



City of Biggs

Agenda Item Staff Report For the Regular City Council Meeting: July 14, 2015

TO: Honorable Mayor and Members of the City Council
FROM: City Administrator
SUBJECT: **AGREEMENT WITH BUTTE COUNTY FOR COLLECTION OF
COUNTY JAIL FACILITY IMPACT FEE WITHIN THE
INCORPORATED LIMITS OF THE CITY OF BIGGS**

SUMMARY

Presented for consideration by the Council is a draft of an agreement with Butte County whereby the City would collect the County's existing Jail Facility Impact Fee on behalf of the County. The Jail Facility Impact Fee would be levied on new residential construction, with limited exemptions, and the revenue collected would support a project expanding the housing capacity of the county jail. The agreement would be effective only upon adoption of similar agreements by each of the other incorporated municipalities in the County.

BACKGROUND DOCUMENTATION

In 2007, the County contracted with TischlerBise to complete a Jail Impact Fee Study, which analyzed the legal framework for the collection of jail impact fees, and provided the methodology for the fee calculation (Attachment I). After discussing the need, and reviewing the 2007 study, the Board of Supervisors adopted Article II of the Butte County Municipal Code, *Development Impact Fees for Jail Facilities in the Unincorporated and Incorporated Area of Butte County* (Attachment II).

DISCUSSION

The effects of two factors have placed unprecedented pressure on the Butte County Jail. The first is the enacting of the 2011 Public Safety Realignment, which has changed the operation of county jails, including Butte County's, in significant ways. Many offenders who would have previously served their sentence in state prison are now sentenced to county jail, which increases the number of offenders the jail must house. These same offenders who would have prior to the realignment been sent to state prison often have considerably longer sentences than inmates that were typically housed in a county jail, and this decreases the flexibility that the Sheriff has to manage the jail population. This shift in responsibility has pushed the current jail facility beyond its operational limit, and the end result is often that offenders serving time on lesser charges must be released early or given a form of alternative custody in order to make room in the jail for those who have committed more serious offenses. Also, some lower-level offenders who would have served time in the jail before the realignment are booked and released due to insufficient capacity in the facility.

The second factor putting pressure on the Butte County Jail is the population growth of the County. Steady population growth in the County since jail capacity was last expanded in 1994 has resulted in the need for additional housing capacity, even without the effects of the 2011

Public Safety Realignment. When combined, the two factors result in an acute need for additional housing in the jail.

The increased burden that both the realignment and population growth have placed on the county jail has impacted the cities in the County, Biggs included. These factors have hastened an increase in the homeless and transient population, as released offenders often have no permanent shelter or prefer to live in an unsupervised environment. Criminals learn that the jail is at capacity and because of that feel that there may be little or no repercussions if they are booked on a misdemeanor, so they may take criminal actions that they otherwise wouldn't. As a result, citizen's concerns about their personal safety and the safety of their property have increased and more pressure has been placed on the City's police force. The changes in responsibility brought about by the 2011 Public Safety Realignment are here to stay and the population will continue to increase at a steady rate, so the demands on the current jail facility will only increase over time and further exacerbate the impacts on public safety.

In order to address these public safety issues, the County is developing plans to expand the capacity of the county jail. The County currently collects a Jail Facility Impact Fee on all new residential development in the unincorporated area of the County that will be used to partially fund the eventual jail expansion, but additional ongoing revenue will be required in order to move a project to the construction phase. In order to help fund this project that will benefit all areas of the County, the County has requested that the City of Biggs collect on the County's behalf the County's existing Jail Facility Impact Fee within the City's incorporated limits. The County has also made the same of request of the Town of Paradise, City of Oroville, and City of Chico and plans to make the same request of the City of Gridley later this month. The Town of Paradise, and City of Oroville have executed agreements and the County continues to work with the City of Chico. The principle details of the agreement are:

- City agrees to collect County's existing Jail Facilities Impact Fee within its boundaries on all new residential development
- Agreement only goes into effect once similar agreement is executed by each municipality within the County
- Agreement has a ten year term; termination permitted earlier with written notice if County increases fee without the City's written consent

Without an agreement with each municipality in the County to collect the County's Jail Facility Impact Fee, expansion of the jail facility will be decidedly difficult to achieve and the public safety problems caused by insufficient space in which to incarcerate criminals will likely persist and possibly worsen.

FISCAL IMPACT: None

RECOMMENDATION: Consideration of the agreement for possible future action.

ATTACHMENTS

1. 2007 Jail Impact Fee Study
2. Butte County Municipal Code, Development Impact Fees for Jail Facilities
3. Draft Development Impact Fee Collection Agreement.

Mark Sorensen, City Administrator

Jail Impact Fee Study

Prepared for:

Butte County, California

Prepared by:

TischlerBise
Fiscal, Economic & Planning Consultants

June 21, 2007

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
LEGAL FRAMEWORK	3
IMPACT FEE CALCULATION METHODOLOGY	6
Figure 1: Schedule of Maximum Supportable Jail Impact Fees per Housing Unit (residential).....	8
JAIL.....	9
METHODOLOGY.....	9
Figure 2: Jail Impact Fee Methodology Chart.....	9
NEED FOR ADDITIONAL JAIL CAPACITY	10
ANTICIPATED POPULATION GROWTH	10
Figure 3: Butte County Population Projections.....	10
LEVEL OF SERVICE – INCREMENTAL-EXPANSION.....	11
Figure 4: Jail Expansion Level of Service and Cost Standards	11
JAIL IMPACT FEE STUDY	12
EVALUATION OF NEED FOR CREDIT.....	12
JAIL IMPACT FEE INPUT VARIABLES.....	12
Figure 5: Jail Impact Fee Input Variables	12
MAXIMUM SUPPORTABLE JAIL IMPACT FEE AMOUNTS	12
Figure 6: Jail Impact Fee Schedule	13
CASH FLOW PROJECTIONS	13
APPENDIX 1: DEMOGRAPHIC AND DEVELOPMENT ESTIMATES AND PROJECTIONS	15
PERSONS PER HOUSEHOLD	15
Figure A1: Persons Per Household in Butte County	16
2007 POPULATION ESTIMATE	16
STUDY AREA	17
FUTURE POPULATION PROJECTIONS	17
Figure A2: Butte County Population Projections	17
APPENDIX 2: IMPLEMENTATION AND ADMINISTRATION	18
ADOPTION.....	18
ADMINISTRATION	18

Executive Summary

Butte County has retained TischlerBise to prepare a jail impact fee study. This report documents the data, methodology, and results of the impact fee study. Impact fees are one-time payments used to fund system improvements needed to accommodate new development. As documented in this report, the methods used to calculate impact fees in this study are intended to satisfy all legal requirements governing such fees, including provisions of the U.S. Constitution, the California Constitution, and the California Mitigation Fee Act (Government Code Sections 66000 *et seq.*).

The jail impact fee for Butte County is proportionate and reasonably related to the capital facility service demands of new development. The written analysis of the impact fee methodology establishes that impact fees are necessary to achieve an equitable allocation of costs in comparison to the benefits received. Impact fee methodologies also identify the extent to which newly developed properties are entitled to various types of credits to avoid potential double payment of capital costs.

LEGAL FRAMEWORK

U. S. Constitution. Like all land use regulations, development exactions, including impact fees, are subject to the Fifth Amendment prohibition on taking of private property for public use without just compensation. Both state and federal courts have recognized the imposition of impact fees on development as a legitimate form of land use regulation, provided the fees meet standards intended to protect against regulatory takings. To comply with the Fifth Amendment, development regulations must be shown to substantially advance a legitimate governmental interest. In the case of impact fees, that interest is in the protection of public health, safety, and welfare by ensuring that development is not detrimental to the quality of essential public services.

There is little federal case law specifically dealing with impact fees, although other rulings on other types of exactions (e.g. land dedication requirements) are relevant. In one of the most important exaction cases, the U.S. Supreme Court found that a government agency imposing exactions on development must demonstrate an "essential nexus" between the exaction and the interest being protected (See *Nollan v. California Coastal Commission*, 1987). In a more recent case (*Dolan v. City of Tigard*, OR, 1994), the Court ruled that an exaction also must be "roughly proportional" to the burden created by development. However, the *Dolan* decision appeared to set a higher standard of review for mandatory dedications of land than for monetary exactions such as impact fees. Constitutional issues related to impact fees will be discussed in more detail below.

California Constitution. The California Constitution grants broad police power to local governments, including the authority to regulate land use and development. That police power is the source of authority for a wide range of regulations, including the authority to impose impact fees on development to pay for infrastructure and capital facilities. Some impact fees have been challenged on grounds that they are special taxes imposed without voter approval in violation of Article XIII A, which was added by Proposition 13 in 1978. That objection is valid only if the fees exceed the cost of providing capital facilities needed to serve new development. If that were the case, then the fees would also run afoul of the U. S. Constitution and the Mitigation Fee Act. Articles XIII C and XIII D, added by Proposition 218 in 1996, require voter approval for some “property-related fees,” but exempt “the imposition of fees or charges as a condition of property development.”

The Mitigation Fee Act. California’s impact fee statute originated in Assembly Bill 1600 during the 1987 session of the Legislature, and took effect in January, 1989. AB 1600 added several sections to the Government Code, beginning with Section 66000. Since that time the impact fee statute has been amended from time to time, and in 1997 was officially titled the “Mitigation Fee Act.” Unless otherwise noted, code sections referenced in this report are from the Government Code.

The Act does not limit the types of capital improvements for which impact fees may be charged. It defines public facilities very broadly to include “public improvements, public services and community amenities.” Although the issue is not specifically addressed in the Mitigation Fee Act, other provisions of the Government Code (see Section 65913.8) prohibit the use of impact fees for maintenance or operating costs. Consequently, the fees calculated in this report are based on capital costs only.

The Mitigation Fee Act does not use the term “mitigation fee” except in its official title. Nor does it use the more common term “impact fee.” The Act simply uses the word “fee,” which is defined 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 ...” To avoid confusion with other types of fees, this report uses the widely-accepted term “impact fee,” which should be understood to mean “fee” as defined in the Mitigation Fee Act.

The Mitigation Fee Act contains requirements for establishing, increasing and imposing impact fees. They are summarized below. It also contains provisions that govern the collection and expenditure of fees, and require annual reports and periodic re-evaluation of impact fee programs. Those administrative requirements are discussed in the Implementation Chapter of this report. Certain fees or charges related to development are exempted from the requirements of the Mitigation Fee Act. Among them are fees in lieu of park land dedication as authorized by the Quimby Act (Section 66477), fees collected pursuant to a reimbursement agreement or developer agreement, and fees for processing development applications.

Required Findings. Section 66001 requires that an agency establishing, increasing or imposing impact fees, must make findings to:

1. Identify the purpose of the fee;

2. Identify the use of the fee; and,
3. Determine that there is a reasonable relationship between:
 - a. The use of the fee and the development type on which it is imposed;
 - b. The need for the facility and the type of development on which the fee is imposed; and
 - c. The amount of the fee and the facility cost attributable to the development project. (Applies only upon imposition of fees.)

Each of those requirements is discussed in more detail below.

Identifying the Purpose of the Fees. The broad purpose of impact fees is to protect the public health, safety and general welfare by providing for adequate public facilities. The specific purpose of the fees calculated in this study is to fund the construction of certain capital improvements identified in this report. Those improvements are needed to mitigate the impacts of additional development in the County, and thereby prevent deterioration in public services that would result from additional development if impact fee revenues were not available to fund such improvements.

Identifying the Use of the Fees. According to Section 66001, if a fee is used to finance public facilities, those facilities must be identified. A capital improvement plan may be used for that purpose, but is not mandatory if the facilities are identified in the General Plan, a Specific Plan, or in other public documents. Impact fees calculated in this study are based on specific capital facilities identified in this report. We recommend that this report be designated as the public document identifying the use of the fees.

Reasonable Relationship Requirement. As discussed above, Section 66001 requires that, for fees subject to its provisions, a "reasonable relationship" must be demonstrated between:

1. the use of the fee and the type of development on which it is imposed;
2. the need for a public facility and the type of development on which a fee is imposed; and,
3. the amount of the fee and the facility cost attributable to the development on which the fee is imposed.

These three reasonable relationship requirements as defined in the statute are closely related to "rational nexus" or "reasonable relationship" requirements enunciated by a number of state courts. Although the term "dual rational nexus" is often used to characterize the standard by which courts evaluate the validity of development impact fees under the U. S. Constitution, we prefer a formulation that recognizes three elements: "impact or need" "benefit," and "proportionality." The dual rational nexus test explicitly addresses only the first two, although proportionality is reasonably implied, and was specifically mentioned by the U.S. Supreme Court in the *Dolan* case.

The reasonable relationship language of the statute is considered less strict than the rational nexus standard used by many courts. Of course, the higher standard controls. We will use the nexus terminology in this report for two reasons: because it is more concise and descriptive, and also to signify that the method used to calculate the impact fee in this study is intended to satisfy the more demanding constitutional standard. Individual elements of the nexus standard are discussed further in the following paragraphs.

Demonstrating an Impact. All new development in a community creates additional demands on some, or all, public facilities provided by local government. If the supply of facilities is not increased to satisfy that additional demand, the quality or availability of public services for the entire community will deteriorate. Impact fees may be used to recover the cost of development-related facilities, but only to the extent that the need for facilities is a consequence of development that is subject to the fees. The *Nollan* decision reinforced the principle that development exactions may be used only to mitigate conditions created by the developments upon which they are imposed. That principle clearly applies to impact fees. In this study, the impact of development on improvement needs is analyzed in terms of quantifiable relationships between various types of development and the demand for specific facilities, based on applicable level-of-service standards. This report contains all information needed to demonstrate this element of the nexus.

Demonstrating a Benefit. A sufficient benefit relationship requires that impact fee revenues be segregated from other funds and expended only on the facilities for which the fees were charged. Fees must be expended in a timely manner and the facilities funded by the fees must serve the development paying the fees. Nothing in the U.S. Constitution or California law requires that facilities paid for with impact fee revenues be available *exclusively* to development paying the fees.

Procedures for earmarking and expenditure of fee revenues are mandated by the Mitigation Fees Act, as are procedures to ensure that the fees are expended expeditiously or refunded. All of those requirements are intended to ensure that developments benefit from the impact fees they are required to pay. Thus, an adequate showing of benefit must address procedural as well as substantive issues.

Demonstrating Proportionality. The requirement that exactions be proportional to the impacts of development was clearly stated by the U.S. Supreme Court in the *Dolan* case (although the relevance of that decision to impact fees has been debated) and is logically necessary to establish a proper nexus. Proportionality is established through the procedures used to identify development-related facility costs, and in the methods used to calculate impact fees for various types of facilities and categories of development. In this study, the demand for facilities is measured in terms of relevant and measurable attributes of development.

In calculating impact fees, costs for development-related facilities are allocated in proportion to the service needs created by different types and quantities of development. The following section describes methods used to allocate facility costs and calculate the jail impact fees in a way that meets the proportionality standard.

IMPACT FEE CALCULATION METHODOLOGY

Any one of several legitimate methods may be used to calculate the jail impact fee. The choice of a particular method depends primarily on the service characteristics and planning requirements for the facility type being addressed. Each method has advantages and disadvantages in a particular situation, and to some extent they are interchangeable, because they all allocate facility costs in proportion to the needs created by development.

Reduced to its simplest terms, the process of calculating impact fees involves only two steps: determining the cost of development-related capital improvements, and allocating those costs equitably to various types of development. In practice, though, the calculation of

impact fees can become quite complicated because of the many variables involved in defining the relationship between development and the need for facilities. The following paragraphs discuss three basic methods for calculating impact fees and how those methods can be applied.

Plan-Based Impact Fee Calculation. The plan-based method allocates costs for a specified set of improvements to a specified amount of development. The improvements are identified by a facility plan and the development is identified by a land use plan. In this method, the total cost of relevant facilities is divided by total demand to calculate a cost per unit of demand. Then, the cost per unit of demand is multiplied by the amount of demand per unit of development (e.g. dwelling units or square feet of building area) in each category to arrive at a cost per unit of development.

The plan-based method is often the most workable approach where actual service usage is difficult to measure (as is the case with administrative facilities), or does not directly drive the need for added facilities (as is the case with fire stations). It is also useful for facilities, such as streets, where capacity cannot always be matched closely to demand. This method is relatively inflexible in the sense that it is based on the relationship between a particular facility plan and a particular land use plan. If either plan changes significantly, the fees should be recalculated.

Cost Recovery Impact Fee Calculation. The rationale for the cost recovery approach is that new development is paying for its share of the useful life and remaining capacity of facilities from which new growth will benefit. To calculate an impact fee using the cost recovery approach, facility cost is divided by ultimate number of demand units the facility will serve.

Incremental Expansion Impact Fee Calculation. The incremental expansion method documents the current level-of-service (LOS) for each type of public facility in both quantitative and qualitative measures, based on an existing service standard such as square feet per capita or park acres per capita. The level-of-service standards are determined in a manner similar to the current replacement cost approach used by property insurance companies. However, in contrast to insurance practices, the County would not use the funds for renewal and/or replacement of existing facilities. Rather, the County would use the impact fee revenue to expand or provide additional facilities, as needed, to accommodate new development. An incremental expansion cost method is best suited for public facilities that will be expanded in regular increments, with LOS standards based on current conditions in the community. The incremental-expansion method is used to calculate the Butte County jail impact fee.

Figure 1 provides a schedule of the *maximum supportable jail impact fees* for Butte County that are assessed per housing unit for residential development. The County may adopt fees that are less than the amounts shown. However, a reduction in impact fee revenue will necessitate an increase in other revenues, a decrease in planned capital expenditures and/or a decrease in the County's LOS standards.

Figure 1: Schedule of Maximum Supportable Jail Impact Fees per Housing Unit (residential)

MAXIMUM SUPPORTABLE IMPACT FEE AMOUNTS	
<u>Residential</u>	<u>Per Unit</u>
Single-Family	\$425
Multi-Family	\$339
Mobile Home	\$347

A note on rounding: Calculations throughout this report are based on an analysis conducted using Excel software. Results are discussed in the report using one-and two-digit places (in most cases), which represent rounded figures. However, the analysis itself uses figures carried to their ultimate decimal places; therefore the sums and products generated in the analysis may not equal the sum or product if the reader replicates the calculation with the factors shown in the report (due to the rounding of figures shown, not in the analysis).

Jail

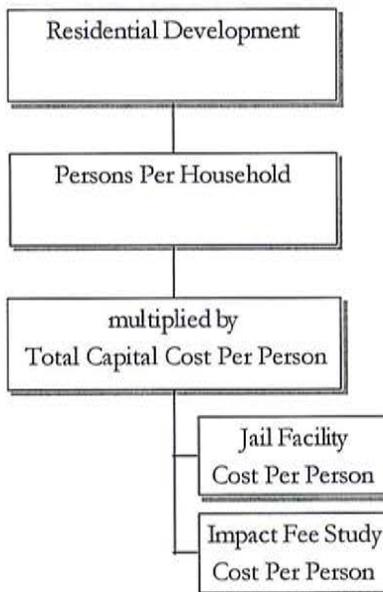
METHODOLOGY

The County plans to expand its jail facility with additional beds to meet anticipated demand from new residential development. The need for additional jail facility capacity is documented in the Butte County *Jail Needs Assessment*, conducted by Steve Reader Enterprises and Harris & Harris Enterprises in September 2006. The County plans to implement a jail impact fee to fund the growth-related costs of jail construction. The incremental-expansion methodology is used to calculate the jail impact fee.

Using the incremental-expansion method, the current level-of-service (LOS) is documented based on existing square feet per person. Going forward, the County will collect jail impact fees in order to ensure this LOS does not diminish as a result of new development. Fees will be used to fund the growth-related share of costs related to constructing a new, expanded jail facility.

As shown in Figure 2, the total capital cost per person is multiplied by the amount of demand per housing unit by housing type (persons per household) to arrive at a cost per housing unit. Demographic factors such as persons per household and population projections are discussed in more detail in under “Anticipated Population Growth” and in Appendix 1.

Figure 2: Jail Impact Fee Methodology Chart



NEED FOR ADDITIONAL JAIL CAPACITY

Butte County’s current jail is at capacity, requiring that the County release inmates who would otherwise remain in custody. The County is expected to face new demands for jail space as its population grows (see discussion below on “Anticipated Population Growth”). To address this, the County plan to construct a new and larger facility in order to address design problems with its existing facility and provide additional beds for anticipated increases in the inmate population. The need for additional jail facility capacity is documented in the *Butte County Jail Needs Assessment*, conducted by Steve Reader Enterprises and Harris & Harris Enterprises in September 2006. In total, an estimated 344 new inmate beds will be added.

ANTICIPATED POPULATION GROWTH

As demand for the jail facility is driven by residents in the County’s incorporated and unincorporated areas, increased demand for the jail is driven by new residential development in the entire County. It is expected that demand will be generated by both existing and new development, so the County’s total household population is considered in making the impact fee calculation.

County population projections are provided by the Butte County Association of Governments (BCAG). Updated in 2006, the projections reflect anticipated population and housing growth from 2006 to 2030 for each of the County’s municipalities and its unincorporated area. The projections anticipate that the County will grow from 218,069 in 2007 (State estimate) to 321,315 in 2030. The projections, which reflect annual growth trends and development in the pipeline, anticipate an average annual growth rate of 2% for the County through 2030. Projections are provided in five-year increments. Projections for intermediate years are extrapolated assuming an even rate of growth during the period. For the purposes of this study, the projection is extended through 2040, assuming the 2% growth rate remains constant. The BCAG projections include both household and group quarters population. The group quarters component includes the County’s institutionalized population (those living in jails, prisons or mental facilities) and non-institutionalized populations in dormitories or halfway houses. Only the household population will be included in the impact fee calculations. These population projections are shown in Figure 3.

Figure 3: Butte County Population Projections

	2007	2010	2015	2020	2025	2030	2035	2040
Total Population	218,069	232,075	254,224	276,277	297,882	321,315	343,190	363,683
Group Quarters	6,408	6,408	6,408	6,408	6,408	6,408	6,408	6,408
Household Population	211,661	225,667	247,816	269,869	291,474	314,907	336,782	357,275

Notes to Table

2007 Population from the State Department of Finance for the incorporated and unincorporated areas of Butte County. County projections through 2030 from Butte County Association of Governments, 2006. Population projections beyond 2030 assume continued 2% annual growth.

LEVEL OF SERVICE – INCREMENTAL-EXPANSION

Using the incremental-expansion methodology, the current level-of-service (LOS) is documented based on existing square feet per person and today’s construction costs. Going forward, the County will collect jail impact fees in order to ensure this LOS does not diminish as a result of new development.

Butte County provided the total existing square footage of the jail, excluding space for Sheriff administration, as this is included in County’s existing sheriff impact fee. This leaves 96,475 square feet for the jail facility. Cost per square foot is based on Butte County’s 2007 construction cost estimates for the new jail, and includes planning (architecture and engineering), construction, management (construction management and administration) and project contingency. Costs associated with the laundry facility are excluded from the total cost, as this improvement is included in the County’s existing sheriff impact fee. The cost for the jail improvements (less the laundry facility) is estimated by the County at \$76.4 million. The planned facility will have a total of 220,271 sq. ft., for a construction cost of \$347/sq. ft.

To calculate the LOS, the total square footage is multiplied by 100% residential demand (as demand is driven by residents) and then divided by the household population in 2007. This results in .46 square feet per person. The calculation is repeated with the total cost, resulting in a cost per person of \$158.17. Levels of service and cost standards are shown in Figure 4.

Figure 4: Jail Expansion Level of Service and Cost Standards

Current Facility	Square Feet ¹	Cost per Square Foot ²	Total Cost
County Jail	96,475	\$347	\$33,478,868
Total	96,475	\$347	\$33,478,868

Development Type	Proportionate Share	2007 Demand Units ³	Cost per Demand Unit
Residential	100%	211,661 Persons	\$158.17
Sq Ft Per Person	0.46		

¹Source: Butte County, excludes square footage for Sheriff administration.

²Source: Jail construction cost estimate provided by Butte County. Costs are based on implementation of phases I-IV as outlined in the *Jail Needs Assessment* prepared by Steve Reader Enterprises and Harris and Harris Enterprises in Sept. 2006 and are updated by the County to reflect 2007 costs. Cost per sq. ft. include planning (architecture and engineering), construction, management (construction management and administration) and project contingency. Costs for the laundry facility is excluded from the total, as this is included in the County's existing sheriff impact fee.

³ California Department of Finance, Demographic Research Unit, E-5 City/County Population and Housing Estimates, 1/1/2007, excludes group quarters population.

JAIL IMPACT FEE STUDY

The County plans on updating its jail impact fee study every five years to ensure the methodologies, assumptions, and cost factors used in the calculations are still valid and accurate. TischlerBise has included the cost of preparing this portion of the study in the jail impact fee calculations in order to create a source of funding to conduct this regular update. The cost of this component (\$22,300) is allocated to the projected increase in population over the next five years. This results in an impact fee study cost per demand unit of \$.98 per person (\$22,300/22,286 people).

EVALUATION OF NEED FOR CREDIT

The County does not have existing debt related to jail facility expansion, so a credit for future principal payments is not included.

JAIL IMPACT FEE INPUT VARIABLES

Figure 5 shows level of service standards and cost factors for the Butte County jail impact fees. Impact fees for jail are based on household size (i.e., persons per household) and are charged to residential development. Level of service standards are based on current costs per person for the jail facility and the jail impact fee study.

Figure 5: Jail Impact Fee Input Variables

INPUT VARIABLES		
<i>Persons Per Household</i>		
Single-Family		2.67
Multi-Family		2.13
Mobile Home		2.18
<i>Level Of Service</i>		
<i>Jail Facility (Incremental-Expansion)</i>		
Jail Facility Cost per Person		\$158.17
<i>Impact Fee Study</i>		
Impact Fee Study Cost Per Person		\$0.98
Total Capital Cost per Person		\$159.15

MAXIMUM SUPPORTABLE JAIL IMPACT FEE AMOUNTS

Figure 6 contains a schedule of maximum supportable jail impact fees for Butte County. The amounts are calculated by multiplying the persons per household for each type of unit by the total capital cost per person. For example, for a single family unit, the persons per household figure of 2.67 is multiplied by the total capital cost per person of \$159.15 for a jail impact fee amount of \$425 per single family unit. The calculation is repeated for all other housing categories.

Figure 6: Jail Impact Fee Schedule

MAXIMUM SUPPORTABLE IMPACT FEE AMOUNTS	
<u>Residential</u>	<u>Per Unit</u>
Single-Family	\$425
Multi-Family	\$339
Mobile Home	\$347

CASH FLOW PROJECTIONS

Based on the population projections discussed under “anticipated population growth,” TischlerBise projected annual anticipated cash flow to the County from the jail impact fees shown in Figure 6. Should development keep pace with projections, the County would be expected to receive \$719,000 annually in jail impact fee revenues (shown in Figure 7). Figure 7 shows only the growth-related costs of jail construction. The results show a nominal net revenue and are considered fiscally neutral.

Figure 7: Projected Annual Impact Fee Cash Flow

<i>(Current \$ in thousands)</i>	Average Annual
REVENUES*	
JAIL	
1 Single Family Jail Impact Fee	\$599
2 Multi-Family Jail Impact Fee	\$90
3 Mobile Home Jail Impact Fee	\$31
<i>Subtotal Jail Impact Fee Revenue</i>	\$719
TOTAL FEE REVENUE	\$719
CAPITAL COSTS	
JAIL	
Jail Facility	\$692
Impact Fee Study	\$1
<i>Subtotal Jail Costs</i>	\$693
TOTAL CAPITAL COSTS	\$693
NET CAPITAL FACILITIES CASH FLOW -	<i>Curr</i>
Annual Surplus (or Deficit)	\$26
Cumulative Surplus (or Deficit)	\$26
NET CASH FLOW	\$26

**does not include revenues from Sheriff impact fee for laundry facilities - approximately \$140,000 through 2036.*

Appendix 1: Demographic and Development Estimates and Projections

As specified in Task 1 of our Work Scope, TischlerBise has prepared documentation on current demographic *estimates* and *projections* that will be used in the Butte County jail impact fee study. Demand for jail facilities is driven by residential development throughout the County, including incorporated and unincorporated areas. As such, the following sections will review the residential demand factors that will be used to calculate jail impact fees for Butte County.

PERSONS PER HOUSEHOLD

Persons per household is an important demographic factor that helps account for variations in service demands by type of housing. The best source of this data is the 2000 U.S. Census, Summary File 3. The 2000 mixture of housing types, as defined by units in structure, is shown in Figure A1 below. According to the 2000 Census data, Butte County had 79,267 occupied housing units (households), excluding boats, RV's and "other" residential units. Census data also indicates a total of 196,789 persons residing in these housing units in 2000. This results in an average household size, for all housing types, of 2.48 persons per household.

To be consistent with the County's existing impact fees, TischlerBise recommends using the following three residential categories in the impact fee calculation: 1) Single-Family (including 1-detached and 1-attached), 2) Multi-Family and 3) Mobile Homes. Single-family units have on average 2.67 persons per household (PPH), multi-family units have 2.13 PPH and mobile homes have an average PPH of 2.18. A differentiation by type of housing is necessary to make residential impact fees proportionate and reasonably related to service demands.

Figure A1: Persons Per Household in Butte County

<i>Units in Structure</i>	<i>Renter & Owner Combined</i>		
	<i>Persons</i>	<i>Hshlds</i>	<i>PPH</i>
1-Detached	129,226	48,340	2.67
1-Attached	5,588	2,145	2.61
Two	5,907	2,335	2.53
3-4	10,495	4,921	2.13
5-9	6,111	2,766	2.21
10-19	3,624	1,796	2.02
20-49	3,753	1,855	2.02
50 or more	5,023	2,701	1.86
Mobile Homes	27,062	12,408	2.18
Other	522	299	1.75
Total SF3 Sample Data	197,311	79,566	2.48
100-Percent Data	197,327	79,566	2.48
		Vacant HU	5,957
			6.97%

Persons Per Household by Type - 2000*

	<i>Persons</i>	<i>Hshlds</i>	<i>PPH</i>	<i>Hhld Mix</i>
Single Family	134,814	50,485	2.67	64%
Multi-Family	34,913	16,374	2.13	21%
Mobile Home	27,062	12,408	2.18	16%
Total Less Group Quarters	196,789	79,267	2.48	100%
Group Quarters	5,844			
TOTAL	202,633	79,267		

Notes to Tables

Source: 2000 U.S. Census, Summary File 3: Tables P1, P3, P9, H1, H3, H8, H30, H32, H33

*excludes boats, RVs, and "other" residential units

2007 POPULATION ESTIMATE

The California Department of Finance estimates 2007 population in Butte County at 218,069 persons. Excluding the group quarters population, the County's household population estimate totals 211,661 in 2007.

STUDY AREA

The study area for this analysis includes all of Butte County and its incorporated municipalities. The entire County is treated as the service area, because the jail serves the entire County. The jail impact fees calculated in this study are intended to apply to all development in the County, including the incorporated municipalities.

FUTURE POPULATION PROJECTIONS

The Butte County Association of Governments (BCAG) recently updated its population projections for use in plans that guide growth in the County, such as transportation and housing. The projections reflect anticipated growth from 2006 to 2030 for each of the County’s municipalities and its unincorporated area. The projections, which reflect annual growth trends and development in the pipeline, anticipate an average annual growth rate of 2% for the County through 2030. Projections for intermediate years are extrapolated assuming an even rate of growth during the period. For the purposes of this study, the projection is extended through 2040, assuming the 2% growth rate remains constant. The BCAG projections include both household and group quarters population. The group quarters component includes the County’s institutionalized population (those living in jails, prisons or mental facilities) and non-institutionalized populations in dormitories or halfway houses. Only the household population will be included in the impact fee calculations. Projections are shown in Figure A2.

Figure A2: Butte County Population Projections

	2007	2010	2015	2020	2025	2030	2035	2040
Total Population	218,069	232,075	254,224	276,277	297,882	321,315	343,190	363,683
Group Quarters	6,408	6,408	6,408	6,408	6,408	6,408	6,408	6,408
Household Population	211,661	225,667	247,816	269,869	291,474	314,907	336,782	357,275

Notes to Table

2007 Population from the State Department of Finance for the incorporated and unincorporated areas of Butte County. County projections through 2030 from Butte County Association of Governments, 2006. Population projections beyond 2030 assume continued 2% annual growth.

Appendix 2: Implementation and Administration

This section of the report contains recommendations for adoption and administration of an impact fee program based on this study, and for the interpretation and application of impact fees recommended herein. Statutory requirements for the adoption and administration of fees imposed as a condition of development approval are found in the Mitigation Fee Act (Government Code Sections 66000 *et seq.*).

ADOPTION

The form in which development impact fees are adopted, whether by ordinance or resolution, should be determined by the County Attorney. Typically, it is desirable that specific fee schedules be set by resolution to facilitate periodic adjustments. Procedures for adoption of fees subject to the Mitigation Fee Act, including notice and public hearing requirements, are specified in Government Code Section 66016. Such fees do not become effective until 60 days after final action by the Governing body. Actions establishing or increasing fees subject to the Mitigation Fee Act require certain findings, as set forth in Government Code Section 66001 and discussed in the Executive Summary of this report.

ADMINISTRATION

Several requirements of the California Mitigation Fee Act (Government Code Sections 66000 *et seq.*) address the administration of impact fee programs, including collection and accounting procedures, refunds, updates and reporting. References to code sections in the following paragraphs pertain to the California Government Code.

Imposition of Fees. Pursuant to the Mitigation Fee Act, when the County imposes an impact fee upon a specific development project, it must make findings to:

1. Identify the purpose of the fee;
2. Identify the use of the fee; and
3. Determine that there is a reasonable relationship between:
 - a. The use of the fee and the development type on which it is imposed;
 - b. The need for the facility and the type of development on which the fee is imposed; and
 - c. The amount of the fee and the facility cost attributable to the development project.

Most of those findings would normally be based on an impact fee study, and this study is intended to provide a basis for all of the required findings. According to the statute, the use of the fee (2., above) may be specified in a capital improvement plan, the General Plan, or other public document. This study is intended to serve as a public document identifying the use of the fees.

In addition, Section 66006, as amended by SB 1693, provides that a local agency, at the time it imposes a fee for public improvements on a specific development project, "... shall identify the public improvement that the fee will be used to finance." For each type of fee calculated in this report, the improvements to be funded by the impact fees are identified. Consequently, this report provides a basis for the notification required by the statute. The County Attorney should be consulted as to the specific method of notification to be provided.

Collection of Fees. Section 66007, provides that a local agency shall not require payment of fees by developers of residential projects prior to the date of final inspection, or issuance of a certificate of occupancy, whichever occurs first. However, "utility service fees" (not defined) may be collected upon application for utility service. In a residential development project of more than one dwelling unit, the agency may choose to collect fees either for individual units or for phases upon final inspection, or for the entire project upon final inspection of the first dwelling unit completed.

An important exception allows fees to be collected at an earlier time if they will be used to reimburse the agency for expenditures previously made, or for improvements or facilities for which money has been appropriated. The agency must also have adopted a construction schedule or plan for the improvement. These restrictions on the time of collection do not apply to non-residential development.

Notwithstanding the foregoing restrictions, many local agencies routinely collect impact fees for all facilities at the time building permits are issued, and builders often find it convenient to pay the fees at that time. In cases where the fees are not collected upon issuance of building permits, Section 66007 provides that the County may require the property owner to execute a contract to pay the fee, and to record that contract as a lien against the property until the fees are paid.

Credit for Improvements provided by Developers. If the County requires a developer, as a condition of project approval, to construct facilities or improvements for which impact fees have been, or will be, charged, the impact fee imposed on that development project, for that type of facility, should be adjusted to reflect a credit for the cost of those facilities or improvements. If the reimbursement would exceed the amount of the fee to be paid by the development for that type of facility, the County may wish to negotiate a reimbursement agreement with the developer.

Credit for Existing Development. If a project involves replacement, redevelopment or intensification of previously existing development, impact fees should be applied only to the portion of the project which represents an increase in demand for County facilities, as measured by the demand variables used in this study. Since residential service demand is normally estimated on the basis of demand per dwelling unit, an addition to a single family dwelling unit typically would not be subject to an impact fee if it does not increase the number of dwelling units in the structure. If a dwelling unit is added to an existing structure, no impact fee would be charged for the previously existing units. A similar approach can be used for other types of development.

Earmarking of Fee Revenue. Section 66006 specifies that fees shall be deposited with other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments. Fees must be expended solely for the purpose for which the fee was collected. Interest earned on the fee revenues must also be placed in the capital account and used for the same purpose.

The language of the law is not clear as to whether depositing fees "with other fees for the improvement" refers to a specific capital improvement or a class of improvements (e.g., street improvements). We are not aware of any County that has interpreted that language to mean that funds must be segregated by individual projects. As a practical matter, that would make it exceedingly difficult to accumulate enough funds to construct any improvements funded by impact fees. Common practice is to maintain separate funds or accounts for impact fee revenues by facility category (i.e., streets, traffic signals, or park improvements), but not for individual projects. We recommend that approach.

Reporting. As amended by SB 1693 in 1996, Section 66006 requires that once each year, within 180 days of the close of the fiscal year, the local agency must make available to the public the following information for each separate account established to receive impact fee revenues:

1. The amount of the fee;
2. The beginning and ending balance of the account or fund;
3. The amount of the fees collected and interest earned;
4. Identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the percentage of the cost of the public improvement that was funded with fees;
5. Identification of the approximate date by which the construction of a public improvement will commence, if the County determines sufficient funds have been collected to complete financing of an incomplete public improvement;
6. A description of each inter-fund transfer or loan made from the account or fund, including interest rates, repayment dates, and a description of the improvement on which the transfer or loan will be expended;
7. The amount of any refunds or allocations made pursuant to Section 66001, paragraphs (e) and (f).

That information must be reviewed by the County Board of Supervisors at its next regularly scheduled public meeting, but not less than 15 days after the statements are made public.

Findings and Refunds. Prior to the adoption of Government Code amendments contained in SB 1693, a local agency collecting impact fees was required to expend or commit the fee revenue within five years or make findings to justify a continued need for the money. Otherwise, those funds had to be refunded. SB 1693 changed that requirement in material ways.

Now, Section 66001 requires that, for the fifth fiscal year following the first deposit of any impact fee revenue into an account or fund as required by Section 66006, and every five years thereafter, the local agency shall make all of the following findings for any fee revenue that remains unexpended, whether committed or uncommitted:

1. Identify the purpose to which the fee will be put;
2. Demonstrate the reasonable relationship between the fee and the purpose for which it is charged;
3. Identify all sources and amounts of funding anticipated to complete financing of incomplete improvements for which impact fees are to be used;
4. Designate the approximate dates on which the funding necessary to complete financing of those improvements will be deposited into the appropriate account or fund.

Those findings are to be made in conjunction with the annual reports discussed above. If such findings are not made as required by Section 66001, the local agency must refund the moneys in the account or fund. Once the agency determines that sufficient funds have been collected to complete an incomplete improvement for which impact fee revenue is to be used, it must, within 180 days of that determination, identify an approximate date by which construction of the public improvement will be commenced. If the agency fails to comply with that requirement, it must refund impact fee revenue in the account according to procedures specified in the statute.

Costs of Implementation. The cost of updating the fees is included in the impact fee. Other ongoing costs associated with implementing the impact fee program are not included in the fees themselves. Implementation costs would include the staff time involved in applying the fees to specific projects, accounting for fee revenues and expenditures, preparing required annual reports, and preparing forms and public information handouts. We recommend that those costs be included in user fees charged to applicants for processing development applications.

Annual Update of the Capital Improvement Plan. Section 66002 provides that if a local agency adopts a capital improvement plan to identify the use of impact fees, that plan must be adopted and annually updated by a resolution of the governing body at a noticed public hearing. The alternative is to identify improvements in other public documents. Since impact fee calculations in this study include costs for future facilities to be funded by impact fees, we believe it is to the County's advantage to use this report as the public document in which the use of impact fees is identified. In that event, we believe the County would not be required to update its CIP annually to satisfy Section 66002.

Indexing of Impact Fee Rates. The fees recommended in this report are stated in current dollars. Fees should be adjusted annually to account for construction cost escalation. The *Engineering News Record* Building Cost Index is recommended as the basis for indexing the cost of yet to be constructed projects. It is desirable that the ordinance or resolution establishing the fees include provisions for annual escalation.

Updates of This Study. Generally, impact fees should be reviewed and updated about every five years, unless significant changes in land use or facility plans make it necessary to update the fees more often.

Attachment 2

Butte County Municipal Code

Article II - Development Impact Fees for Jail Facilities in the Unincorporated and Incorporated Area of Butte County

Article II. - Development Impact Fees for Jail Facilities in the Unincorporated and Incorporated Area of Butte County

3-10 - Purpose.

This article is enacted pursuant to Article I, Section 1 of the Butte County Charter, Article XI, Section 7 of the California Constitution, and Section 66000 and following of the Government Code for the purpose of authorizing and levying jail facilities fees upon the owners of real property located in all parts of Butte County, to include both the unincorporated and incorporated areas, adding one (1) or more new residential units to such property, in an amount sufficient to defray the cost of providing jail facilities made necessary to serve the additional jail needs arising from an increase or change in the use of such property.

(Ord. No. 3967, § 1 (part), 7-10-07)

3-11 - Findings.

The board of supervisors makes the following findings and determinations required by Government Code Section 66001 in regard to the development impact fees authorized and levied pursuant to the provisions of this article:

- (a) **Increased Need Resulting from New Development.** The Jail Impact Fee Study dated June 21, 2007, relies on figures from the Butte County Association of Governments and the California Department of Finance to project increases in population over a twenty (20) year period, from year 2007 to 2036. It projects that population will increase by two (2) percent annually. As a result, there will be new residential development occurring within Butte County that will create a need for the development of additional jail facilities. Over time, existing jail facilities will become insufficient in size and capacity to meet the needs of new residential development. Based on the Jail Impact Fee Study dated June 21, 2007 and the Butte County Jail Needs Assessment dated September 2006, new residential development occurring within Butte County will create the need for additional jail facility capacity.
- (b) **Use of Revenues from Fees to Meet Jail Facilities Needs.** All revenues from the development impact fees authorized and levied on new residential development pursuant to the provision of this article will be used for the acquisition and development of additional jail facilities within the unincorporated and incorporated area of Butte County which will meet the need for such facilities caused by such new residential development. In accordance with the provisions of this article, all such revenues must be deposited in a jail facility account and thereafter appropriated by the Board of Supervisors for the acquisition and development of jail facilities including the design, engineering, construction, land acquisition costs, furniture, fixtures and equipment for the expanding facilities.
- (c) **Fees do not Exceed Level Necessary to Meet Need.** The development impact fees authorized and levied on new residential development pursuant to the provisions of this article will not exceed that which is necessary to fund the jail facilities attributable to the new residential development upon which such fees are imposed. In particular, the development impact fees authorized and levied on new residential development will be equal to that necessary to fund additional jail facilities for the increase in population and residential development that will eventually occur in Butte County by year 2036.
- (d) **Appropriateness of Development Impact Fees.** Due to the projected increase in population, development impact fees are the only equitable way for new development to contribute to maintaining existing levels of service.

- (e) Purpose of Fees. The purpose of the fees authorized and levied by this article is to defray the cost of improvements to the jail facilities made necessary by the anticipated increase in population.
- (f) Facilities Identified. The facilities that will be financed wholly or in part by the fees are those identified in the Jail Impact Fee Study dated June 21, 2007 and the Butte County Jail Needs Assessment dated September 2006.
- (g) Relationship between Use of Fees and Type of Development. There is a reasonable relationship between the use of the fees and the type of development project on which the fees are imposed, as set forth in the provisions of this article, including, but not limited to, Sections 3-13 and 3-14
- (h) Relationship between Need for Facilities and Type of Development. There is a reasonable relationship between the need for the jail facilities and the type of development project on which the fees are imposed, as set forth in the provisions of this article, including, but not limited to, Sections 3-13 and 3-14
- (i) Relationship between Amount of Fees and Cost of Facilities. There is a reasonable relationship between the amount of the fees and the cost of the jail facilities or portions thereof attributable to the development on which the fees are imposed, as set forth in the provisions of this article, including, but not limited to, Sections 3-13 and 3-14 and the Jail Impact Fee Study dated June 21, 2007.

(Ord. No. 3967, § 1 (part), 7-10-07)

3-12 - Definitions.

Unless the contrary is stated or clearly appears from the context, the following definitions shall govern the construction of the words and phrases used in this article:

- (a) "Single Family Residence" is as defined in Butte County Code Section 24-305.130 and includes Duplex as defined in Butte County Code Section 24-305.105, as well as pre-fabricated homes. It also includes second dwelling units as defined in Butte County Code Section 24-305.375, but not guest house as defined in Butte County Code Section 24-305.175.
- (b) "Multifamily residence" is as defined in Butte County Code Section 24-305.120.
- (c) "Mobile home" is as defined in Butte County Code Section 24-305.280 and includes modular home as defined in Butte County Code Section 24-305.288, as well as a manufactured home, but not a temporary mobile home as defined in Butte County Code Section 24-295
- (d) "Chargeable space" shall mean all of the covered and enclosed space determined to be within the perimeter of a commercial, industrial, office or school structure, not including any parking structure. The determination of the chargeable space, to be expressed in the number of square feet, shall be made by the Building Division of the Development Services Department of the County, in accordance with the standard practice of the County.
- (f) "Dwelling unit" shall mean any building or mobile home, or portion thereof, used or designed for use as a residence by an individual or any group of individuals living together as a family.
- (g) "More intensive use" shall mean a land use on a particular parcel of real property or any part thereof which, as compared to the previous land use, involves: more residents, employees, students, occupants, participants or other persons onsite; the generation of more vehicular traffic to and from the site; or any condition or combination of conditions which create a greater need for jail facilities.

(Ord. No. 3967, § 1 (part), 7-10-07)

3-13 - Imposition of development impact fees for jail facilities.

A jail facilities development impact fee shall be authorized and levied upon any owner of real property located in the unincorporated and incorporated area of Butte County, with the fee to be collected in the incorporated area by each respective municipality through an agreement with Butte County, adding one (1) or more residential units to such property incident to the construction of a new building on the property, the installation of a mobile home or factory-built home on the property or connection thereof to utilities, or change of any use of a building that is other than residential on the property to a residential use. Fees authorized and levied hereunder as to the installation of a mobile home or factory-built home or the connection of a mobile home or factory-built home to utilities shall only be authorized and levied at the initial location of said mobile home or factory-built home in the unincorporated or incorporated area of Butte County and if such location is on a space, site or other property on which no other mobile home or factory-built home was previously located.

(Ord. No. 3967, § 1 (part), 7-10-07)

3-14 - Amount of impact fees for jail facilities.

The amount of impact fees for jail facilities authorized and levied pursuant to the provisions of this article shall be as follows:

Dwelling Unit Type	Fee
Single-family	\$455.89
Multifamily	363.63
Mobile home	372.22

For calculation of the above fees, see the Jail Impact Fee Study dated May 31, 2007. The most recent amount on the index, dated December 2009, is 9,722.17.

(Ord. No. 3967, § 1 (part), 7-10-07; Ord. No. 3997, § 1, 2-24-09; Ord. No. 4017, § 1, 3-16-10)

3-15 - Periodic adjustment to jail facilities fees.

From time to time, county staff may submit documentation substantiating that there has been an increase in the cost of acquiring and/or developing jail facilities within the unincorporated and incorporated area of Butte County, and requesting an increase in the jail facilities fee authorized and levied pursuant to the provisions of this article. The Board of Supervisors may increase this fee, in an amount proportional to the increase in such costs. The determination of whether there has been an increase in the cost of acquiring and/or developing such jail facilities and the amount of the increase in the jail facilities fee which is proportional to the increase in such costs shall be made by the Board of Supervisors based on the following:

The net percentage increase in the Engineering News Record Construction Cost Index for San Francisco (using the CCI column of the "ENR City Cost Index - San Francisco") (based on 1913 U.S. average = one hundred (100)) as last published in the Engineering News Record McGraw Hill Construction Weekly (or on the internet) between the date of such increase and the effective date of the ordinance codified in this section or any prior increase in the fee made pursuant to the provisions of this section. The formula for adjusting the fee is: $(\text{New index amount} / \text{amount of index at time of existing fee}) \times \text{existing fee} = \text{new fee}$.

(Ord. No. 3967, § 1 (part), 7-10-07)

3-16 - Credit for jail facilities fees previously paid.

Where jail facilities fees have previously been paid in whole or in part as to the real property upon which the structures are to be added, the owner of said real property shall be entitled to a credit or partial credit for the amount paid against the fees owing pursuant to this article. Such fees may previously have been paid to another jurisdiction or to Butte County where such fees have been paid for a use that is being converted to a different or more intensive use.

(Ord. No. 3967, § 1 (part), 7-10-07)

3-17 - Exemption from jail facilities fees.

Notwithstanding any provisions of this article to the contrary, a jail facilities fee shall not be authorized and levied upon an owner of real property located in the unincorporated or incorporated area of Butte County adding or enlarging one (1) or more structures to such property or converting the use thereof to a more intensive use under the following circumstances:

- (a) Where the structure is owned by a governmental agency;
- (b) Where the structure is a building, or is within a building, which is being reconstructed following damage or destruction by fire or other casualty, or the voluntary demolition thereof, provided that the number of structures or the amount of chargeable space in such reconstructed structure is no greater than the number of structures or the amount of chargeable space in the structure prior to such damage, destruction or demolition;
- (c) Where a use is a nonresidential use and the structure is located within the Oroville Enterprise Zone as described in Butte County Code Chapter 2, Article XVI.5;
- (d) Where the structure is a temporary mobile home as described in Butte County Code Section 24-295

(Ord. No. 3967, § 1 (part), 7-10-07)

3-18 - Payment of development impact fee for jail facilities.

- (a) Time of Payment. The jail facilities fee authorized and levied pursuant to the provisions of this article shall be due and payable prior to:
 - (1) The issuance of a building permit for the construction of any new residential building, or for the change in use of a nonresidential building or mobile home to a residential use;
 - (2) The issuance of an installation or utility connection permit for a mobile home or factory-built home in which such dwelling unit is to be located; or
 - (3) The occupation of such dwelling unit.
- (b) Such fee shall be paid to the County of Butte, Department of Development Services, Building Division, in the amount specified in Section 3-14

(Ord. No. 3967, § 1 (part), 7-10-07)

3-19 - Deposit of jail facilities fee revenues in jail facilities account.

All revenues from the jail facilities fee authorized and levied pursuant to the provisions of this article shall, when received by the County of Butte, be deposited in a separate jail facilities account thereafter appropriated and used only for the acquisition and/or development of jail facilities or land in the manner hereinafter provided by this article.

(Ord. No. 3967, § 1 (part), 7-10-07)

3-20 - Appropriation of jail facilities fee revenues for the acquisition and development of jail facilities.

All revenues from the jail facilities fee authorized and levied pursuant to the provisions of this article and received by the County of Butte, Department of Development Services, Building Division, and deposited in a separate account pursuant to this article shall be appropriated by the Board of Supervisors in a manner consistent with the Jail Impact Fee Study dated June 21, 2007 and the Butte County Jail Needs Assessment dated September 2006 and only for the acquisition and/or development of those jail facilities identified in these plans.

(Ord. No. 3967, § 1 (part), 7-10-07)

3-21 - Report re disposition of jail facilities fee revenues; action re unexpended revenues.

- (a) Within one hundred eighty (180) days after the last day of each fiscal year the Auditor/Controller of the County of Butte shall provide to the Board of Supervisors a report regarding each separate account established pursuant to this article, and the Board shall then review the report, in compliance with the requirements of Government Code Section 66006(b).
- (b) Action by the Board of Supervisors. Commencing with the fifth fiscal year following the first receipt of any revenues from jail facilities fees authorized and levied pursuant to the provisions of this article, and every five (5) years thereafter, the board of supervisors, following receipt of the Butte County Auditor/Controller's report, shall make the required findings with respect to any unexpended jail facilities fee revenues in the jail facilities account as set forth in Government Code Section 66001(d). In the event that the jail facilities fee revenues are found not to have been diligently expended, the Board of Supervisors may take one (1) of the following actions:
 - (1) Order the expending of all or any part of such unexpended jail facilities fee revenues for the acquisition and/or development of jail facilities in the manner hereinbefore provided by this article;
 - (2) Make a finding with respect to all or any part of such unexpended jail facilities fee revenues which identifies the purpose to which the revenues are to be put and which demonstrates a reasonable relationship between the fees from which the revenues are derived and the purpose for which they were charged; or
 - (3) Order the refund of all or any part of such unexpended jail facilities fee revenues, together with any interest accrued thereon, to the current owner of any property for which fees were paid; provided, however, that if the administrative costs of refunding such jail facilities fee revenues exceed the amount to be refunded, the board of supervisors, after considering the matter at a public hearing, notice of which is given in the manner provided for by Government Code Section 66001(f), may order the expending of such revenues for any other facility or improvement for which development fees are charged or otherwise imposed pursuant to this Code and which the board of supervisors determines will benefit the properties for which the jail facilities fees were paid.

(Ord. No. 3967, § 1 (part), 7-10-07)

3-22 - Other jail facilities requirements.

The provisions of this article shall not relieve the owner of any real property located within the county, both the incorporated and unincorporated areas, from the obligation of complying with any requirements that are imposed pursuant to other provisions of this code, state law or federal law at the time of approval of a subdivision map, parcel map, building permit or other land use entitlement regarding the funding of jail facilities.

(Ord. No. 3967, § 1 (part), 7-10-07)

3-23 - Notation of subdivision maps.

As a condition of approval of tentative subdivision maps, final maps shall contain a notation with regard to the imposition of the development impact fees for jail facilities. The notation shall include information to the effect that a development impact fee for jail facilities will be required at the time of the

issuance of a building permit and that such fee will be determined and calculated as of the date of application for the building permit, as opposed to the time of the filing of the final map or issuance of the use permit.

(Ord. No. 3967, § 1 (part), 7-10-07)

3-24 - Processing fee.

A processing fee covering the collection, handling, and accounting of the development impact fees collected pursuant to this article will be charged and set by resolution.

(Ord. No. 3967, § 1 (part), 7-10-07)

3-25—3-30 - Reserved.

Agreement Regarding Collection of Development Impact Fees for Jail Facilities within the
Incorporated Area of the City of Biggs

THIS AGREEMENT is made this __ day of _____, by and between the County of
Butte ("County") and the City of Biggs ("City").

RECITALS

WHEREAS, the County provides certain public safety services that benefit the residents of both the incorporated and the unincorporated areas of Butte County, including but not limited to incarceration of convicted felons and misdemeanants; and

WHEREAS, the County and City wish to ensure adequate public safety facilities including sufficient jail capacity as population increases due to residential development; and

WHEREAS, the County has prepared a study that identifies the capacity needs of the county jail now and for a period into the future; and

WHEREAS, the County has also prepared a study that reasonably and proportionately relates the cost of jail capacity expansion to residential development in both the unincorporated area of the County and in the incorporated areas of the County and identified the necessary relationships as required by the Mitigation Fee Act (Government Code section 66000 et seq.); and

WHEREAS, the County is currently collecting a Development Impact Fee for Jail Facilities upon new residential development within the unincorporated area of the County in order to mitigate impacts on jail facilities resulting from residential development; and

WHEREAS, the County and the City desire to address the need to mitigate the impact of new residential growth on the County's jail facility in a manner that is fair and equitable to all residents of the County regardless of where they reside; and

WHEREAS, the City finds that residential development within the boundaries of the City contributes to the need for the construction, expansion, and improvement of jail facilities, and that the County has identified said impacts and adopted a development impact fee program for jail facilities that is in conformance with the Mitigation Fee Act; and

WHEREAS, the purpose of this agreement is to provide a means for the County to impose Development Impact Fees for Jail Facilities on residential development projects located within the incorporated area of the City to help ensure that the County can adequately meet the jail facility needs of those who reside at such residential developments;

NOW, THEREFORE, the parties hereby agree as follows:

AGREEMENT

I. CONDITION PRECEDENT. As a condition precedent to this Agreement, County shall have entered into similar agreements with the Town of Paradise, City of Oroville, City of Chico and City of Gridley, municipal corporations within the County of Butte, relating to the collection of the County Development Impact Fee for Jail Facilities.

II. COUNTY FEE. Subject to the terms and conditions of this Agreement and the provisions of the Chapter 3, Article II of the Butte County Code, the City agrees that the County may impose the Development Impact Fee for Jail Facilities contained in Chapter 3, Article II of the Butte County Code on all residential development projects within its incorporated boundaries.

III. FEE AMOUNT; ADJUSTMENT OF FEE. Exhibit A to this Agreement displays the current fee amount by residential development type as of the date of signing. From time-to-time, County may adjust the amount of the Development Impact Fee for Jail Facilities after documenting that there has been an increase in the cost of acquiring and/or developing jail facilities; in all cases, fee amount collected by City on behalf of County shall be that amount identified in Chapter 3, Article II of the Butte County Code.

IV. COLLECTION OF COUNTY FEE. City agrees to collect the Development Impact Fee for Jail Facilities on a City-wide basis at any one of the times permitted by Chapter 3, Article II of the Butte County Code:

- a. The issuance of a building permit for the construction of any new residential building, or for the change in use of a nonresidential building or mobile home to a residential use;
- b. The issuance of an installation or utility connection permit for a mobile home or factory-built home in which such dwelling unit is to be located; or
- c. The occupation of such dwelling unit.

V. TRANSFER OF FEE. City shall transfer to County funds collected pursuant to this agreement on a quarterly basis, beginning after the close of the first entire quarter following the enacting of fee collection. Fees transferred shall include only those Development Impact Fees for Jail Facilities collected by the City. No other City funds shall be obligated to make payment for the Development Impact Fees for Jail Facilities, including but not limited to, General Fund or other Development Impact Fees.

VI. EXEMPTION FROM FEE. City agrees to permit exemptions to Fee only in the same manner as County:

- a. Where the structure is owned by a governmental agency;
- b. Where the structure is a building, or is within a building, which is being reconstructed following damage or destruction by fire or other casualty, or the voluntary demolition thereof, provided that the number of structures or the amount of chargeable space in such reconstructed structure is no greater than the number of structures or the amount of chargeable space in the structure prior to such damage, destruction or demolition;
- c. Where the structure is a temporary mobile home as described in Butte County Code Section 24-295.

VII. EFFECTIVE DATE. City shall begin collecting Development Impact Fees for Jail Facilities sixty (60) days from the satisfaction of the condition precedent set forth in Section I of this Agreement.

VIII. SOLE AND EXCLUSIVE METHOD. This Agreement shall be the sole and exclusive method for imposing and adjusting County Development Impact Fees for Jail Facilities within the incorporated area of the City. The County shall not attempt to impose or collect any Development Impact Fees for Jail Facilities except in accordance with the terms and provisions of this agreement.

IX. TERMINATION. This Agreement shall remain in effect for ten years after the agreement is signed; provided, however, City may terminate this Agreement at any time with a 60 day written notice to County if County increases the Development Impact Fee for Jail Facilities without City's prior written consent.

X. INDEMNIFICATION. Pursuant to Government Code section 895.4, the County agrees to defend, indemnify and hold harmless the City and its elected officials, officers, employees, agents and volunteers from and against any and all claims, damages, demands, losses, defense costs, expenses (including attorneys' fees) and liability of any kind or nature arising out of or alleged to arise out of the performance of this Agreement. In carrying out its obligations under this Section VIII, the County may use legal counsel of its choice.

XI. APPLICABLE LAW AND FORUM. This Agreement shall be construed and interpreted according to California law and any action to enforce the terms of this Agreement for the breach thereof shall be brought and tried in the County of Butte.

XII. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective representatives, heirs, predecessors, affiliated entities, transferees, assigns and successors in interest.

XIII. ATTORNEYS' FEES AND COSTS. In the event of future litigation to enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

XIV. SEVERABILITY. Should any paragraph, clause or provision of this Agreement be construed to be against public policy or determined by a court of competent jurisdiction to be

void, invalid or unenforceable, such construction and decisions shall affect only those paragraphs, clauses or provisions so construed or interpreted, and shall in no event affect the remaining paragraphs, clauses or provisions of this Agreement, which shall remain in force.

XV. NO THIRD PARTY BENEFICIARIES. This Agreement is not intended to, and will not be construed to, create any right on the part of any third party to bring an action to enforce any of its terms.

XVI. ENTIRE AGREEMENT; MODIFICATION. This Agreement is the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This Agreement shall not be amended, except in a writing that is executed by authorized representatives of both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

Doug Teeter, Chair
Butte County Board of Supervisors

Date

Mark Sorensen, City Administrator
City of Biggs

Date

Date

Approved as to Form:
County Counsel

Reviewed for Fiscal Control,
Subject to Budgetary Appropriation
Butte County Auditor-Controller

By: _____

By: _____

Date _____

Date _____

Approved as to Form:

By: _____

Date _____

EXHIBIT A

Amount of Impact Fees for Jail Facilities as of the date of Signing:	
<u>Dwelling Unit Type</u>	<u>Fee</u>
Single-Family	\$455.89
Multifamily	\$363.63
Mobile Home	\$372.22