normal development requirements (project frontage improvements) from the program. These costs should be the responsibility of the adjacent property owner to avoid unfair `subsidies' being provided to potentially competing developments.

"Response. Typically, a developer of property is required to provide his/her own street frontage improvements as part of project construction. This includes curb and gutter, sidewalks, streetlights, and a paved travel lane and tie-in paving. The draft program includes all these improvements in the NRTBD construction costs, and in turn, they become a financial responsibility of all properties in the NRTBD. Including funding for full improvements responds to the City Council's direction and the community's desire that all major circulation improvements in the interchange area be constructed at one time to avoid a haphazard development pattern and the resulting inconvenience to drivers and pedestrians that extended construction projects would create. [¶] There is some merit to this concern; and to respond to this, an alternative approach has been prepared for Council consideration, in addition to the full-improvement scenario. This alternative removes normal frontage improvements from the cost projections for all streets *except* Oasis Road between Churn Creek Bridge and Gold Hills Drive. This alternative reduces the total projected infrastructure cost by approximately \$17 million. [¶] All traffic using the freeway interchange must travel on Oasis Road for at least a portion of its trip. Ensuring that Oasis Road is constructed at its ultimate improved design will minimize construction disruptions for all properties and area residents, as well as provide a safer, better-functioning circulation system. An added benefit may be the fact that the completed improvements will encourage faster development on properties within the surrounding area by providing a more attractive and marketable condition." (Emphasis omitted in part.)

The next comment and response concerned the total cost of the planned improvements called for in the specific plan:

"Comment 8. The City should reduce the number of improvements in the program to lower the fee. Street segments such as Cascade Boulevard north and south of Oasis Road and Twin View Boulevard north and south of Oasis Road should be constructed as temporary facilities on the shortest feasible alignments and with the minimum amount of improvements necessary, thus reducing costs and the fee. The ultimate alignments can be constructed at the time the abutting properties develop, and they should be the responsibility of adjacent properties.

"Response. The basis of this comment is that it is `unfair' to some properties to include improvements that are not absolutely required for an expanded interchange to operate. Among the fee program's basic goals is avoiding the expense of `throw-away' improvements, which will ultimately impact the overall economic viability of the area. While there is no prohibition against interim improvements and some development may occur which includes them, such an approach will increase development cost and cannot be justified as part of the fee program. More fundamentally, failing to create the backbone street system that provides good traffic circulation would negatively affect the entire system, impacting the ability of streets to operate in a fashion that will maintain minimum service standards. Because of this, the program is not recommended for modification to this comment."

A further fee study was issued on August 21, 2007. The further study revised the "light" option to decrease fees born by developers within the NRTBD by using Buckeye Redevelopment Area funds to reduce their share of costs. The City staff also adjusted NRTBD boundaries to include additional properties. The further study incorporated select link traffic modeling calculations for both directions of Cascade Boulevard, Twin View Boulevard, and Oasis Road as well as for the freeway interchange. On the basis of the traffic modeling analysis, the further study apportioned costs for each of the links.

On November 6, 2007, the City Council adopted Ordinance No. 2398. The ordinance incorporated the revised "light" fee option as set forth in the further study.

NorCal's Challenge to Ordinance No. 2398

On the same day as Ordinance No. 2398's adoption, NorCal filed a petition for writ of mandate and complaint for declaratory relief. (Code Civ. Proc., § 1085.) NorCal urged the trial court to invalidate the ordinance for failure to comply with the Act. The City and the City Council moved for summary dismissal of the writ petition.

The trial court concluded Ordinance No. 2398 did not violate the Act and entered judgment on November 25, 2008. NorCal timely filed a notice of appeal.

DISCUSSION

I

Statute of Limitations (§ 65009)

Respondents contend NorCal's petition for writ of mandate and complaint for declaratory relief were barred by the statute of limitations. We reject the contention. Respondents forfeited the issue by failing to properly raise it in the trial court.

A

The procedural bar imposed by the statute of limitations constitutes an affirmative defense that a defendant must properly invoke to preserve the issue for appeal. (*Minton v. Cavaney* (1961) 56 Cal.2d 576, 581.) It has long been "established in California that even if it appears upon the face of a complaint that the cause of action therein alleged is barred by the statute of limitations, the defense is nevertheless not available unless it is pleaded and that it may not be raised by a general demurrer but must be specifically stated as a ground of demurrer." (*Miller v. Parker* (1933) 128 Cal.App. 775, 776; see also 5 Witkin, Cal. Procedure (5th ed. 2008) Pleadings, § 962, p. 375.) Unless the defendant raises the statute of limitations issue in a demurrer or answer, the issue is forfeited. (*Berendsen v. McIver* (1954) 126 Cal.App.2d 347, 351.)

Here, respondents failed to demur on ground that NorCal's suit was barred by the statute of limitations. Respondents' answer to NorCal's petition for writ of mandate and complaint for declaratory relief does not mention the statute of limitations. Respondents' motion for summary denial of NorCal's writ petition is also silent as to the issue. Respondents raised the statute of limitations issue only in a memorandum of points and authorities that served as their trial brief.

For failure to properly present a statute of limitations defense in either their answer or by demurrer, respondents forfeited the issue. (*Berendsen v. McIver, supra*, 126 Cal.App.2d at p. 351; 5 Witkin, *supra*, Pleadings, § 962, p. 375.)

II

Mitigation Fee Act (§ 66000 et seq.)

The Act sets forth "a statutory standard against which monetary exactions by local governments subject to its provisions are measured." (*Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 865 (*Ehrlich*)). "As its legislative history evinces, the Act was passed 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, quoting *Centex Real Estate Corp. v. City of Vallejo* (1993) 19 Cal.App.4th 1358, 1361.)

Subdivision (a) of section 66001 "applies to an initial, quasi-legislative adoption of development fees" and specifies findings an agency must make prior to implementing a fee program. (*Garrick Development Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320, 336 (*Garrick*)).

Subdivision (a) of section 66001 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."

III

Standard of Review

In reviewing whether the City Council comported with the Act in adopting Ordinance No. 2398, we "exercise very limited review `out of deference to the separation of powers between the Legislature and the judiciary, to the legislative delegation of administrative authority to the agency, and to the presumed expertise of the agency within its scope of authority.'" (*California Hotel & Motel Assn. v. Industrial Welfare Com.* (1979) 25 Cal.3d 200, 212, fn. omitted.) The court may not weigh the evidence adduced before the administrative agency or substitute its judgment for that of the agency, for to do so would frustrate the legislative mandate. (*Pitts v. Perluss* (1962) 58 Cal.2d 824, 833-835.) An agency acting in a quasi-legislative capacity is not required by law to make findings indicating the reasons for its action (*City of Santa Cruz v. Local Agency Formation Com.* (1978) 76 Cal.App.3d 381, 389, 390-391), and the court does not concern itself with the wisdom underlying the agency's action any more than it would were the challenge to a state or federal legislative enactment. (*Stauffer Chemical Co. v. Air Resources Board* (1982) 128 Cal.App.3d 789, 794-796; *Faulkner v. Cal. Toll Bridge Authority* (1953) 40 Cal.2d 317, 329; *City of Santa Cruz v. Local Agency Formation Com.*, *supra*, 76 Cal.App.3d at p. 389.) In sum, the court confines itself to a determination whether the agency's action has been `""arbitrary, capricious, or entirely lacking in evidentiary support. . . ."' (*Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 34, fn. 2 (*Strumsky*), quoting *Pitts v. Perluss*, *supra*, 58 Cal.2d at p. 833, and *Brock v. Superior Court* (1952) 109 Cal.App.2d 594.)" (*Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, 230 (*Shapell*)).

In determining whether the City Council abused its discretion, "we find useful the test articulated by our Supreme Court in *California Hotel & Motel Assn. v. Industrial Welfare Com.*, *supra*, 25 Cal.3d 200: `A court will uphold the agency action unless the action is arbitrary, capricious, or lacking in evidentiary support. A court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.'" (*Id.* at p. 212, fn. omitted.)" (*Shapell*, *supra*, 1 Cal.App.4th at p. 232.)

With these principles in mind, we consider NorCal's challenges to respondents' establishment of a fee program to fund traffic infrastructure improvements to Oasis Road.

IV

The City's Departure from Past Infrastructure Funding Practices

NorCal argues the "light" fee option must be invalidated because it conflicts with the policy established in the City of Redding General Plan and Municipal Code that "development pays for any impacts attributable to the development." We disagree.

Prior to Ordinance No. 2398's adoption, no reimbursement or credit had ever been accorded to a developer of property in the City for construction of improvements such as curbs, gutters, sidewalks, or additional paved street widths. The City's ambitious plans for developing the Oasis Road area marked the first time that some developers would receive credit for some of their traffic infrastructure costs.

In attacking the City's new manner of funding traffic infrastructure upgrades, NorCal makes the mistake of equating what is familiar with what is necessary. As respondents point out, accepting NorCal's argument would mean that a legislative body, such as a city council, would abuse its discretion whenever exacting a fee in a manner differing from past practices. A city council is not required to preserve practices out of mere deference to the past. Instead, a city is required to implement a fee program in harmony with the Act. (*Ehrlich, supra*, 12 Cal.4th at pp. 864-865.) Accordingly, we reject NorCal's argument that mere deviation from past policies regarding collection of developer fees constitutes a basis for invalidating Ordinance No. 2398.

V

Sufficiency of the Evidence in Support of the Fee Program's Purposes

NorCal next contends the reasons stated for the fee program established by Ordinance No. 2398 "are not statements of facts, they are opinions, and the basis or justification for these opinions is nowhere revealed. Further, the alleged benefit connections are conceptually difficult to make." We conclude the City's fee program pursues legitimate purposes.

A

Even while NorCal asserts a lack of conceptual connection between the fees to be collected and the infrastructure to be built, it presents a cogent summary of the City's stated purposes. NorCal correctly states:

"The City offers two justifications: [¶] 1. The congestion management and other environmental benefits to future businesses and residents in the area by reducing the likelihood of piecemeal or repetitive road improvement construction along the most heavily congested road link (other than the freeway interchange in the fee area[]). [¶] 2. The economic benefit for future development throughout the NRTBD of providing funding for a completed arterial section on Oasis Road, which will serve as the single most important gateway to properties in the area."

B

A valid governmental *purpose* for a public project does not require evidentiary support. So long as a governmental purpose is not based on impermissible discriminatory animus, the legislative body enjoys nearly unfettered discretion to determine what goals best serve the public good. (*County of Butte v. Bach* (1985) 172 Cal.App.3d 848, 862 & fn. 1; see also *Ehrlich, supra*, 12 Cal.4th at pp. 881-882.)

Here, respondents' stated reasons for implementing a fee program for Oasis Road improvements are permissible governmental purposes. Reducing traffic delays due to halting construction efforts, increasing a roadway's capacity to handle expected increases in traffic, minimizing adverse environmental effects, and encouraging economic development are legitimate governmental aims. Regardless of whether the fee study adequately justifies the *manner* for achieving the goals for the Oasis Road area, the City's stated *purposes* are permissible.

NorCal acknowledges the plans for "arterial roads, sewers, and utilities" are sufficiently connected to the intention for which the fee is assessed. We have no difficulty including an interest in proper development and funding of sidewalks, curbs, and gutters among legitimate governmental purposes. We also find unproblematic the respondents' goal of avoiding "throw-away" infrastructure improvements as a matter of economic and environmental prudence.

The City was not required to study whether encouraging economic development, reducing traffic congestion, or ameliorating environmental impacts are proper goals for a governmental entity. Accordingly, we reject NorCal's attack on the sufficiency of the evidence in support of the stated purposes for the fee exacted under Ordinance No. 2398.

VI

Ordinance No. 2398's Three Classes of Developer Fees

NorCal argues the fee program established by Ordinance No. 2398 must be invalidated because "there is no provision for a case-by-case determination of individual impacts, as fees are imposed on a district-wide basis." NorCal further contends the fee program unfairly requires some developers to subsidize the projects of other developers. Such "subsidy" is argued to give developers of parcels adjacent to a short stretch of Oasis Road an unfair economic advantage. We are not persuaded.

A

Ordinance No. 2398 funds traffic infrastructure improvements to Oasis Road from four sources: (1) developers of properties adjacent to Oasis Road between Cascade Boulevard and Gold Hills Drive, who pay for development of traffic infrastructure improvements adjacent to their properties but receive a credit for some of their costs, (2) developers of properties within the NRTBD, who pay for developments called for in the specific plan but do not receive any reimbursement for their own curb, gutter, or sidewalk costs, (3) developers of properties outside the NRTBD but within the City, who pay a lesser fee and also receive no reimbursement, and tax payers within the Buckeye Redevelopment Area, who contribute toward the redevelopment fund.

Developers pay fees according to the class into which their properties fall. For example, properties within the NRTBD pay according to the same dwelling unit equivalent fee table regardless of how far from Oasis Road the properties may actually be. The fee study explains the division of developers into classes as follows: "Typically, benefit district boundaries are designed to achieve the following objectives: [¶] 1. Encompass the projected development that is expected to impact the need for the traffic improvements outlined in this report; [¶] 2. Avoid arbitrary boundary effects that would cause adjacent and presumably similar developments to pay fees at vastly different rates.

"To achieve these objectives, City of Redding staff established the boundaries of the NRTBD to include all land within significant development potential in the immediate vicinity of the intersection of Oasis Road and I-5. The size of the District reasonably corresponds to the travel shed likely to generate trips on the reconstructed interchange and related improvements.

"The majority of new development within the NRTBD will occur within the [specific plan area], hence the greatest portion of fee contributions will be generated from within that area. . . . Based on the results of the Select Link traffic modeling, 87.1% of the new development trips using the interchange can be attributed to the NRTBD."

The fee study explains that select link traffic modeling "allows isolation of the traffic on a roadway segment where an improvement is planned to identify where the traffic that will be using each link is coming from or going to. . . . With this information, the cost of improvements can be fairly apportioned according to which future developments will benefit from it."

The further fee study took into account public comment to revise the borders of the NRTBD. As a result, the further study expanded the NRTBD boundaries "to include some additional properties, particularly those within the City limits on the east side of Interstate 5 along Oasis Road . . . that reasonably can be expected to develop within the term of the program and will directly contribute to traffic in the fee area." City staff also refined estimates of future housing and commercial developments. The further study included a detailed cost analysis of the components of the project. The study set forth an estimate of future development by area and development type (i.e., residential, commercial, office industrial) within specific plan area, NRTBD, and rest of the City.

B

NorCal contends the City is required to make an individualized determination of the fee for each property within the NRTBD based on distance of the property to the Oasis Road improvements. NorCal's approach would require the City and its staff to calculate a unique fee for each property within a district expected to yield 2,177 single family, 2,785 multi-family, and 1,675 commercial dwelling unit equivalents. Indeed, NorCal's argument offers no logical reason why the City would not be required to make an individualized calculation of fees for each of the 20,209 residential, commercial, office, and industrial dwelling unit equivalents anticipated to be developed within the City of Redding over the next 20 years.

The Act does not require property-by-property fee determinations for fee programs broadly applicable to new developments. (*Ehrlich, supra*, 12 Cal.4th at p. 876; *Garrick, supra*, 3 Cal.App.4th at p. 334.) Instead, the unique assessment of a fee for a particular property is required only when "the

property owner challenges an individualized exaction imposed as a condition of issuance of a development permit as an uncompensated taking under the Fifth Amendment." (*Ehrlich, supra*, 12 Cal.4th 854, 866.) The quasi-adjudicatory nature of a governmental taking "presents an inherent and heightened risk that local government will manipulate the police power to impose conditions *unrelated* to legitimate land use regulatory ends, thereby avoiding what would otherwise be an obligation to pay just compensation. In such a context, the heightened *Nollan-Dolan*^[31] standard of scrutiny works to dispel such concerns by assuring a constitutionally sufficient link between ends and means. It is *the imposition of land use conditions in individual cases*, authorized by a permit scheme which by its nature allows for both the discretionary deployment of the police power and an enhanced potential for its abuse, that constitutes the sine qua non for application of the intermediate standard of scrutiny" requiring property by property evaluation. (*Ehrlich, supra*, 12 Cal.4th 854, 869, second italics added.)

Here, NorCal challenges an ordinance that applies to all new developments throughout the City. Thus, NorCal necessarily relies on subdivision (a) of section 66001, "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." (*Garrick, supra*, 3 Cal.App.4th 320, 336.) However, subdivision (a) does not require a city to establish a reasonable relationship between each parcel and the fee to be paid. An ordinance establishing a fee program is "valid if supported by a reasonable relationship between the amount of the fee and estimated cost of services. Site-specific review is neither available nor needed." (*Garrick, supra*, 3 Cal.App.4th at p. 334.)

NorCal urges us to disregard *Garrick's* holding in order to require an individualized fee evaluation for every parcel subject to Ordinance No. 2398. We decline to do so. Section 66001 does not require fee programs to calculate a unique fee for every parcel subject to broadly applicable legislation. As our Supreme Court explained in *San Remo Hotel v. City and County of San Francisco* (2002) 27 Cal.4th 643, at pages 670-671, "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." By contrast, broadly applicable fee programs do not require site-specific review. (*Ibid.*)

Neither the Government Code nor the United States Constitution requires a parcel-by-parcel determination of the amount of a developer fee applying to all developments within a city.

C

NorCal contends the ordinance "results in an unequal allocation of cost burdens not justified by the use of the fee or the types of development on which it is imposed; in fact all that is being accomplished is a cost shifting from a few select developers to the rest of the developers within the District and the City."

NorCal does not dispute the City's prerogative to make ambitious plans for developing the Oasis Road area. The development plans inherently require upgrading Oasis Road's infrastructure if traffic snarls and construction delays are to be minimized. The City Council had discretion to decide on traffic improvements to Oasis Road that would offer benefits to a far greater number of properties than the small number of parcels between Cascade Boulevard and Gold Hills Drive. The extended range of the benefits arising from the Oasis Road upgrades also allowed the City Council to extend the burden of paying for the improvements.

Invalidation of Ordinance No. 2398 would require either (1) developers of properties adjacent to a short stretch of Oasis Road to shoulder major infrastructure costs without reimbursement from other beneficiaries of the upgrades, or (2) cramp development plans so that no arterial traffic improvements such as those called for in the specific plan would be necessary. Neither option is required, or even encouraged, by the Act.

Ordinance No. 2398 represents a rational method of exacting developer fees by class. Classes were formulated according to the level of benefit they will receive from the planned Oasis Road traffic infrastructure improvements. The difference in fees was intended to roughly match the benefits and costs of the Oasis Road upgrades. The ordinance's apportionment of fees according to three classes of new developments within city limits does not conflict with the Act. Respondents did not act in an arbitrary or capricious manner in structuring the fee program to fund the Oasis Road improvements.

VII

Nexus Between the Stated Purpose for the Fee and the Planned Improvements to be Funded

NorCal contends respondents failed to demonstrate a nexus between the planned improvements and the fee exacted under Ordinance No. 2398. We disagree.

A

The further study detailed the improvements slated for Oasis Road and the freeway interchange. The study also tallied anticipated developments within the City and provided separate estimates of anticipated new developments in the specific plan area, the NRTBD, and the rest of the City. Using the fundamental unit of "dwelling unit equivalent," the further study apportioned fees among developments categorized as single family residential, multi-family residential, commercial, office, and industrial.

The further study listed all major components of the specific plan's projects, and estimated the cost for each constituent project. Relying on the select link traffic analysis, the further study divided the specific plan project costs among the development classes. Developers of properties within the NRTBD were given a credit of nearly \$17 million for funds received from the Buckeye Redevelopment Area funds. Within each class, the further study calculated the cost per dwelling unit equivalent to be paid by developers within and outside the NRTBD.

B

NorCal does not challenge the calculations of anticipated traffic increases yielded by the County of Shasta's select link traffic analysis. Nor does NorCal assign error to the boundaries drawn by City staff for the revised NRTBD. Instead, NorCal simply denies the sufficiency of evidence in support of a nexus between the fees collected under Ordinance No. 2398 and the City's plans for improving Oasis Road and the freeway interchange.

The record supports the fee study's assertion of a nexus between the fees to be collected from new developments within the NRTBD and the projects detailed in the further study. The plans for improvements to Oasis Road were formulated according to anticipated traffic volume due to anticipated development in the surrounding area. After public comment, the reserve of funds for contingencies substantially shrunk. The specific plan for Oasis Road is detailed in its planning for types of commercial and residential developments, traffic facility improvements, and other infrastructure.

The City staff's response to public comments further supports our conclusion that the fee imposed on new developments within the NRTBD area was rationally determined. In response to public comment, City staff agreed that funds from the Buckeye Redevelopment Area tax should be used to offset only the fees to be collected from developments within the NRTBD area. As a consequence, the redevelopment funds reduce the fee burden for developers within the NRTBD by nearly \$17 million.

The total projected costs are allocated according to anticipated traffic volumes generated by developments inside the NRTBD and the rest of the City. Even within the development class, the fees are distributed according to dwelling unit equivalents in order to ensure equitable apportionment among different types of developments.

The City Council had sufficient evidentiary basis to conclude that developments throughout the City would benefit from the substantial upgrades to Oasis Road. Accordingly, we conclude that Ordinance No. 2398 was not adopted in an arbitrary or capricious manner, or without evidentiary support.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

We concur:

SCOTLAND, P. J.

ROBIE, J.