

# HUGHSON FIRE PROTECTION DISTRICT

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**Final Report**

**Development Impact Fee Study**

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Prepared by:



Corporate Headquarters  
32605 Temecula Parkway, Suite 100  
Temecula, CA 92592  
Toll free: 800.676.7516

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# Executive Summary

The Hughson Fire Protection District (Hughson FPD) retained NBS Government Finance Group to analyze the impacts of new development on the facilities and other capital assets needed to serve the District and to calculate impact fees based on that analysis. The methods used in this study are intended to satisfy all legal requirements of the U. S. Constitution, the California Constitution and the California Mitigation Fee Act (Government Code Sections 66000 *et seq.*).

## Organization of the Report

Chapter 1 of this report provides an overview of the legal requirements for establishing and imposing such fees, and the methods that can be used to calculate impact fees.

Chapter 2 contains data on existing development in the District.

Chapters 3 analyzes the impacts of development on the District's need for facilities, apparatus, vehicles and equipment and calculates impact fees based on that analysis.

Chapter 4 contains recommendations for adopting and implementing impact fees, including suggested findings to satisfy the requirements of the Mitigation Fee Act.

## Development Data

Chapter 2 of this report presents estimates of existing development in the District. The Hughson Fire Protection District includes the City of Hughson as well as a portion of unincorporated Stanislaus County.

Chapter 2 also shows demand factors in terms of fire calls per unit per year for each type of development identified in this study.

Because of provisions of AB 602 that were incorporated into California law effective in 2022, impact fee categories for residential development in this study are defined in terms of unit size categories, broken down by square footage. Prior to the adoption of AB 602 it was common practice to base residential impact fees on unit type categories (e.g., single-family or multi-family units).

No forecast of future development for the District was available at the time of this Study. However, as discussed further below, AB 602 also requires that impact fees be based on the existing level of service, and therefore the calculations for impact fees in this report do not involve nor require a forecast of future development.

## Impact Fee Analysis

The impact fees calculated in this report are based on the existing level of service in the District in keeping with the requirements of Government Code Section 66016.5, which was added by AB 602 in 2021. The existing level of service is defined as the relationship between the replacement cost of existing District facilities, apparatus, vehicles and

equipment and the number of calls for service per year received by the District. That relationship is stated as a cost per call for service per year.

As part of this study, NBS analyzed the distribution of Hughson FPD calls for service for a full year to determine the average number of calls per unit per year generated by different types of development. The impact fee per unit for each type of development is calculated by multiplying the cost per call by the number of calls per unit per year generated by each type of development. The impact fees calculated in this report are intended to apply to all types of new development in the District other than development by government entities.

Table S.1 below shows the impact fees calculated in this report.

**Table S.1: Proposed Impact Fees per Unit**

Development Type	Units <sup>1</sup>	Impact Fee per Unit
Residential: <800 Sq. Ft.	DU	\$ 884.11
Residential: >800-1,300 Sq. Ft.	DU	\$ 1,205.61
Residential: >1,300-1,900 Sq. Ft.	DU	\$ 1,527.11
Residential: >1,900-2,500 Sq. Ft.	DU	\$ 1,848.60
Residential: >2,500 Sq. Ft.	DU	\$ 2,170.10
Senior/Assisted Living	Room	\$ 8,512.19
Commercial	SF	\$ 1.35
Industrial	SF	\$ 0.06
Quasi-Public Facilities	SF	\$ 0.27

<sup>1</sup> Units of development: DU = dwelling unit; SF = gross square feet of building area; Room = occupant room or apartment

The proposed impact fee schedule contains a new category for Senior/Assisted Living. That category was added because almost 25% of all Hughson FPD calls for service in the one-year period analyzed in this study originated from one assisted living community in Hughson. The proposed impact fee for Senior/Assisted Living facilities reflects the outsized service demand created by that type of development.

Table S.2 shows the proposed impact fees from Table S.1 with the addition of a 3.6% administrative charge. That percentage is intended to cover the average annual cost of preparing an impact fee update study every eight years as required by the Mitigation Fee Act.

The percentage of the administrative charge is based on the estimated cost of an impact fee update study (\$25,000) divided by eight years of estimated future impact fee revenue. The District’s average annual impact fee revenue from the City and the County over the last three years was \$61,475. NBS estimates that, if the impact fees calculated in this study are adopted, average annual revenue will increase by 40% to about \$86,000. Eight years of revenue at \$86,000 per year is \$688,520, and  $\$25,000 / 688,520 = 0.036$  or 3.6%.

**Table S.2: Proposed Impact Fees per Unit + Admin Charge**

Development Type	Units <sup>1</sup>	Impact Fee per Unit
Residential: <800 Sq. Ft.	DU	\$ 915.94
Residential: >800-1,300 Sq. Ft.	DU	\$ 1,249.01
Residential: >1,300-1,900 Sq. Ft.	DU	\$ 1,582.08
Residential: >1,900-2,500 Sq. Ft.	DU	\$ 1,915.15
Residential: >2,500 Sq. Ft.	DU	\$ 2,248.22
Senior/Assisted Living	Room	\$ 8,818.62
Commercial	SF	\$ 1.39
Industrial	SF	\$ 0.06
Quasi-Public Facilities	SF	\$ 0.28

<sup>1</sup> Units of development: DU = dwelling unit; SF = gross square feet of building area; Room = occupant room or apartment

<sup>2</sup> In this table, a 3.6% administrative charge is added to the impact fees; see discussion in text

As explained on pages 3-3 and 3-4 in Chapter 3, The District may encounter non-residential development projects that do not fit well into any of the non-residential development categories for which impact fees are calculated in that report. In that case, the District can calculate a customized impact fee using the formula shown on page 3-4.

Table S.3 shows the District's existing impact fees. All of the existing impact fees are based on square footage, while the proposed residential impact fees are shown per unit. To make the comparison of existing and proposed impact fees more meaningful, the existing residential impact fees are converted to per-unit fees using the estimated average square feet per unit for each unit-size category.

**Table S.3: Existing Impact Fees per Unit**

Development Type	Units <sup>1</sup>	Impact Fee per Unit <sup>2</sup>
Residential: <800 Sq. Ft.	DU	\$ 450.00
Residential: >800-1,300 Sq. Ft.	DU	\$ 720.00
Residential: >1,300-1,900 Sq. Ft.	DU	\$ 900.00
Residential: >1,900-2,500 Sq. Ft.	DU	\$ 1,320.00
Residential: >2,500 Sq. Ft.	DU	\$ 1,650.00
Senior/Assisted Living	Room	No Existing Fee
Commercial	SF	\$ 0.30
Industrial (Classified Commercial)	SF	\$ 0.30
Quasi-Public Facilities	SF	No Existing Fee

<sup>1</sup> Units of development: DU = dwelling unit; SF = gross square feet of building area; Room = occupant room or apartment

<sup>2</sup> Residential impact fees per unit are based on the existing residential impact fee per square foot and the estimated average square feet per unit for each unit size category

The comparison of existing and proposed impact fees for the commercial category is fairly straightforward. The existing fee is \$0.30 per square foot and the proposed impact fee is \$1.39 per square foot, including the administrative charge. However, under the existing fee schedule, industrial development is considered commercial except for greenhouses which have a specific impact fee of \$0.11 per square foot. The proposed impact fee schedule includes a separate impact fee for all industrial development, including greenhouses, at a rate of \$0.06 per square foot. The proposed new impact fees for commercial and industrial development reflect the substantial differences in service demand created by those types of development.

Table S.4 shows the difference between the District's existing impact fees and the proposed impact fees including the administrative charge. Numbers in parentheses indicate that the proposed impact fee is lower than the existing impact fee.

**Table S.4: Difference Between Existing and Proposed Fees**

Development Type	Units <sup>1</sup>	Impact Fee Difference <sup>2</sup>
Residential: <800 Sq. Ft.	DU	\$ 465.94
Residential: >800-1,300 Sq. Ft.	DU	\$ 529.01
Residential: >1,300-1,900 Sq. Ft.	DU	\$ 682.08
Residential: >1,900-2,500 Sq. Ft.	DU	\$ 595.15
Residential: >2,500 Sq. Ft.	DU	\$ 598.22
Senior/Assisted Living	Room	No Existing Fee
Commercial	SF	\$ 1.09
Industrial	SF	\$ (0.24)
Quasi-Public Facilities	SF	No Existing Fee

<sup>1</sup> Units of development: DU = dwelling unit; SF = gross square feet of building area; Room = occupant room or apartment

<sup>2</sup> Impact fee difference = proposed impact fee per unit + admin charge from Table S.2 less existing impact fee per unit from Table S.3

# Chapter 1. Introduction

## Purpose

The purpose of this study is to analyze the impacts of development on the need for capital facilities and other capital assets provided by the Hughson Fire Protection District and to calculate impact fees based on that analysis. This report documents the approach, data and methodology used in this study to calculate impact fees.

The methods used to calculate impact fees and in-lieu fees in this report 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 66000-66025).

## Legal Framework for Impact Fees

This brief summary of the legal framework for development fees is intended as a general overview. It was not prepared by an attorney and should not be treated as legal advice.

**Fire Protection District Law of 1987.** California Health and Safety Code Section 13916, which is part of the Fire Protection District Law of 1987, states: “A (fire protection) district board shall not charge a fee on new construction or development for the construction of public improvements or facilities or the acquisition of equipment.” However, although the District itself may not charge such fees, it is quite common in California for cities and counties to impose fire impact fees for fire protection districts that provide services within their boundaries. The fees calculated in this report are intended to be adopted by the City of Hughson and Stanislaus County.

**U. S. Constitution.** Like all land use regulations, development exactions, including impact fees, are subject to the 5th 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.” A regulatory taking occurs when regulations unreasonably deprive landowners of property rights protected by the Constitution.

In two landmark cases dealing with exactions, the U. S. Supreme Court has held that when a government agency requires the dedication of land or an interest in land as a condition of development approval or imposes ad hoc exactions as a condition of approval on a single development project that do not apply to development generally, a higher standard of judicial scrutiny applies. To meet that standard, the agency must demonstrate an “essential nexus” between such exactions and the interest being protected (See *Nollan v. California Coastal Commission*, 1987) and make an “individualized determination” that the exaction imposed is “roughly proportional” to the burden created by development (See *Dolan v. City of Tigard*, 1994).



Until recently, it was widely accepted that legislatively enacted impact fees that apply to all development in a jurisdiction are not subject to the higher standard of judicial scrutiny flowing from the *Nollan* and *Dolan* decisions. But after the U. S. Supreme Court decision in *Koontz v. St. Johns Water Management District (2013)*, state courts have reached conflicting conclusions on that issue. The California Supreme Court has held that the heightened scrutiny required by *Nollan* and *Dolan* does not apply to development fees that are generally applicable to a broad class of property owners through legislation (see the opinion in the California Court of Appeal, Third Appellate District, case of *Sheetz v. County of El Dorado*).

For purposes of this study, we assume that the key distinction between the heightened scrutiny of *Nollan* and *Dolan*, and the “reasonable relationship” requirements of the California Mitigation Fee Act (discussed below) is that legislatively adopted impact fees do not require an “individualized determination” as to the nature and extent of the impacts of a particular development project and the proportionality of the fees. Otherwise, we consider the reasonable relationship requirements of the Mitigation Fee Act to be generally consistent with the broad nexus standard enunciated in various federal and state impact fee decisions.

**Defining “Nexus.”** While courts have not been entirely consistent in defining the nexus required to justify exactions and impact fees, that term can be thought of as having the three elements discussed below. We think proportionality is logically included as one element of that nexus, even though it was discussed separately in *Dolan v. Tigard*. The elements of the nexus discussed below mirror the three “reasonable relationship” findings required by the Mitigation Fee Act for establishment and imposition of impact fees.

Need or Impact. Development must create a need for the facilities to be funded by impact fees. All new development in a community creates additional demands on some or all public facilities provided by local government. If the capacity of facilities is not increased to satisfy the 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 related to the development project subject to the fees.

The *Nollan* decision reinforced the principle that development exactions may be used only to mitigate impacts created by the development projects upon which they are imposed. In this study, the impact of development on facility needs is analyzed in terms of quantifiable relationships between various types of development and the demand for public facilities based on applicable level-of-service standards. This report contains all of the information needed to demonstrate compliance with this element of the nexus.

Benefit. Development must benefit from facilities funded by impact fees. With respect to the benefit relationship, the most basic requirement is that facilities funded by impact fees be available to serve the development paying the fees. A sufficient benefit relationship also requires that impact fee revenues be segregated from other funds and

expended in a timely manner on the facilities for which the fees were charged. Nothing in the U.S. Constitution or California law requires that facilities paid for with impact fee revenues be available exclusively to development projects paying the fees.

Procedures for earmarking and expenditure of fee revenues are mandated by the Mitigation Fee Act, as are procedures to ensure that the fees are either expended in a timely manner or refunded. Those requirements are intended to ensure that developments benefit from the impact fees they are required to pay. Thus, over time, procedural issues as well as substantive issues can come into play with respect to the benefit element of the nexus.

Proportionality. Impact fees must be proportional to the impact created by a particular development project. Proportionality in impact fees depends on properly identifying development-related facility costs and calculating the fees in such a way that those costs are allocated in proportion to the facility needs created by different types and amounts of development. The section on impact fee methodology, below, describes methods used to allocate facility costs and calculate impact fees that meet the proportionality standard.

**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 local governments in California to impose impact fees on development. Some impact fees have been challenged on grounds that they are special taxes imposed without voter approval in violation of Article XIII A. However, that objection is valid only if the fees charged to a project exceed the cost of providing facilities needed to serve the project. In that case, the fees would also run afoul of the U. S. Constitution and the Mitigation Fee Act.

Articles XIII C and XIII D, added to the California Constitution 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.” Thus, impact fees are exempt from those requirements.

**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 Mitigation Fee 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, it is clear both in case law and statute (see Government Code Section 65913.8) that impact fees may not be used to pay for ongoing maintenance or operating costs. Consequently, the fees calculated in this report are based on the cost of capital assets only.

The Mitigation Fee Act does not use the term “mitigation fee” except in its official title. Nor does it use the 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 terms “impact fee” and “development impact fee” which both 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 requires annual reports and periodic re-evaluation of impact fee programs. Those administrative requirements are discussed in the implementation chapter of this report.

Required Findings. Section 66001 (a) 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 the use of the fee and the development type on which it is imposed
4. Determine that there is a reasonable relationship between the need for the facility and the type of development on which the fee is imposed

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

Legal experts have opined that the requirements of Section 66001 (a) apply when impact fees are based on a legislatively adopted fee schedule, while the requirements of Section 66001 (b) apply when impact fees are based on an administratively imposed (ad hoc) assessment.<sup>1</sup>

The requirements outlined above are discussed in more detail below.

Identifying the Purpose of the Fees. The broad purpose of impact fees is to protect public health, safety and general welfare by providing for adequate public facilities. The specific

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<sup>1</sup> See “The Mitigation Fee Act’s Five-Year Findings Requirement: Beware Costly Pitfalls” by Glen Hansen, Senior Council, Abbott and Kindermann and Rick Jarvis, Managing Partner, Jarvis, Fay and Gibson, presented at the 2022 League of California Cities City Attorneys Spring Conference

purpose of the fees calculated in this study is to fund acquisition or construction of certain capital assets that will be needed to mitigate the impacts of planned new development on District facilities, and to maintain an acceptable level of service as the in the face of growing service demand related to new development.

This report recommends that findings regarding the purpose of an impact fee should define the purpose broadly, as providing for the funding of adequate public facilities to serve additional development.

Identifying the Use of the Fees. According to Section 66001(a)(2), 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 a General Plan, a Specific Plan, or in other public documents. Section 66002 (b) requires that if a capital improvement plan is used to identify the facilities, it must be updated annually.

However, a new provision in Section 66016.5, which was added by AB 602 in 2021, requires that large jurisdictions adopt a capital improvement plan as part of an impact fee study. That requirement applies to impact fee studies adopted after January 1, 2022. "Large jurisdiction" means a county of 250,000 or more or any city within that county. The statute does not provide any detail about what must be included in the capital improvement plan or how it should relate to the impact fee study. That new requirement is inconsistent with the original language of Section 66001(a)(2), so it is unclear whether the annual update requirement in Section 66002(b) applies.

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.

Technically, as best we can determine, the third requirement in that list pertains only to "ad hoc" fees that are not part of a legislatively adopted fee schedule. However, it is reasonable to assume that all three are part of a complete "nexus" or "reasonable relationship" framework as discussed earlier and impact fees calculated in this report are based on a proportional allocation of eligible costs to various types of development.

Development Agreements and Reimbursement Agreements. The requirements of the Mitigation Fee Act do not apply to fees collected under development agreements (see Govt. Code Section 66000) or reimbursement agreements (see Govt. Code Section 66003). The same is true of fees in lieu of park land dedication imposed under the Quimby Act (see Govt. Code Section 66477).

Existing Deficiencies. In 2006, Section 66001(g) was added to the Mitigation Fee Act (by AB 2751) to clarify that impact fees “shall not include costs attributable to existing deficiencies in public facilities...” The legislature’s intent in adopting this amendment, as stated in the bill, was to codify the holdings of *Bixel v. City of Los Angeles* (1989), *Rohn v. City of Visalia* (1989), and *Shapell Industries Inc. v. Governing Board* (1991).

That amendment does not appear to be a substantive change. It is widely understood that other provisions of law make it improper for impact fees to include costs for correcting existing deficiencies.

However, Section 66001(g) also states that impact fees “may include the costs attributable to the increased demand for public facilities reasonably related to the development project in order to (1) *refurbish existing facilities to maintain the existing level of service or (2) achieve an adopted level of service that is consistent with the general plan.*” (Emphasis added.)

**Impact Fees for Existing Facilities.** Impact fees may be used to recover costs for existing facilities to the extent that those facilities are needed to serve additional development and have the capacity to do so. In other words, it must be possible to show that fees used to pay for existing facilities meet the need and benefit elements of the nexus.

## Recent Legislation

Several new laws enacted by the State of California since 2019 to facilitate development of affordable housing bear on the implementation of impact fees calculated in this study. Below are brief overviews of some key bills passed since 2019.

**SB 330 – The Housing Crisis Act of 2019.** Amendments to existing law contained in SB 330 prohibit the imposition of new approval requirements on a housing development project once a preliminary application has been submitted. That provision applies to increases in impact fees and in-lieu fees, except when the resolution or ordinance establishing the fee authorizes automatic, inflationary adjustments to the fee or exaction.

**AB 1483 – Housing Data: Collection and Reporting.** AB 1483 requires that a city, county or special district must post on its website a current schedule of its fees and exactions, as well as associated nexus studies and annual reports. Updates must be posted within 30 days.

**SB 13 – Accessory Dwelling Units.** SB 13 prohibits the imposition of impact fees on accessory dwelling units (ADUs) smaller than 750 square feet and provides that impact fees for ADUs of 750 square feet or more must be proportional to the square footage of the primary dwelling unit. The proportionality requirement means that impact fees for ADUs of 750 square feet or more must be calculated on a case-by-case basis during the approval process.

Existing law requires a water or sewer connection fee or capacity charge for an accessory dwelling unit requiring a new or separate utility connection to be based on either the accessory dwelling unit’s size or the number of its plumbing fixtures. SB 13 revises the

basis for calculating the connection fee or capacity charge to either the accessory dwelling unit's square feet or the number of its drainage fixture units.

**AB 602 – Amendments to the Planning and Land Use Law and the Mitigation Fee Act.**

AB 602, which was passed and signed in 2021, adds section 65940.1 to the Planning and Land Use Law requiring cities, counties and special districts that have internet websites to post schedules of fees, exactions and affordability requirements, annual fee reports, and an archive of nexus studies on that website, and to update that information within 30 days after any changes.

AB 602 also adds Section 66016.5 to the Mitigation Fee Act imposing several new requirements for impact fees that go into effect in 2022, including:

- A nexus study must identify the existing level of service for each facility, identify the proposed new level of service (if any), and explain why the new level of service is appropriate.
- If a nexus study supports an increase in an existing fee the local agency shall review the assumptions of the nexus study supporting the original fee and evaluate the amount of the fees collected under the original fee.
- Large jurisdictions (counties over 250,000 and cities within those counties) must adopt a capital improvement plan as part of the nexus study.
- All impact fee nexus studies shall be adopted at a public hearing with at least 30 days' notice, and the local agency shall notify any member of the public that requests notice of intent to begin and impact fee nexus study of the date of the hearing.
- Nexus studies shall be updated at least every eight years, from the period beginning on January 1, 2022.
- A nexus study adopted after July 1, 2022, shall calculate a fee imposed on a housing development project proportionately to the square footage of proposed units in the development. A nexus study is not required to comply with this requirement if the local agency makes certain findings specified in the law. A local agency that imposes a fee proportionately to the square footage of units in the development shall be deemed to have used a valid method to establish a reasonable relationship between the fee charged and the burden posed by the development.
- Authorizes any member of the public, including an applicant for a development project, to submit evidence that impact fees proposed by an agency fail to comply with the Mitigation Fee Act, and requires the legislative body of the agency to consider such evidence and adjust the proposed fee if deemed necessary.

## Impact Fee Calculation Methodology

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

Allocating facility costs to various types and amounts of development is central to all methods of impact fee calculation. Costs are allocated by means of formulas that quantify the relationship between development and the need for facilities. In a cost allocation formula, the impact of development is represented by some attribute of development such as added population or added vehicle trips that represent the impacts created by different types and amounts of development.

**Plan-Based or Improvements-Driven Method.** Plan-based impact fee calculations are based on the relationship between a specified set of improvements and a specified increment of development. The improvements are typically identified in a facility plan, while the development is identified in a land use plan that forecasts potential development by type and quantity.

Using this method, facility costs are allocated to various categories of development in proportion to the service demand created by each type of development. To calculate plan-based impact fees, it is necessary to determine what facilities will be needed to serve a particular increment of new development.

With this method, the total cost of eligible facilities is divided by total units of additional demand to calculate a cost per unit of demand (e.g., a cost per capita for parks). Then, the cost per unit of demand is multiplied by factors representing the demand per unit of development (e.g., population per unit) to arrive at a cost per unit of development.

This method is somewhat inflexible in that it is based on the relationship between a specific facility plan and a specific land use plan. If either plan changes significantly the fees will have to be recalculated.

**Capacity-Based or Consumption-Driven Method.** This method calculates a cost per unit of capacity based on the relationship between total cost and total capacity of a system. It can be applied to any type of development, provided the capacity required to serve each increment of development can be estimated and the facility has capacity available to serve the development. Since the cost per unit of demand does not depend on the particular type or quantity of development to be served, this method is flexible with respect to changing development plans.

In this method, the cost of unused capacity is not allocated to development. Capacity-based fees are most commonly used for water and wastewater systems, where the cost of a system component is divided by the capacity of that component to derive a unit cost. However, a similar analysis can be applied to other types of facilities. To produce a schedule of impact fees based on standardized units of development (e.g. dwelling units

or square feet of non-residential building area), the cost per unit of capacity is multiplied by the amount of capacity required to serve a typical unit of development in each of several land use categories.

**Standard-Based or Incremental Expansion Method.** Standard-based fees are calculated using a specified relationship or standard that determines the number of service units to be provided for each unit of development. The standard can be established as a matter of policy or it can be based on the level of service being provided to existing development in the study area.

Using the standard-based method, costs are defined on a generic unit-cost basis and then applied to development according to a standard that sets the number of service units to be provided for each unit of development.

Park in-lieu and impact fees are commonly calculated this way. The level of service standard for parks is typically stated in terms of acres of parks per thousand residents. A cost-per-acre for park land or park improvements can usually be estimated without knowing the exact size or location of a particular park. The ratio of park acreage to population and the cost per acre for parks is used to calculate a cost per capita. The cost per capita can then be converted into a cost per unit of development based on the average population per dwelling unit for various types of residential development.

*Standard-based fee calculations using the existing level service as the standard appear to be well-suited to meeting the requirement that impact fees be based on the existing level of service. That requirement was added by Section 66016.5 as part of AB 602 and became effective in 2022.*

**Note on Impact Fees for Accessory Dwelling Units (ADUs).** Recent amendments to Section 65852.2 of the Government Code provide that impact fees may not be imposed on ADUs smaller than 750 square feet. It also establishes the following requirement for impact fees imposed on ADUs of 750 square feet or more:

*“Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.”*

Although it is not spelled-out in Section 65852.2, we think it is obvious that when calculating ADU impact fees in cases where the primary unit is a single-family detached unit, the starting point for the proportionality calculation is the fee that applies to the single-family unit.

The law also allows for ADUs on lots or parcels where the primary units are multi-family units. There are two potential complications for ADUs in multi-family complexes. The first is that the existing units in a multi-family complex may be of different sizes, which makes it more difficult to determine what square footage should be used for the primary unit when calculating the proportional fee for an ADU. The second is that the ADU may be similar in size to the existing units, which means that proportional impact fees for any ADU larger than 750 square feet would not benefit from a significant reduction in impact



fees. The District should establish a policy to define the primary unit square footage that would apply for ADUs in multi-family projects. One possibility would be to use the average size of existing units in the complex. Another would be to base the primary unit square footage on the largest unit in the complex, which would have the effect of reducing the ADU impact fee.

The formula for calculating proportional ADU impact fees would be:

$$\text{Primary unit impact fee X (ADU square feet / Primary unit square feet)}$$

One thing that becomes obvious in that formula is that, for an ADU of a particular size, a larger primary unit results in lower impact fees for the ADU. For example, if the ADU is 1,000 square feet and the primary unit is 2,000 square feet, the proportional impact fee for the ADU would be 50% of the impact fee that would apply to the primary unit. But if the primary unit is 1,200 square feet, the impact fee for the same-sized ADU would be 83.33% of the primary unit fee. It seems likely that discrepancy is an unintended consequence of language in Section 65852.2 that was not thoroughly considered before adoption.

Also, as mentioned earlier, residential impact fees adopted after July 1, 2022, must be proportionate to the square footage of a unit. It seems likely that impact fees based on square footage for primary units will tend to reduce the inequity created by the proportionality language of Section 65852.2 because the fees that apply to a smaller primary unit would be less than the fees that apply to a larger primary unit.

### **Subsequent Chapters**

Chapter 2 of this report contains data on development and service demand in the District. Impact fees for HFPD facilities apparatus, vehicles and equipment are calculated in Chapter 3. Chapter 4 covers implementation of the impact fees calculated in this report.

## Chapter 2. Development Data

This chapter presents data on existing development within the Hughson Fire Protection District (Hughson FPD) that will be used to calculate impact fees in this report. The information in this chapter may be used to establish levels of service, analyze facility needs, and allocate the cost of capital facilities among various types of development.

Land use and development data in this chapter are based on information from the U.S. Census Bureau and the American Community Survey (ACS), the California Department of Finance (DOF) Demographic Research Unit, the Stanislaus County Assessor and other sources as noted in this chapter.

### Study Area

The study area for this study is the area within the boundaries of the Hughson Fire Protection District which includes the City of Hughson and a portion of unincorporated Stanislaus County surrounding the City.

### Development Types

The development types for which impact fees are calculated in this study are listed below. Traditionally, impact fees for residential development are based on unit types such as single-family, multi-family and mobile home units. However, AB 602, enacted in 2021, added Section 66016.5 to the Government Code. That section requires that, “[a] nexus study adopted after July 1, 2022, shall calculate a fee imposed on a housing development project proportionately to the square footage of proposed units of the development.” It further states that “[a] local agency that imposes a fee proportionately to the square footage of the proposed units of the development shall be deemed to have used a valid method to establish a reasonable relationship between the fee charged and the burden posed by the development.” Consequently, the residential development categories used in this study are based on unit size rather than the type of unit. The list of development categories used in this study is shown below.

- Residential: < 800 Sq. Ft.
- Residential: > 800 – 1,300 Sq. Ft.
- Residential: > 1,300 – 1,900 Sq. Ft.
- Residential: > 1,900 – 2,500 Sq. Ft.
- Residential: > 2,500 Sq. Ft.
- Senior/Assisted Living
- Commercial
- Industrial
- Public/Quasi-Public Facilities

**Residential.** As noted in the previous section, the residential development categories used in this study are based on unit size and do not distinguish among unit types (e.g., single-family, multi-family or mobile home).

**Senior/Assisted Living.** This category includes facilities for independent living and assisted living for residents over 65, as well as skilled nursing facilities, memory care facilities and other similar uses. It excludes age-restricted residential developments that do not provide on-site caregivers.

**Commercial.** The Commercial category includes retail commercial, service commercial and similar uses.

**Industrial.** The Industrial category includes manufacturing, warehousing, processing and similar uses, including greenhouses.

**Quasi-Public Facilities.** This category includes quasi-public facilities such as religious institutions, hospitals and private schools. All of the demand associated with this category in the analysis of HFPD calls for service was from churches or other religious institutions. Government facilities are not included in this category because in most cases those facilities are exempt from impact fees. It is also worth noting that the analysis of HFPD calls for service in this study did not identify any calls from government facilities.

## **Units of Development**

In this study, quantities of existing and planned development are measured in terms of certain units of development. Those units are discussed below.

**Dwelling Units.** Residential development in this study is measured in terms of dwelling units (DUs).

**Building Area.** Non-residential development in this study is measured in terms of building area in square feet or thousands of square feet, denoted as KSF.

## **Demand Variable**

In calculating impact fees, the relationship between facility needs and development must be quantified in cost allocation formulas. Some measurable attribute of development such as population, vehicle trips or calls for service are used in those formulas to reflect the impact of different types and amounts of development on the demand for specific public services and the facilities that support those services.

Those attributes are referred to in this study as “demand variables.” Demand variables are selected either because they directly measure service demand created by various types of development, or because they are reasonably correlated with that demand.

The demand variable used in this study is calls for service. The impact of development on the need for facilities, apparatus and vehicles used by the Hughson Fire Protection is represented by the number of calls for service per year received by HFPD. The service demand created by a particular type of development is represented by the average number of calls per unit per year generated by that type of development.

Those calls-for-service-per-unit-per-year factors, also called demand factors, are based on analysis by NBS of a random sample of calls for service for a one-year period. The number

of calls generated during that year by each type of development is divided by the number of units of that development type to arrive at calls-per-unit-per-year factors that are shown in Table 2.1 and used to calculate impact fees in Chapter 3 of this report. For additional detail see Chapter 3.

## Demand Factors

Table 2.1 shows the calls for service-per-unit-per-year factors for each type of development defined in this study. As noted above, those factors are based on an analysis by NBS of all calls for service received by the Hughson Fire Protection District for a one-year period, specifically the period from December 1, 2021, to November 30, 2022.

With respect to residential development, available data do not allow calls for service to be related directly to residential units by unit size, so the calls for service analysis identifies calls generated by single-family, multi-family and mobile home units. Then, to meet the requirement of Government Code Section 66016.5 which requires residential impact fees to be proportional to square footage, calls-for-service factors by unit size category were estimated on a sliding scale around the overall average rate. In other words, the residential calls-for-service factors shown in Table 2.1 increase with unit size and those factors range around the overall average rate for residential development.

**Table 2.1 - Fire Department Calls per Unit per Year**

Development Type <sup>1</sup>	Unit Type <sup>2</sup>	Fire Calls per Unit <sup>8</sup>
Residential: <800 Sq. Ft.	DU	0.110
Residential: >800-1,300 Sq. Ft.	DU	0.150
Residential: >1,300-1,900 Sq. Ft.	DU	0.190
Residential: >1,900-2,500 Sq. Ft.	DU	0.230
Residential: >2,500 Sq. Ft.	DU	0.270
Senior/Assisted Living	Room	1.059
Commercial	KSF	0.167
Industrial	KSF	0.008
Quasi-Public Facilities <sup>2</sup>	KSF	0.034

<sup>1</sup> Fire Department calls for service per unit per year based on analysis of a random sample of all HFPD calls for service from 12/1/21 to 11/30/22; see discussion in text and in Chapter 3

<sup>2</sup> Public/Quasi-Public Facilities analyzed in this study consist primarily of religious institutions and do not include government owned buildings which are not subject to impact fees

## Existing Development

Table 2.2 presents data on existing development as of January 2023 in the area served by the Hughson Fire Protection District.

It is important to note that in Table 2.2, all residential development is grouped into a single category. As noted above, this study is required to calculate residential impact fees in proportion to square footage, so residential development types are defined in this study by unit-size categories rather than by unit types. However, we do not have data that would allow us to break out existing residential development into unit-size categories, so in Table 2.2 all residential development is grouped into a single category. However, in Chapter 3, specific impact fees are calculated for each residential unit size category.

**Table 2.2: Existing Development January 1, 2023 - Hughson FPD**

Development Type	Unit Type <sup>1</sup>	No. of Units <sup>2</sup>	Fire Calls per Year <sup>3</sup>
General Residential	DU	3,192	606
Senior/Assisted Living	Room	237	251
Commercial	KSF	238.9	40
Industrial	KSF	3,885.4	30
Quasi-Public Facilities	KSF	233.9	8
<b>Totals</b>			<b>935</b>

<sup>1</sup> DU = dwelling unit; KSF = 1,000 gross square feet of building area

<sup>2</sup> Existing residential units based on data from the 2022 California Department of Finance E-5 report; existing non-residential units based on CoStar data and the Stanislaus County Assessor's property database

<sup>3</sup> Fire Department calls for service per unit per year based on analysis of a random sample of all HFPD calls for the period from 12/1/21 to 11/30/2022; see discussion in text

Forecasts of future development within the District were not available for use in this report. The impact fee calculations do not require forecasts of future development. However, without such forecasts, it is not possible to project potential revenue from the impact fees calculated in this report.

## Chapter 3. Impact Fees

This chapter calculates impact fees for Hughson Fire Protection District (Hughson FPD) capital facilities, apparatus, vehicles and equipment of the types identified later in this chapter.

### Methodology

This chapter calculates impact fees using the standard-based method discussed in Chapter 1. Standard-based fees are calculated using a specified relationship or standard that determines the number of service units to be provided for each unit of development. All of the impact fees calculated in this chapter are based on the existing level of service (LOS) provided by the District, as defined in the section titled Existing Facilities and Existing Level of Service, below. Impact fees calculated in that manner are intended to provide the funding needed to maintain the existing level of service as the District grows.

### Service Area

The impact fees calculated in this chapter are intended to apply to all new development in the District with the exception of government buildings, which are typically exempt from impact fees.

### Demand Variable

As discussed in Chapter 2, a “demand variable” is a quantifiable attribute of development that is used in impact fee calculation formulas to represent the impact of development on the need for capital facilities. The demand variable used to calculate impact fees for Hughson FPD facilities in this chapter is calls for service per year.

Impact fees calculated in this chapter for different types of development vary depending on the number of calls for service per unit per year generated by each development type. The calls-for-service-per-unit-per-year factors used to calculate impact fees for Hughson FPD facilities in this study are derived from analysis of a random sample of all of District calls for service for a one-year period from December 1, 2021, to November 30, 2022. The District logged 1,016 calls for service for that period.

NBS took a random sample of 500 of those calls and classified them by the type of development where the call originated. Of the 500 sampled calls, only 400 could be classified because some of the calls were at locations other than a specific address or the address could not be matched to a specific type of development. Statistically, the 400 classified calls represent a sample large enough to reach a margin of error of 3.8% at a 95% confidence level.

After determining the distribution of calls by development type, the number of sampled calls for each type of development was scaled up to match the full year’s calls and then divided by the number of existing units of the corresponding development type to arrive

at a calls-per-unit-per year factor for each type of development. Calls associated only with agricultural land were not included in the total existing calls for service shown in Table 3.3 in this chapter because there will be no completely new agricultural land in the District which could be subject to impact fees. The calls-per-unit-per-year factors used in the impact fee calculations in this chapter are from Table 2.1 in Chapter 2

### Existing Facilities and Existing Level of Service

In 2021, AB 602 added Section 66016.5 to the Mitigation Fee Act. That section requires, after January 1, 2022, that the level of service used in an impact fee study must be compared with the existing level of service. If the level used in the impact fee study exceeds the existing level of service, an explanation is required. The impact fees calculated in this chapter are based on the existing level of service as shown in Table 3.3, later in this chapter, so there is no level-of-service issue with respect to Section 66016.5.

In this chapter, the existing level of service for Hughson FPD facilities is based on the relationship between the current number of calls for service per year and the replacement cost of existing facilities, apparatus, vehicles and equipment. Table 3.1 lists the District’s buildings with their replacement cost. The existing balance of the HFPD impact fee fund will be used to fund capital improvements and is included as an existing asset.

**Table 3.1: Existing Fire Department Facilities**

Facility	Constr Date	Building Sq Ft <sup>1</sup>	Bldg Repl Cost <sup>2</sup>	Site Acres <sup>3</sup>	Site Value <sup>4</sup>	Impact Fee Cost Basis <sup>5</sup>
Administration Building	2006	4,006	\$ 1,392,675	0.07	\$ 21,000	\$ 1,413,675
Apparatus Building	1969	5,000	\$ 1,676,183	0.50	\$ 150,000	\$ 1,826,183
Existing Balance in HFPD Impact Fee Fund						\$ 452,563
<b>Total</b>						<b>\$ 3,692,421</b>

<sup>1</sup> Building square footage provided by the Hughson Fire Protection District (HFPD)

<sup>2</sup> Building replacement cost from HFPD insured property schedule

<sup>3</sup> Site acres provided by HFPD

<sup>4</sup> Site value based on \$300,000 per acre

<sup>5</sup> Impact fee cost basis = building replacement cost + site value

Table 3.2 lists the District’s existing firefighting apparatus and vehicles and the personal protective equipment issued to firefighters and shows the replacement cost for each. Equipment associated with apparatus and vehicles is included in the replacement cost of those items.

**Table 3.2: Existing Apparatus, Vehicles and Equipment**

Model Year	Unit	Description	Replacement Cost <sup>1</sup>
2020	Engine 39	Pierce Impel Type I Engine	\$ 850,000
2013	Engine 239	Pierce Impel Type I Engine	\$ 850,000
1991	Engine 339	Pierce Dash Type I Engine	\$ 850,000
2010	Tender 39	High-Tech Kenworth 3,000 Gal.	\$ 450,000
2008	Grass 39	Pierce Ford F550 Type 6 Engine	\$ 400,000
2012	Utility 39	Ford F350 DRW Command Vehicle	\$ 100,000
2014	Utility 239	Chevy Tahoe Utility Vehicle	\$ 80,000
Personal Protective Gear @ \$7,350 each for 33 Firefighters			\$ 242,550
<b>Total</b>			<b>\$ 3,822,550</b>

<sup>1</sup> Replacement cost provided by the Hughson Fire Protection District

Table 3.3 calculates the District’s existing level of service as a cost per call for service per year for the District’s facilities, apparatus, vehicles and equipment. The cost per call is calculated using the costs from Tables 3.1 and 3.2 and the existing calls for service per year from Table 2.2.

**Table 3.3: Cost per Capita - Fire Department Facilities**

Impact Fee Cost Basis <sup>1</sup>	Existing Calls for Service per Year <sup>2</sup>	Cost per Call <sup>3</sup>
\$7,514,971	935	\$8,037.40

<sup>1</sup> See Tables 3.1 and 3.2

<sup>2</sup> See Table 2.2

<sup>3</sup> Cost per call = impact fee cost basis / existing service population

### Impact Fees per Unit

Table 3.4 calculates impact fees per unit by development type for Hughson FPD facilities and other capital assets. Those fees are based on the cost per call from Table 3.3 and calls-for-service-per-unit-per-year factors from Table 2.1.

No impact fees are calculated in this study for public facilities owned by government agencies because they are typically exempt from such fees. The Quasi-Public category shown in Table 3.4 includes facilities constructed by religious institutions, private schools, hospitals and similar uses which are not legally exempt from impact fees. The calls-per-unit-per-year data used in this study for Quasi-Public Facilities is based almost entirely on data for existing churches and other religious facilities, so the fee shown for Quasi-Public Facilities in Table 3.4 would be most applicable to religious facilities.

**Customizing Impact Fees.** For any other type of non-residential development that does not fit well into either the commercial or industrial category, the District can customize impact fees based on an analysis of the number of calls for service they are likely to



generate. That analysis can be based on the calls generated by similar uses in the District or in areas served by other fire departments. The formula to calculate a customized fee would be:

$$\text{Impact Fee per Unit} = \text{Calls per Unit per Year} \times \text{Cost per Call from Table 3.3}$$

**Change in Units for Non-Residential Fees.** Up to this point in this study, the unit used for non-residential development has been one-thousand square feet (KSF) of building area. However, for consistency with the District’s existing non-residential impact fees, the non-residential impact fees shown in Table 3.4 are shown as square foot fees.

**Table 3.4: Fire Impact Fees per Unit**

Development Type	Units <sup>1</sup>	Cost per Call <sup>2</sup>	Calls per Unit per Year <sup>3</sup>	Impact Fee per Unit <sup>4</sup>
Residential: <800 Sq. Ft.	DU	\$8,037.40	0.110	\$ 884.11
Residential: >800-1,300 Sq. Ft.	DU	\$8,037.40	0.150	\$ 1,205.61
Residential: >1,300-1,900 Sq. Ft.	DU	\$8,037.40	0.190	\$ 1,527.11
Residential: >1,900-2,500 Sq. Ft.	DU	\$8,037.40	0.230	\$ 1,848.60
Residential: >2,500 Sq. Ft.	DU	\$8,037.40	0.270	\$ 2,170.10
Senior/Assisted Living	Room	\$8,037.40	1.059	\$ 8,512.19
Commercial	SF	\$8,037.40	0.167	\$ 1.35
Industrial	SF	\$8,037.40	0.008	\$ 0.06
Quasi-Public Facilities	SF	\$8,037.40	0.034	\$ 0.27

<sup>1</sup> Units of development: DU = dwelling unit; SF = gross square feet of building area

<sup>2</sup> See Table 3.3

<sup>3</sup> See Table 2.1

<sup>4</sup> Impact per unit = cost per call X calls per unit per year

## Updating the Fees

The impact fees calculated in this chapter are based on the current estimated cost of Hughson FPD facilities, apparatus, vehicles and equipment. We recommend that the fees be reviewed annually and adjusted as needed using local cost data or an index such as the *Engineering News Record* Construction Cost Index (CCI). See the Implementation Chapter for more on indexing of fees.

## Nexus Summary

As discussed in Chapter 1 of this report, Section 66001 of the Mitigation Fee Act requires that an agency establishing, increasing or imposing impact fees, must make findings to:

Identify the purpose of the fee;

Identify the use of the fee; and,

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.

Satisfying those requirements also ensures that the fees meet the “rational nexus” and “rough proportionality” standards enunciated in leading court decisions bearing on impact fees and other exactions. (For more detail, see “Legal Framework for Impact Fees” in Chapter 1.) The following paragraphs explain how the impact fees calculated in this chapter satisfy those requirements.

**Purpose of the Fee:** The purpose of the impact fees calculated in this chapter is to mitigate the impact of new development on the need for facilities, apparatus, vehicles and equipment (capital assets) used by the Hughson FPD to serve development in the District.

**Use of the Fee.** Impact fees calculated in this chapter will be used to provide capital assets needed to mitigate the impacts of new development on the services provided by the District. Specifically, those fees would be used to partially fund a new building to house firefighting apparatus and vehicles. The existing apparatus building does not have the capacity to serve added demand. The fees may also be used to acquire additional apparatus, vehicles and equipment needed to serve future development. Also, as discussed further in Chapter 4, the District is required to adopt a capital improvement plan as part of this nexus study. As provided by the Mitigation Fee Act, revenue from impact fees may also be used for temporary loans from one impact fee fund or account to another.

**Reasonable Relationship between the Use of the Fee and the Development Type on Which It Is Imposed.** The impact fees calculated in this chapter will be used to provide capital assets needed to mitigate the impact of new development on the demand for services provided by the District.

**Reasonable Relationship between the Need for the Facilities and the Type of Development on Which the Fee Is Imposed.** New development increases the need for facilities, apparatus, vehicles and/or equipment to maintain the existing level of service as described earlier in this chapter. Without funding to provide for those needs, the increase in demand associated with new development would result in a reduction in the level of service provided to all development in the District.

**Reasonable Relationship between the Amount of the Fee and the Facility Cost Attributable to the Development Project.** The amount of the impact fees for Hughson FPD capital assets calculated in this chapter depends on the number of calls for service per unit per year associated with each category of development. The fees per unit of development calculated in this chapter for each type of development are based on the estimated number of calls per unit per year associated with that type of development in the District. Thus, the fee charged to a development project reflects the impact of that project on capital assets needed by Hughson FPD to serve development in the District.

## Chapter 4. Implementation

This chapter of the report contains recommendations for adoption and administration of impact fees, and for the interpretation and application of the development impact fees and in-lieu fees calculated in this study. It was not prepared by an attorney and is not intended as legal advice.

Statutory requirements for the adoption and administration of fees imposed as a condition of development approval (impact fees) are found in the Mitigation Fee Act (Government Code Sections 66000 *et seq.*).

### Adoption

The form in which development impact fees are enacted should be determined by the attorney for the agency adopting the fees. As noted in Chapter 1, California Health and Safety Code Section 13916, which is part of the Fire Protection District Law of 1987, states that a (fire protection) district board shall not charge a fee on new construction or development for the construction of public improvements or facilities or the acquisition of equipment.” Because the Hughson Fire Protection District encompasses both the City of Hughson and a portion of unincorporated Stanislaus County, the impact fees calculated in this report would have to be adopted by both the City Council and the Board of Supervisors to be effective within the entire District.

Procedures for adoption of fees subject to the Mitigation Fee Act, including notice and public-hearing requirements, are specified in Government Code Sections 66016 and 66018. It should be noted that Section 66018 refers to Government Code Section 6062a, which requires that the public hearing notice be published at least twice during the 10-day notice period. **However, Section 66016.5 added by AB 602 in 2021 requires that impact fee nexus studies be adopted at a public hearing with at least 30-days’ notice.**

Government Code Section 66017 provides that fees subject to the Mitigation Fee Act do not become effective until 60 days after final action by the governing body.

Actions establishing or increasing fees subject to the Mitigation Act require certain findings, as set forth in Government Code Section 66001 and discussed in Chapter 1 of this report.

Examples of findings that could be used for impact fees calculated in this study are shown below. The specific language of such findings should be provided by the adopting agency’s attorney. A more complete discussion of the nexus for each fee can be found in individual chapters of this report.

**Sample Finding: Purpose of the Fee.** The City Council (or Board of Supervisors) finds that the purpose of the impact fees hereby enacted is to protect the public health, safety and welfare by requiring new development to contribute to the cost of public facilities needed to mitigate the impacts of new development.

**Sample Finding: Use of the Fee.** The City Council (or Board of Supervisors) finds that revenue from the impact fees hereby enacted will be used to acquire capital assets needed to mitigate the impacts of new development on the Hughson Fire Protection District and identified in the 2023 Hughson Fire Protection District Development Impact Fee Study by NBS.<sup>2</sup>

**Sample Finding: Reasonable Relationship.** Based on analysis presented in the 2023 Hughson Fire Protection District Development Impact Fee Study by NBS, the City Council (or Board of Supervisors) finds that there is a reasonable relationship between:

- a. The use of the fees and the types of development projects on which they are imposed; and,
- b. The need for facilities and the types of development projects on which the fees are imposed.

## Administration

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

**Notices and Statute of Limitations.** Section 66006 (f) 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."

Section 66020 (d) (1) requires that the agency, at the time it imposes an impact fee, provide a written statement of the amount of the fee and written notice of a 90-day period during which the imposition of the fee can be protested. Failure to protest imposition of the fee during that period may deprive the fee payer of the right to subsequent legal challenge.

Section 66022 (a) provides a separate procedure for challenging the establishment of an impact fee. Such challenges must be filed within 120 days of enactment.

**Collection of Fees.** The District should enter into a Memorandum of Understanding or other agreement with each of the agencies (the City and the County) adopting the impact fees calculated in this study to establish who will be responsible for collecting those fees,

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<sup>2</sup> According to Gov't Code Section 66001 (a) (2), the use of the fee may be specified in a capital improvement plan, the General Plan, or other public documents that identify the public facilities for which the fee is charged. The findings recommended here identify this impact fee study as the source of that information. Also note that Section 66016.5 (a)(6) requires that large jurisdictions adopt a capital improvement plan as part of an impact fee nexus study. That requirement applies in counties of 250,000 or more and cities in those counties.

how they will be remitted to the District if collected by the City and/or County, and which agency or agencies will be responsible for preparing mandatory annual reports and five-year findings required by the Mitigation Fee Act (see page 4-5 below).

Section 66007(a) 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, but likely referring to water and sewer connections) may be collected upon application for utility service. In a residential development project of more than one dwelling unit, Section 66007 (a) allows the agency to 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.

Section 66007 (b) provides two exceptions when the local agency may require the payment of fees from developers of residential projects at an earlier time: (1) when the local agency determines that the fees "will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy" or (2) the fees are "to reimburse the local agency for expenditures previously made."

Statutory restrictions on the time at which fees may be collected do not apply to non-residential development.

Notwithstanding the foregoing restrictions, some cities collect impact fees for all facilities at the time building or grading permits are issued, and builders may find it convenient to pay the fees at that time.

In cases where the fees are not collected upon issuance of building permits, Sections 66007 (c) (1) and (2) provide that the responsible agency 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.

**Earmarking and Expenditure of Fee Revenue.** Section 66006 (a) mandates that fees 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, and expend those fees solely for the purpose for which the fee was collected." Section 66006 (a) also requires that interest earned on the fee revenues 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 municipality that has interpreted that language to mean that funds must be segregated by individual projects. And, as a practical matter, that approach

would be unworkable because it would mean that no pay-as-you-go project could be constructed until all benefiting development had paid the fees. Common practice is to maintain separate funds or accounts for impact fee revenues by facility category (i.e., streets, park improvements), but not for individual projects.

**Impact Fee Exemptions, Reductions, and Waivers.** In the event that a development project is found to have no impact on facilities for which impact fees are charged, such project must be exempted from the fees.

If a project has characteristics that will make its impacts on a particular public facility or infrastructure system significantly and permanently smaller than the average impact used to calculate impact fees in this study, the fees should be reduced accordingly to meet the requirement that there must be a reasonable relationship between the amount of the fee and the cost of the public facility attributable to the development on which the fee is imposed. The fee reduction is required if the fee is not proportional to the impact of the development on relevant public facilities.

In some cases, an agency may desire to voluntarily waive or reduce impact fees that would otherwise apply to a project as a way of promoting goals such as affordable housing or economic development. Such a waiver or reduction is within the discretion of the governing body but may not result in increased costs to other development projects. So, the effect of such policies is that the lost revenue must be made up from sources other than impact fees.

**Credit for Improvements Provided by Developers.** If an agency requires a developer, as a condition of project approval, to dedicate land or construct facilities or improvements for which impact fees are charged, the agency should ensure that the impact fees are adjusted so that the overall contribution by the developer does not exceed the impact created by the development.

In the event that a developer voluntarily offers to dedicate land, or construct facilities or improvements in lieu of paying impact fees, the responsible agency may accept or reject such offers, and may negotiate the terms under which such an offer would be accepted. Excess contributions by a developer may be offset by reimbursement agreements.

**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 that represents a net increase in impact on the relevant facilities, applying the measure of demand used in this study to calculate the impact fee in question.

**Annual Report.** Section 66006 (b) (1) 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. A brief description of the type of fee in the account or fund;
2. The amount of the fee;

3. The beginning and ending balance of the account or fund;
4. The amount of the fees collected and interest earned;
5. 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;
6. Identification of the approximate date by which the construction of a public improvement will commence, if the agency determines sufficient funds have been collected to complete financing of an incomplete public improvement;
7. 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;
8. The amount of any refunds or allocations made pursuant to Section 66001, paragraphs (e) and (f).

The annual report must be reviewed by the agency's governing body at its next regularly scheduled public meeting, but not less than 15 days after the statements are made public, per Section 66006 (b) (2).

**Five-Year Findings and Refunds under the Mitigation Fee Act.** Prior to 1996, The Mitigation Fee Act required that a local agency collecting impact fees was required to expend or commit impact 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, adopted in 1996 as an amendment to the Mitigation Fee Act, changed that requirement in material ways.

Now, Section 66001 (d) 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 (b), 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 could be required to refund the moneys in the account or fund, per Section 66001 (d).

Once the agency determines that sufficient funds have been collected to complete financing on incomplete improvements 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 (Section 66001 (e)). If the agency fails to comply with that requirement, it must refund impact fee revenue in the account according to procedures specified in Section 66001 (d). At least two recent Court of Appeal decisions in California have required cities to refund substantial amounts of impact fee or in-lieu fee revenue for failing to adequately comply with the five-year findings.

For a useful discussion of the foregoing requirements, see “The Mitigation Fee Act’s Five-Year Findings Requirement: Beware Costly Pitfalls” by Glen Hansen, Senior Counsel, Abbott and Kindermann, and Rick Jarvis, Managing Partner, Jarvis, Fay and Gibson, presented at the 2022 League of California Cities City Attorneys’ Spring Conference.

**Audit Requests.** Section 66023 provides that any person may request an audit to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product, public facility, as defined in Section 66000, or service provided by the local agency. The legislative body of the local agency may retain an independent auditor to conduct the audit but is not required to conduct an audit if an audit has been performed for the same fee within the previous 12 months.

The agency shall retain an independent auditor to conduct an audit only if the person who requests the audit deposits with the local agency the amount of the local agency’s reasonable estimate of the cost of the independent audit. At the conclusion of the audit, the local agency shall reimburse unused sums, if any, or the requesting person shall pay the local agency the excess of the actual cost of the audit over the amount that was deposited.

*However, if the local agency fails to comply with the annual report requirement of Section 66006 following the establishment, increase or imposition of a fee, but requires payment of that fee in connection with the approval of a development project for three consecutive years, the agency shall not require a deposit for the independent audit and shall pay the cost of the audit.*

**Indexing of Impact Fees.** Impact fees calculated in this report are based on current costs and should be adjusted periodically to account for changes in the cost of facilities or other capital assets that will be funded by those fees. That adjustment is intended to account for escalation in costs for land, construction, vehicles and other relevant capital assets. The *Engineering News Record* Building Cost Index (BCI) and Construction Cost Index (CCI) are useful for indexing construction costs. Where land costs are covered by an impact fee or in-lieu fee, land costs should be adjusted based on changes in local land prices. Updating of costs for other types of assets may be based on recent purchases or vendor price estimates.



## Requirements Imposed by AB 602

In 2021, the California Legislature passed AB 602 and the Governor signed it into law. AB 602 creates some new requirements for impact fees that went into effect in 2022. The new law amends Government Code Section 65940.1 and adds Section 66016.5 to impose the following requirements:

- 1) A city, county or special district that has an internet website shall post on its website:
  - a) A current written schedule of fees, exactions and affordability requirements applicable to a proposed housing development project and shall present that information in a manner that identifies the fees, exactions and affordability requirements that apply to each parcel and the fees that apply to each new water and sewer utility connection.
  - b) All zoning ordinances and development standards and specifying the zoning, design and development standards that apply to each parcel.
  - c) A list of the information that will be required from any applicant for a development project, as specified in Government Code Section 69540.
  - d) The current and five previous annual fee reports required by Government Code Section 66006 and Subsection 66013 (d).
  - e) An archive of impact fee nexus studies, cost of service studies or equivalent conducted on or after January 1, 2018.
- 2) The above information shall be updated within 30 days of any changes.
- 3) A city or county shall request from a development proponent, upon issuance of a certificate of occupancy or final inspection, the total amount of fees and exactions associated with the project for which the certificate is issued. That information must be posted on the website and updated at least twice a year.
- 4) Before adoption of an impact fee, an impact fee nexus study shall be adopted.
- 5) When applicable, the nexus study shall identify the existing level of service for each public facility, identify the proposed new level of service and explain why the new level of service is appropriate.
- 6) If a nexus study supports the increase of an existing fee, the local agency shall review the assumptions of the nexus study supporting the original fee and evaluate the amount of the fees collected under the original fee.
- 7) A nexus study adopted after July 1, 2022, shall calculate a fee imposed on a housing development project proportionately to the square footage of the proposed units of the development. A local agency that imposes a fee proportionately to the square footage if the proposed units of the development shall be deemed to have used a valid method to establish a reasonable relationship between the fee charged and the burden posed by the development. A nexus study is not required to comply with this requirement if the agency makes certain findings outlined in the statute.

- 8) Large jurisdictions as defined in Section 53559.1 (d) of the Health and Safety Code (counties of 250,000 or more and cities in those counties) shall adopt a capital improvement plan as part of a nexus study.
- 9) All studies shall be adopted at a public hearing with at least 30-days' notice, and the local agency shall notify any member of the public that requests notice of intent to begin an impact fee nexus study of the date of the hearing.
- 10) Studies shall be updated at least every eight years, beginning on January 1, 2022.

### **Training and Public Information**

Effective administration of an impact fee program requires considerable preparation and training. It is important that those responsible for collecting the fees, and for explaining them to the public, understand both the details of the fee program and its supporting rationale.

It is also useful to pay close attention to handouts that provide information to the public regarding impact fees. Impact fees should be clearly distinguished from other fees, such as user fees for application processing, and the purpose and use of particular impact fees should be made clear.

Finally, anyone responsible for accounting, capital budgeting, or project management for projects involving impact fees must be fully aware of the restrictions placed on the expenditure of impact fee revenues. Fees must be expended for the purposes identified in the impact fee nexus study in which they were calculated, and the responsible agency must be able to show that funds have been properly expended.

### **Recovery of Administrative Costs**

To recover the cost of periodic impact fee update studies and ongoing staff costs for capital budgeting, annual reports, five-year updates and other requirements of the Mitigation Fee Act, an administrative charge may be added to the impact fees calculated in this report. See the Executive Summary for a discussion of an administrative charge to recover some costs for administration and/or updating of impact fees.