



## Tim Beals

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**From:** Tim Beals  
**Sent:** Thursday, February 21, 2019 9:03 AM  
**To:** 'Amanda Uhrhammer'  
**Cc:** Brandon Pangman; Bonnie Vierra; Heather Foster  
**Subject:** SCFPD#1 Fire Mitigation Fees

Amanda. I know we have discussed this over the past few weeks and I sent a couple of email requests to Dave months ago anticipating questions and a need for direction on the fee program and how best to incorporate the newly annexed areas to the fire district. I do not recall Dave responding and I know your opinion during our discussions was that certain changes to existing documents and ordinances would be necessary.

So as you may expect, when the district initially requested the ordinance and the Board of Supervisors ultimately approved the fire mitigation fee, we have seen a number on instances where district clarifications were needed regarding fee applicability. Above ground fuel tanks, second residential units, remodels, out buildings, commercial projects, amendments to projects in the system where fees had already been collected, and many other instances required us at the county level to seek clarification from the district as the ordinance was totally silent on interpretations and discretion. The district is also required to have a plan for the expenditures of the fees collected and it needs to be reported annually to the Board of Supervisors so its status is public and known to the Board. I do not believe this is being routinely accomplished.

So now we have an annexation to the existing district of a large area that includes the communities of Sierra Brooks, all of Verdi, Long Valley and so forth and it is clearly my understanding that the fire fee for the former district follows the newly annexed area and the fee is now applicable to the new area recently annexed. A number of questions arose and were the subject of my earlier inquiries to Dave and I believe you and I discussed these issues recently as well:

- 1) The existing County ordinance needs to be amended to reflect the newly annexed areas as now being part of the fee program and projects in the newly annexed area are subject to the mitigation fee; and,
- 2) It is assumed that a revised capital improvement budget needs to be adopted by the district which incorporates the newly annexed areas and it is not clear if a revised engineering study is required that encompasses the former district or only the expanded district now that it has been approved and recorded as of December 2019.
- 3) Assuming that the district wants to, or is required to, amend its program (and the Board needs to amend its existing ordinance) to incorporate the agreed-upon interpretation of the many questions and instances we have experienced since the initial fee was instituted, do these revisions or clarifications need to now be incorporated in to a new or amended engineering report to support the fee?

So can you outline what you see as the required process and then can we discuss formulating the needed documents from our end? Also, we need to make sure the district understands its own obligations under this program regarding any revised engineering fee, amended fee schedule, and so forth. It would be my hope to have this in front of the Board soon so there is no misunderstanding as we enter the building season in the next few weeks.

Thanks.

Tim

## Tim Beals

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**From:** Tim Beals  
**Sent:** Thursday, April 25, 2019 7:41 AM  
**To:** Amanda Uhrhammer  
**Cc:** Brandon Pangman  
**Subject:** RE: Mitigation fees

Thanks Amanda....My understanding is that upon any annexation, the fee structures in place for the base special district would then apply to any new area annexed to that district. I have no idea if this is embodied in any language in the LAFCo statutes but I will make an inquiry of one or two LAFCo experts and see what comes up. So if this were the case, it seems to me that requiring a separate engineering report may not be required but then when asked to justify the fee, the lack of a report or some formula to justify or clearly outline a nexus between the fee and the property is missing and then somewhat arbitrary. This certainly should be something that is clarified somewhere....I hope so let me inquire of some LAFCo experts and I will copy you on the transmittal.

At minimum, what you seem to be saying is that we need to amend the county ordinance to include the new areas annexed but need to resolve the question of the need for a new engineering evaluation for the newly annexed area.

Separate from this question, we have worked through the ordinance since it was adopted (County and Fire District) and we have a short list of things that will need to be changed, including categories of project that need clarification and a few procedural issues in the permit issuance process. So we would want to propose folding those proposed changes into the ordinance as well. If the fire district makes a change, like adding private garages to the list of projects that will require a fee, then I am certain that a new engineering report will be needed to support any addition or any deletion of a project. So it looks like the fire district may be facing the cost and effort of a new engineering report regardless and it may be a good move to incorporate any changes they want to see as well as review the nexus issues with the newly annexed areas at the same time, thus resolving the question whether or not a new engineering study is required.

Finally, please provide the process we need to follow to get this done as the former ordinance process was first subject to hearings at the fire district level only conducted after they had the engineering report completed. Once the district adopted a proposed policy, I believe it was then forwarded to the County for ratification and once adopted, it was instructive to the County and the District what the policies were as of the date of the ordinance becoming effective. Can you clarify this process so we all have a template for getting this done?

We should try to get this in place soon as the building season is here and there is a lot of activity in the area newly annexed to the fire district.

Thanks.

Tim

**From:** Amanda Uhrhammer [mailto:[amanda@plelawfirm.com](mailto:amanda@plelawfirm.com)]  
**Sent:** Wednesday, April 24, 2019 1:45 PM  
**To:** Tim Beals <[tbeals@sierracounty.ca.gov](mailto:tbeals@sierracounty.ca.gov)>  
**Subject:** Mitigation fees

Hello Tim,

You had asked whether a new engineering report would be necessary to justify the fees for the new area, whether that study should include the old area as well, and whether it should include the clarifications and revisions which have been made over the years. You also asked whether the ordinance should be amended.

The ordinance should be amended, and we can take the opportunity to add in whatever clarifications may be necessary going forward. As for the study, whether it needs to include the old area as well as the new may be a question for the engineers. That being said, they should be made aware of the clarifications, etc. to ensure that they do not impact the prior findings. I think there was also a question about whether an engineering report would be necessary at all. I am reticent to say it is not. The nexus cases have been pretty tough on lack of findings to establish a nexus between the impact and the fees. It could be considered ad hoc and therefore a tax. I'll keep looking into it, but I wanted to at least give you my initial thoughts. Thanks.

Amanda Uhrhammer, Partner



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**BOARD OF SUPERVISORS  
COUNTY OF SIERRA  
STATE OF CALIFORNIA**

ORDINANCE No. 1011

**Ordinance Repealing and Reenacting Section 12.06.040 of the Sierra County Code  
Pertaining to Fire Impact Development Fees Within  
Boundaries of the Sierra County Fire Protection District #1**

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SIERRA ORDAINS as follows:**

**ORDINANCE SECTION 1**

Section 12.06.040 of the Sierra County Code pertaining to Development Fees for Sierra County Fire Protection District #1, is hereby repealed.

The repeal of Section 12.06.040 shall be made retroactive to March 20, 2009.

**ORDINANCE SECTION 2**

Section 12.06.040 of the Sierra County Code pertaining to Development Fees for Sierra County Fire Protection District #1, is hereby reenacted to read as follows:

**12.06.040 Establishment of Development Fees for Sierra County Fire Protection District #1**

- a. Based on the presentation by the Sierra County Fire Protection District #1 of a resolution of the District Board of Directors declaring the District impacted by new development and the impact analysis accompanying said resolution, a fire impact development fee in the amount of \$1.25 per square foot of floor space is hereby required to be paid by all new development/construction which is within the boundaries of the Sierra County Fire Protection District #1. For the purpose of this ordinance, floor space shall be computed based on the exterior dimensions of the building or structure. Multiple storied buildings and structures shall take account of the exterior dimensions for each story, including without limitation, lofts and basements. Floor space shall exclude detached accessory structures such as garages, workshops and storage buildings for residential properties and decks and eave area. Floor space shall also exclude accessory structures that do not require the issuance of a building permit.
- b. The fire impact development fee shall, unless the District otherwise makes provision for collection of the fees be assessed and collected at the time of the issuance of each building permit.
- c. Unless the District otherwise makes provision for collection of the fees, at the time of the issuance of a building permit, the development fees shall be computed and collected by the County Building Department in accordance with the provisions of this Chapter; provided however, that any applicant asserting a right to defer the fees under the provisions of Government Code Section 66007 may appeal the timing of the payment of the fees. Any such appeal shall be made to the Board of Directors of Sierra County Fire Protection District #1. In the event that the collection of any fees is required to be deferred,

the fees shall be due and shall be collected on the date of the final inspection or the date the certificate of occupancy is issued, whichever occurs first. In cases in which fees are deferred the District may also require the execution of an agreement to pay the fees as a condition to the issuance of a building permit.

d. To the extent that a fire impact development fee or exaction was assessed and paid for any parcel as a condition for the approval of the subdivision which created the parcel, a credit for the fee paid or the cost of the exaction shall be given.

e. The fire impact development fee established by this Section shall become effective as of June 6, 2009, thereafter may be amended by resolution adopted by the Board of Supervisors upon presentation by the District of an appropriate impact analysis. Any increase in the fee shall only be adopted following compliance with the public hearing and notice requirements as set out in Government Code Sections 66004 and 66018 and any other applicable provisions of law.

**ORDINANCE SECTION 3**

This Ordinance shall take effect thirty (30) days after its passage. Before the expiration of fifteen (15) days after passage of this ordinance, it shall be published once with the names of the members of the Board of Supervisors voting for and against the ordinance in the Mountain Messenger, a newspaper of general circulation published in the County of Sierra, State of California.

Introduced at a regular meeting of the Board of Supervisors held on the 17<sup>th</sup> day of March, 2009, and passed and adopted by the Board of Supervisors of the County of Sierra, State of California, on the 7<sup>th</sup> day, of April, 2009 by the following roll call vote, to-wit:

AYES: Supervisors **Adams, Huebner, Goicoechea, Whitley and Nunes**  
NOES: **None**  
ABSTAIN: **None**  
ABSENT: **None**

COUNTY OF SIERRA

  
BILL NUNES  
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

  
HEATHER FOSTER  
CLERK OF THE BOARD

APPROVED AS TO FORM:

  
JAMES A. CURTIS  
COUNTY COUNSEL

**BOARD OF SUPERVISORS  
COUNTY OF SIERRA  
STATE OF CALIFORNIA**

**ORDINANCE No. 11008**

**Ordinance Adding Chapter 12.06 to the Sierra County Code Pertaining to  
Development Fees and Establishing Fire Impact Development Fees  
Within Boundaries of the Sierra County Fire Protection District #1**

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SIERRA ORDAINS as follows:**

**ORDINANCE SECTION 1**

Chapter 12.06 pertaining to Development Fees is hereby added to the Sierra County Code, as follows:

**CHAPTER 12.06 DEVELOPMENT FEES**

**12.06.010 Purpose and Intent**

California law recognizes that growth due to development can create impacts to public entities that provide public services required by the development. Such impacts are required to be addressed under the California Environmental Quality Act (CEQA) and to be mitigated where feasible. State law provides procedures for cities and counties to adopt development mitigation fees as a way to secure funding for capital facilities and equipment that are needed in order to meet the service requirements from new development (reference is to Mitigation Fee Act - California Government Code Sections 66000 – 66024.) It is the purpose and intent of this Chapter to provide for the establishment and imposition of development fees in accordance with the provisions of the Mitigation Fee Act in order to address the impacts created on the County and other local governmental entities. It is the intent of this Chapter that new development pays its fair share to maintain the pre-existing level of service, thereby mitigating the impact of development on local governmental entities' ability to provide such service.

**12.06.020 Requirements and Procedures for Establishment of Development Fees**

In order to address the impacts on the infrastructure and services provided by the County and the other special districts providing services within Sierra County, this Chapter requires the payment of development fees, as set forth in the following sections of this Chapter, to offset the impacts reasonably anticipated due to the development of property within the County. Fees shall be established by the County for each local public entity (through adoption of further sections to this Chapter) only following the preparation by the impacted entity and presentation to the County Board of Supervisors of a study that adequately demonstrates the reasonable relationship between new

development and the fees to be charged, as required by the Mitigation Fee Act. Pursuant to the Mitigation Fee Act, fees may only be accessed for the purpose of acquiring capital facilities and equipment necessary to maintain the same service capacity in a proportionate manner that which existed before the new development. Fees may not be assessed to cover operational and maintenance expenses of a public entity providing service to development. The Board of Supervisors shall establish the amount of the development fees for each individual local entity upon completion by the local entity of an adequate study prepared and provided by the local entity and following a publicly noticed meeting following the procedures set out in Government Code Section 60018 (per Government Code Section 66004).

#### **12.06.020 Receipt, Accounting and Use of Fees**

- a. All development fees shall be collected by the County on behalf of the local entity on whose behalf they are imposed. Fees shall be deposited by the County Auditor in an account for the benefit the local entity on whose behalf they are imposed and thereafter such entity or entities shall be solely responsible for complying with the provisions of Government Code Sections 66000, et seq., with regard to segregation, use, accounting and refund of any such fees. The fees together with any interest accruing thereon, shall be maintained and accounted for in a separate capital facilities account or fund in a manner to avoid any commingling of such monies with other revenues or funds and expended in a timely fashion only for approved purposes. Fees remaining unexpended or uncommitted five (5) or more years after deposit shall be subject to the provisions for refund under Government Code Section 66001. Any entity receiving development fees shall be solely responsible for making any refunds of the fees as may be required by law.
- b. As a requirement for the receipt of development fees, each local entity shall, within one hundred-eighty (180) days after the last day of each fiscal year, provide to the Sierra County Board of Supervisors and make available to the public the following information for the prior fiscal year:
  - (1) A brief description of the type of fees in the account or fund.
  - (2) The amount of the fees.
  - (3) The beginning and ending balance of the account or fund.
  - (4) The amount of the fees collected and the interest earned.
  - (5) An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.
  - (6) An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Government Code Section 66001, and the public



improvement remains incomplete.

(7) A description of each inter-fund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an inter-fund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.

(8) The amount of refunds made pursuant to subdivision (e) of Government Code Section 66001 and any allocations pursuant to subdivision (f) of Government Code Section 66001.

- c. The local agency shall review the information made available to the public pursuant to paragraph (1) at the next regularly scheduled public meeting not less than fifteen (15) days after this information is made available to the public, as required by this subdivision. Notice of the time and place of the meeting, including the address where this information may be reviewed, shall be mailed, at least fifteen (15) days prior to the meeting, to any interested party who files a written request with the local agency for mailed notice of the meeting.

#### **12.06.030 Hold Harmless**

As an express condition of the imposition and collection of fees as established by this Chapter, each local entity receiving and collecting such fees shall be conclusively presumed to have agreed to hold Sierra County harmless and shall indemnify and defend the County against all actions, claims and damages related to said fees, including, without limitation, any challenge to the validity of or use of said fees. Each local entity receiving and collecting development fees shall be solely responsible for the refunding of any fees as may otherwise be required by law.

#### **12.06.040 Establishment of Development Fees for Sierra County Fire Protection District #1**

- a. Based on the presentation by the Sierra County Fire Protection District #1 of a resolution of the District Board of Directors declaring the District impacted by new development and the impact analysis accompanying said resolution, a fire impact development fee in the amount of \$3.56 per square foot of floor space is hereby required to be paid by all new development/construction which is within the boundaries of the Sierra County Fire Protection District #1. For the purpose of this ordinance, floor space shall be computed based on the exterior dimensions of the building or structure. Multiple storied buildings and structures shall take account of the exterior dimensions for each story, including without limitation, lofts and basements. Floor space shall exclude detached accessory structures such as garages, workshops and storage buildings for residential properties; decks and eave area, and any like accessory structure that is exempted from the issuance of a building permit.
- b. The fire impact development fee shall, unless the District otherwise makes provision for collection of the fees be assessed and collected at the time of the issuance of each building permit.

- c. Unless the District otherwise makes provision for collection of the fees, at the time of the issuance of a building permit, the development fees shall be computed and collected by the County Building Department in accordance with the provisions of this Chapter; provided however, that any applicant asserting a right to defer the fees under the provisions of Government Code Section 66007 may appeal the timing of the payment of the fees. Any such appeal shall be made to the Board of Directors of Sierra County Fire Protection District #1. In the event that the collection of any fees is required to be deferred, the fees shall be due and shall be collected on the date of the final inspection or the date the certificate of occupancy is issued, whichever occurs first. In cases in which fees are deferred the District may also require the execution of an agreement to pay the fees as a condition to the issuance of a building permit.
- d. To the extent that a fire impact development fee or exaction was assessed and paid for any parcel as a condition for the approval of the subdivision which created the parcel, a credit for the fee paid or the cost of the exaction shall be given.
- e. The fire impact development fee established by this Section may be amended by resolution adopted by the Board of Supervisors upon presentation by the District of an appropriate impact analysis. Any increase in the fee shall only be adopted following compliance with the public hearing and notice requirements as set out in Government Code Sections 66004 and 66018 and any other applicable provisions of law.


**ORDINANCE SECTION 2**

This Ordinance shall take effect thirty (30) days after its passage. Before the expiration of fifteen (15) days after passage of this ordinance, it shall be published once with the names of the members of the Board of Supervisors voting for and against the ordinance in the Mountain Messenger, a newspaper of general circulation published in the County of Sierra, State of California.

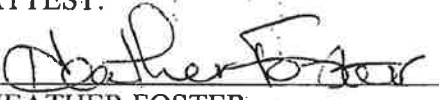
Introduced at a regular meeting of the Board of Supervisors held on the 6<sup>th</sup> day of January, 2009, and passed and adopted by the Board of Supervisors of the County of Sierra, State of California, on the 20<sup>th</sup> day, of January, 2009 by the following roll call vote, to-wit:

AYES: Supervisors Adams, Huebner, Goicoechea, Whitley and Nunes  
NOES: None  
ABSTAIN: None  
ABSENT: None

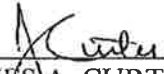
COUNTY OF SIERRA

  
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BILL NUNES  
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

  
HEATHER FOSTER  
CLERK OF THE BOARD

APPROVED AS TO FORM:

  
JAMES A. CURTIS  
COUNTY COUNSEL