**CITY OF TRUTH OR CONSEQUENCES NEW MEXICO**

# WATER AND WASTEWATER IMPACT FEE LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENT PLAN

**REPORT FINAL**

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MOLZENCORBIN

ENGINEERS | ARCHITECTS | PLANNERS

CES181-11

ENGINEER OF RECORD

Molzen Corbin
1155 Commerce Drive, Suite F
Las Cruces, New Mexico 88011
(575) 522-0049

The technical material and data contained in this report were prepared under the supervision and direction of the undersigned, whose seal as a Professional Engineer, licensed to practice in the State of New Mexico, is affixed below.




N.M.P.E. No. 12423

**TABLE OF CONTENTS**

1.0 Introduction ..... 1
1.1 Study Area ..... 1
2.0 Development Impact Fee ..... 4
2.1 Definition ..... 4
2.2 Service Area ..... 5
2.3 Land Use Assumptions ..... 6
2.4 Capital Improvements Plan ..... 6
3.0 Service Areas ..... 7
4.0 Land Use ASSUMPTIONS ..... 9
4.1 Project Area Growth Rate ..... 10
4.1.1 Growth Projection Consensus ..... 11
4.2 Growth Areas ..... 13
5.0 Development Needs Analysis ..... 14
6.0 Capital Improvements Plan ..... 15
6.1 Existing Facilities ..... 15
6.1.1 Water Supply & Storage System ..... 15
6.1.2 Wastewater System ..... 17
6.2 Facility Expansions Needed ..... 19
6.2.1 Proposed Facilities Upgrade Under Consideration for Development Impact Fees ..... 19
6.2.2 Water & Wastewater Improvements needed and made a part of the CIP ..... 20
6.2.3 Offsets for Alternative Revenue ..... 22
6.2.4 Summary of Impact Fee Estimation for Average Homes ..... 24
7.0 Methodologies for Setting Impact Fees ..... 26

7.1.1 Fixture Units ..... 26

8.0 Conclusion and recomendation ..... 28

**APPENDICIES**

Appendix A – Cost Estimates for Utility Extension to Future Growth Areas
Appendix B – Development Fees Act (5-8-1 through 5-8-42 NMSA 1978)

**TABLE OF FIGURES**

Figure 1. location map ..... 2
Figure 2. Future Growth Areas (FROM PER). ..... 8
Figure 3. Existing Zone Districts ..... 9
Figure 4. Truth or Consequences Population ..... 10
Figure 5. Williamsburg Population ..... 11
Figure 6. Existing water sysytem ..... 16
Figure 7: Existing sewer system ..... 18

**TABLE OF TABLES**

Table 1: Growth Projection Scenarios ..... 12
Table 2: Wastewater Cost Factor for additional treatment capacity ..... 19
Table 3 Wastewater Treatment Plant Funding breakdown for Impact Fee ..... 22
Table 4: Water System Improvements as defined in Capital Improvement Plan ..... 22
Table 5: Water System Improvements for the Future Growth Areas ..... 23
Table 6: Wastewater Treatment Cost as defined in Capital Improvement Plan ..... 23
Table 7: Wastewater System Improvements for the Future Growth Areas ..... 24
Table 8: Analysis of equivalent Fixture Unit for the expected population increase ..... 24
Table 9: Water and Wastewater Capital Needs for the Study Period ..... 25
Table 10: IPC Fixture Unit Values per Fixture ..... 27

# 1.0 INTRODUCTION

A Development Impact Fee Study Report was done for the City of Truth or Consequences in August of 2006. The City has charged water and wastewater impact fees based on this report since the report was completed and accepted by the City. This study updates the Impact Fee Study completed in 2006 and utilizing the information within the City's recently completed reports, for water, wastewater and land use. The material considered within these reports include water production, wastewater treatment and land use. Water and Wastewater items from the City's existing Infrastructure Capital Improvement Plan will be used as a part of the Capital Improvements Plan for this update.

## 1.1 Study Area

Truth or Consequences is the county seat of Sierra County. The built core of the community is bounded by Interstate 25 to the west, the Rio Grande to the east, Elephant Butte to the north and Williamsburg to the south. Truth of Consequences is only two hours south of Albuquerque, one hour north of Las Cruces and five miles from Elephant Butte Lake. Truth or Consequences was previously known as Hot Springs, New Mexico, was incorporated in 1914. In 1951 the name was changed to Truth or Consequences. The City of Truth or Consequences is predominantly a retirement community with a limited college-age and middle-age population. However, the City maintains a high level of tourism, provides many service related jobs, and continues to attract new residents. The City of Truth or Consequences is attracting people to its mid-range neighborhoods. Molzen Corbin has been retained by the city to update the City's Water and Wastewater Impact Fee study, which will provide the City funds for proposed wastewater and water facilities upgrade including projects spurred by new infill development and the development of new subdivisions in Truth or Consequences and the Village of Williamsburg.




**FIGURE 1. LOCATION MAP**

The Following documents have been reviewed to complete this study and are a part of this report by reference:

- Development Impact Fee Study Report, August 2006, authored by Engineers Inc.
- Truth or Consequences Water System Asset Management Plan, March 2017 (rev 2), authored by Smith Engineering.
- Truth or Consequences Water System Improvements PER, August 2015, authored by Smith Engineering.
- Infrastructure Capital Improvement Plan Project Summaries, August 2017, authored by the City of Truth or Consequences.
- Truth or Consequences Comprehensive Plan, October 2014, authored by Consensus Planning, Inc.
- Truth or Consequences Downtown Master Plan, October 2014, authored by Consensus Planning, Inc.
- Water Conservation Plan, Spring 2016, authored by the City of Truth or Consequences.
- Truth or Consequences Affordable Housing Plan, October 2014, authored by Consensus Planning.

- Truth or Consequences Wastewater System Improvements, July 2016, authored by Smith Engineering.

## 2.0 DEVELOPMENT IMPACT FEE

### 2.1 Definition

Development Impact Fees are a means for municipalities, or local governments, to require new development to pay a proportionate share of the infrastructure costs that the development imposes on to a community. This charge or assessment imposed by the city on a new development generates revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attribute to the new development. This is in contract to negotiating with developer exactions for the required improvements to provide the services that are needed for the new development. Development Impact Fees are charged on new developments using a standard formula based on the objectives. In this case, water and wastewater. The fees are a one-time charge, with payment usually made at the time the building permit is issued. Impact fees require that new development pay for its pro-rata share of the cost for new capital facilities required to serve that development.

Development impact fees in the State of New Mexico are governed by the New Mexico Development Fees Act (Sec. 5-8-1, et. Seq., New Mexico Revised Statues).

The term Development Fee includes:

a. Amortized charges
b. Lump sum charges
c. Capital recovery fees
d. Contributions in aid of construction
e. Development Fees
f. Any other fee that functions as described by this definition

The term Development Fee does not include:

a. Construction, acquisition or expansion of public facilities or assets that are not capital improvements or facility expansions identified in the capital improvements plan.
b. Repair, updating or maintenance, of existing or new capital improvements or facility expansions.

c. Upgrading, updating, expanding, or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards.
d. Administrative and operating costs of the city, except as provided in the Development Fees Act.
e. Dedication of right- of-way or easements.
f. Construction or dedication of on-site water distribution.
g. Wastewater collection or drainage facilities or streets, sidewalks or curbs if the dedication or construction is required by previously adopted valid ordinance, or regulation and is necessitated by and attributable to the development.

The development impact fees collected cannot be used for operation, maintenance, repair, alteration, or replacement of existing capital facilities and cannot just be added to general revenue. Development Impact Fees are essentially user fees levied in anticipation of use, expanding the capacity of existing services or facilities to handle additional demand.

Development Impact Fees are also being considered expenditures that developers are required to make as a precondition for approval of their project.

Development Impact Fees are one-time charges applied to offset the additional public service costs of new development. The fees are frequently passed on by developers to purchasers in the price of a new property and, therefore, increase the cost of housing and may decrease the profitability of a particular project.

## 2.2 Service Area

The New Mexico Development Fees Act requires that Land Use Assumptions and Capital Improvement Plans must be prepared for an area. This area may also be referred to as the "service area". The service area is a geographic area within certain capital facilities that provides benefit to all development located within the service area. In general, development impact fees collected within a service area will be spent within the same service area. There may be instances where the facility that serves the development in the service area is physically located

outside the service area, such as, water production wells and wastewater treatment facilities. The areas of consideration for this study will include those areas known as future growth areas, as defined within the Water and Wastewater Preliminary Engineering Reports. Additional areas included are the infill development within the underutilized tracts/subdivisions, lot, or parcel of real property within the existing service area. Many of these infill areas currently have utility lines adjacent to the lot or tract and line extensions would not be needed.

## 2.3 Land Use Assumptions

A development impact fee update must include land use assumptions for each service area. The Development Fees Act defines land use assumptions as "projections of changes in land uses, densities, intensities and population in the service area over at least a five-year period." The Capital Improvement Plan must be prepared to identify improvement needs for a period not to exceed ten years; a 5-to-10 year time-frame is appropriate for a development impact fee study and for future updates. The City's Comprehensive Plan which was approved and adopted in October 2014 has defined land use throughout Truth or Consequences. This document will be used as reference for this report, and Land Use Assumptions required by the Development Fees Act will be presented in Section 4 of this report. The City's land use plan has been maintained and updated since 2014.

## 2.4 Capital Improvements Plan

According to the Development Fees Act, development impact fees can only be spent on improvements identified in the Capital Improvements Plan. The Capital Improvements Plan required by the Development Fees Act is somewhat different from the traditional Capital Improvements Program. Similar to a traditional capital improvements program, the Capital Improvements Plan required by the Development Fees Act must include a list of capital projects and their costs. The development impact fee Capital Improvements Plan is limited to those improvements that are needed for growth, and not replacement of old infrastructure due to decay. The Capital Improvement Plan for water and wastewater projects is defined within this study.

## 3.0 SERVICE AREAS

The services area for the City's development impact fees will include land located within the Truth or Consequences' current water and wastewater service area, but not including the Village of Williamsburg (see Figure 2). This service area encompasses the future growth areas defined in the water and wastewater preliminary engineering reports (PER) prepared in 2015 & 2016. The future growth areas include growth areas known as A, B, C, D, and E and are mostly within the current city limits. These five areas where growth is expected to occur as stated within the respective PER's, as well as infill within the two city limit boundaries.

Future growth area B is a redevelopment area and as a redevelopment area it currently has the water and wastewater infrastructure in place. Upgrades to the existing infrastructure will be necessary as a result of the age of the infrastructure in the downtown area. Future growth area B is within the service area and does tax the systems for water production and wastewater treatment.

Impact fees should be imposed on any new development within the city limits which would include the future growth areas and any infill.

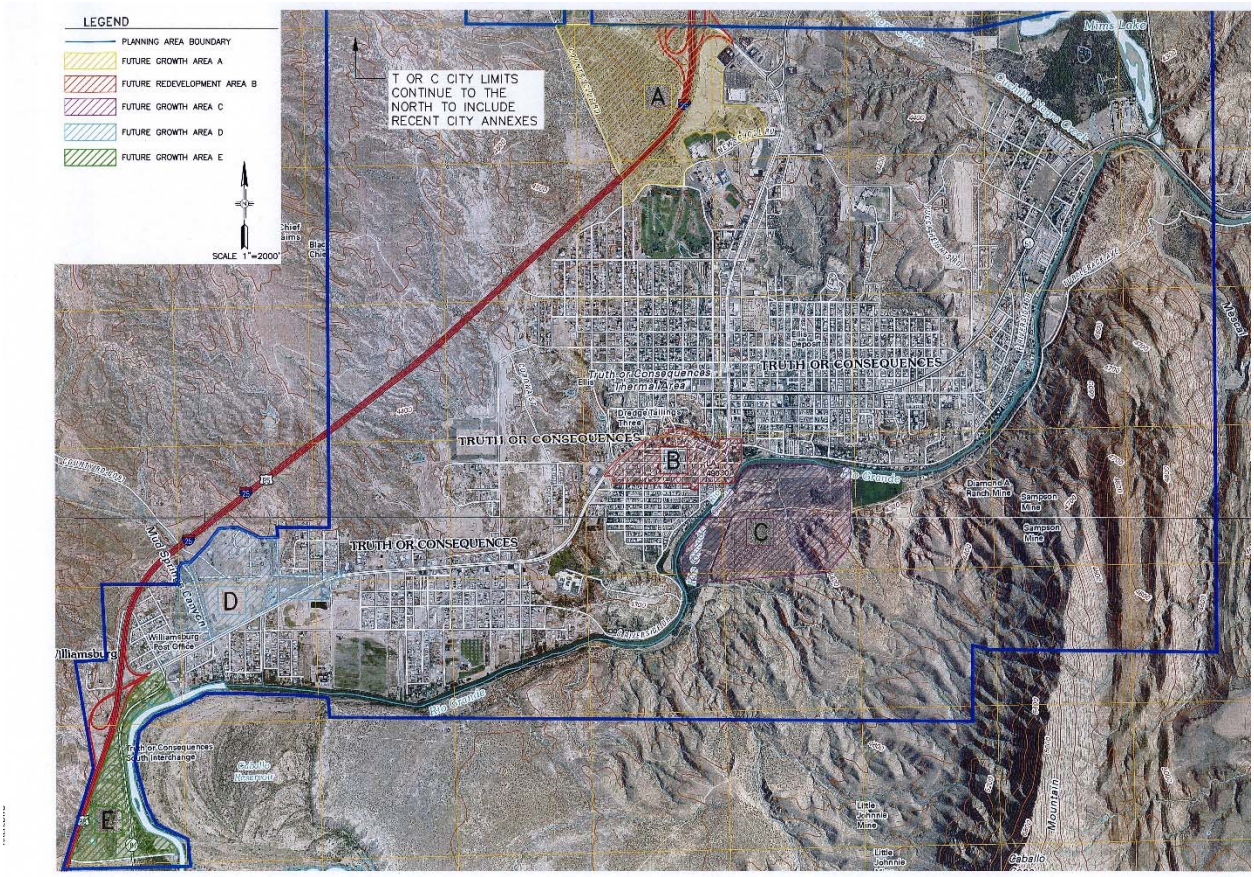



**FIGURE 2. FUTURE GROWTH AREAS (FROM PER).**

## 4.0 LAND USE ASSUMPTIONS

The Village of Truth or Consequences currently has nine existing zoning districts. These districts include:

1. R-1 Single Family, Low Density Residential District
2. R-2 Medium Density Residential District
3. R-3 High Density Residential District
4. R-4 Rural Residential District
5. RR-1 Riverside Residential District
6. RCPUD Residential Commercial Planned Unit Development District
7. C-1 General Commercial District
8. M-1 Light Manufacturing District
9. T-1 Transition District

These areas are further defined within the City of Truth or Consequences Comprehensive Plan dated 2014, and adopted in October 2014 (see Figure 3).

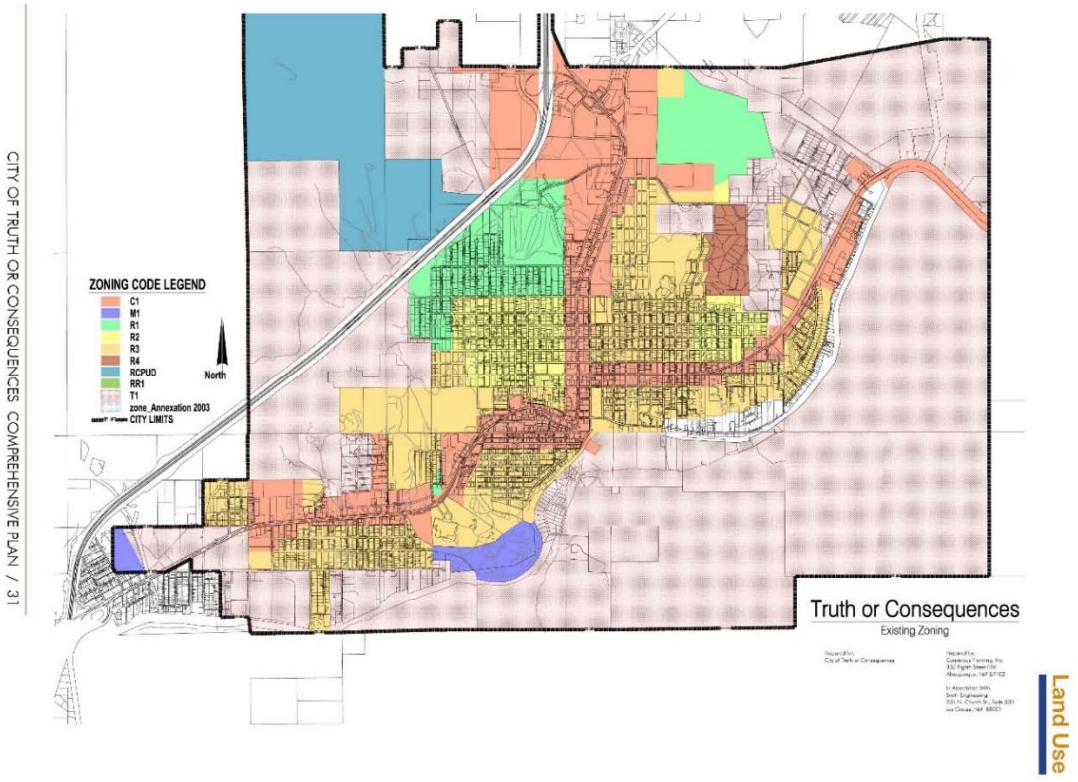



**FIGURE 3. EXISTING ZONE DISTRICTS**

## 4.1 Project Area Growth Rate

The population of the project area, City of Truth or Consequences and the Village of Williamsburg, saw a population that is declining, according to data retrieved from the U.S. Census Bureau. The population has declined from 2010 to 2016. Also, reviewing the population trends section discussed in the Water and Wastewater PER, they found that the total population declined from 2000 to 2009. According to the U.S. Census Bureau the population for the study area is 6,444, which has changed very little, but overall has been on the decline. The PER's & the Comprehensive Plan trend the potential growth in the area and discuss the possibilities of growth for the area. The PER's defined growth scenarios, in Table 1, were created to provide a basis for which T or C officials could discuss and give a recommendation.

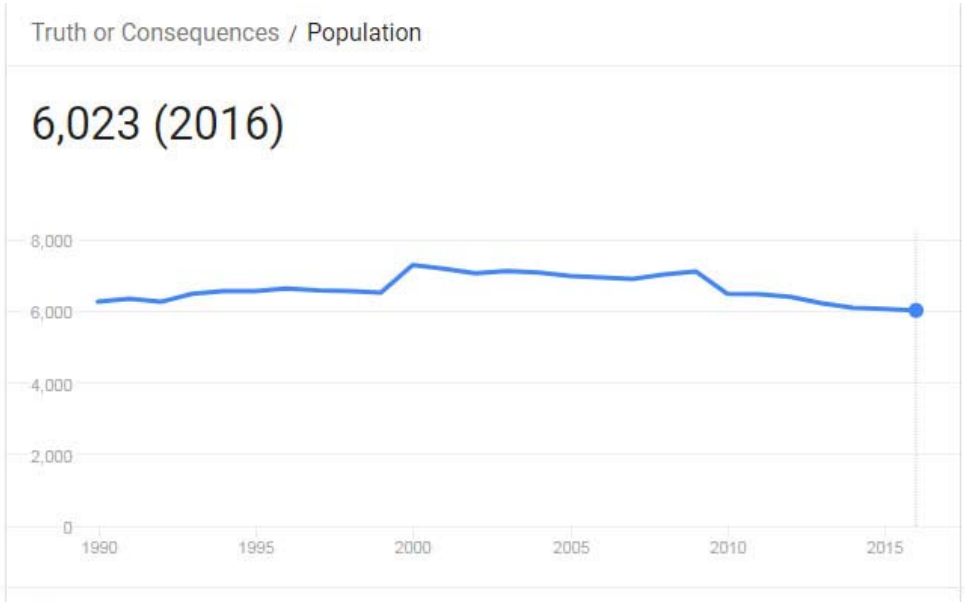



**FIGURE 4. TRUTH OR CONSEQUENCES POPULATION**

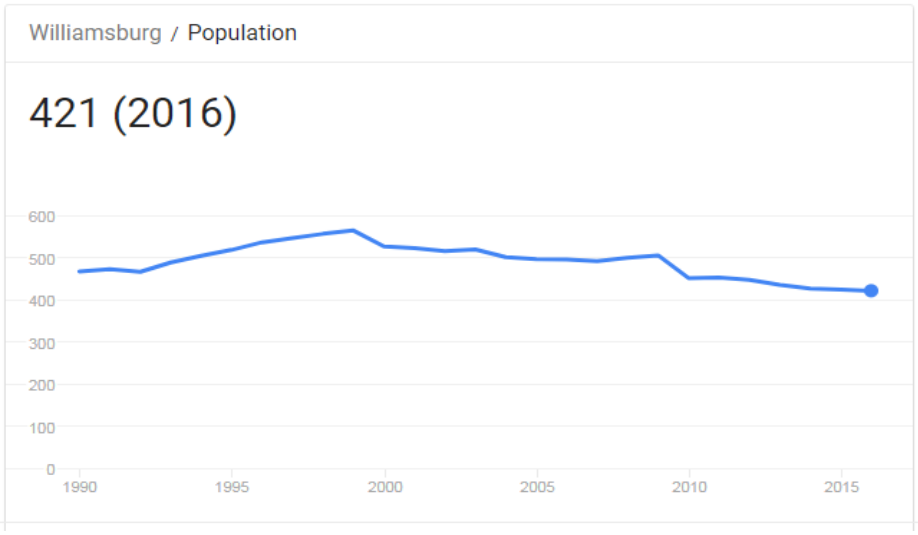



**FIGURE 5. WILLIAMSBURG POPULATION**

### 4.1.1 Growth Projection Consensus

The U.S. Census information, shown in Figure 5, illustrates a decline in the population since 2010. However, as discussed in the Preliminary Engineering Reports (PER) for the water & wastewater system improvements, the potential for growth should not be ignored as the area may see growth precipitated from potential development as discussed in the Comprehensive Plan such as; Spaceport America, R & D Park Resorts, Motorplex, etc. As a result, the previous mentioned preliminary engineering reports describe several growth scenarios in an effort to illustrate the potential of area, so that the City is properly prepared.

In this report, taking into account the available population data, we have also provided growth scenarios to facilitate a decision from the staff, board and commission. The planning period for the projections would be through the year 2038 and are provided as a comparison for growth of the community. The previous reports (PER, Comprehensive plan and 2006 Impact Fee Study) used a straight line average growth for projection of future population whereas this report will us an average annual growth rate.

| TABLE 1: GROWTH PROJECTION SCENARIOS | | | | |
|---|---|---|---|---|
| | ***Population Projections*** | | | |
| Year | ***0.5 % Annual Growth*** | ***0.75% Annual Growth*** | ***1% Annual Growth*** | ***1.5% Annual Growth*** |
| 2016 | 6444 | 6444 | 6444 | 6444 |
| 2018 | 6509 | 6541 | 6574 | 6639 |
| 2023 | 6673 | 6790 | 6909 | 7152 |
| 2028 | 6841 | 7048 | 7261 | 7705 |
| 2033 | 7014 | 7317 | 7632 | 8300 |
| 2038 | 7191 | 7595 | 8021 | 8941 |
| 2043 | 7373 | 7884 | 8430 | 9632 |

According to the U.S Census, the population of Truth or Consequence grew from 6,221 people in the year 1990 to 7,290 people in the year 2000. Over this 10-year period, Truth or Consequences' growth was approximately 1.7%

Although the population has slightly decreased since 2000, it was determined that a growth rate be applied for any potential population growth. The rate applied for the analysis of the Development Impact Fee is a 0.75 % increase. The increase in population at 0.75% average growth per year, total increase from 2018 to the year 2043 is 1,343. The projected population increase from 2018 to the year 2028 is 507.

Water and wastewater infrastructure typical design criteria would dictate that infrastructure be sized for a minimum of a 25 year service life. Although this Development Impact Fees study should consider a 5 to 10 year time-frame, or as based on the planning period of the City's Capital Improvement Plan (CIP). The planning period for an impact fee study should take into account the projections for sizing water and wastewater infrastructure. Therefore, it is responsible to take into consideration a 25 year population projection.

## 4.2 Growth Areas

The future growth areas are planned areas for development as a result of future growth, and these areas currently fall within currently zoning/land use:

- Future Growth Area A – Current Zoning C1 and T1
- Future Redevelopment Area B – Current Zoning C1
- Future Growth Area C – Current Zoning C1 and T1
- Future Growth Area D – Current Zoning C1, R3, T1 and un-zoned.
- Future Growth Area E – Current Zoning Village of Williamsburg
- Infill throughout the City – Current Zoning varies

Future Growth Area B is within the current Downtown area and since existing water and wastewater infrastructure currently exists through the area no line extension costs are anticipated. Improvements proposed will be for improvements to the existing infrastructure.

Based on the various reports, cited herein, the city's growth is not being encouraged in any particular area. However, the Downtown area does have the most growth potential since it has the most defined guidance through the Downtown Master Plan. The redevelopment of Area B will depend largely on transportation improvements defined in the report (Downtown Masterplan), which will be dependent on state funding and be in design and construction throughout the next 10 years. Therefore, for the purpose of this report it is anticipated that all the areas will experience growth at the same rate.

At the growth rates used in this report, these defined areas will accommodate the predicted growth beyond the 25 years and no other growth areas will be defined for this study period.

## 5.0 DEVELOPMENT NEEDS ANALYSIS

The most fundamental challenge Truth or Consequences faces in housing development is the need for upgrades and extensions to the water and wastewater systems. Therefore in this study, only impact fees from water and wastewater facilities will be considered, and only those costs that are needed as a result of population increase. Currently, only water and wastewater impact fees are provided for within the city code.

Both water and wastewater facility expansion is needed to serve new development, as well as infill areas currently served by existing water and wastewater lines.

With the development of the Comprehensive Plan, Downtown Master Plan and the completion of the water and wastewater Preliminary Engineering Reports, the City is in a better position to define those areas that growth should be directed and where growth is anticipated. As such, the planning of infrastructure extensions, water production and wastewater treatment can be defined and quantified for implementation through the development of Impact Fees.

## 6.0 CAPITAL IMPROVEMENTS PLAN

For the purpose of this study Impact fees will be evaluated from:

a. Improvements to Water Supply & Storage Facilities
b. Improvement to Wastewater Treatment Facilities
c. Wastewater and water line extensions to proposed development area.

The water system has a series of wells, storage tanks, booster stations and conveyance pipelines that provide production and delivery. The wastewater system provides collection, interceptor pipelines, lift stations, forcemains and wastewater treatment. Water and wastewater facilities consist of integrated, inter-connected systems that provide service to all properties connected to those systems.

## 6.1 Existing Facilities

### 6.1.1 Water Supply & Storage System

The water system delivers potable water to all the City's residents, commercial businesses, and public use. The Truth or Consequences water system also serves the Village of Williamsburg.

The Truth or Consequences water system consists of six wells, four ground-level storage tanks, a centralized chlorination facility, and miles of pipeline. The City has a recognized right to divert up to about 2,743 acre feet of water per annum of ground water for municipal use. The City's annual water usage is approximately 288 million gallons or 884 acre feet. Truth or Consequences has an additional appropriation of 50 acre feet of geothermal water for swimming pool, heating and related purposes. The City also holds irrigation water rights of 498 acre feet for the irrigation of 83 acres, including an existing golf course and cemetery.

Truth or Consequences currently has four ground-level water storage tanks: one 0.2 million gallon, one 1.2-gallon, and two 3-million gallon storage tanks. The total capacity of existing water storage is 7.4 million gallons. All of the storage tanks of the Water System have been rehabilitated or installed as new within the last ten years and are in excellent condition. The wells vary greatly in age and vary in estimated condition from excellent to poor, directly related to age. The water distribution system is aging and older portions of the system have been

identified to be replaced. This information is provided within the Water System Improvement Preliminary Engineering Report.

An illustration of the City's water system is shown in Figure 6. as shown on the "Water System Improvement Preliminary Engineering Report (August 2015)".

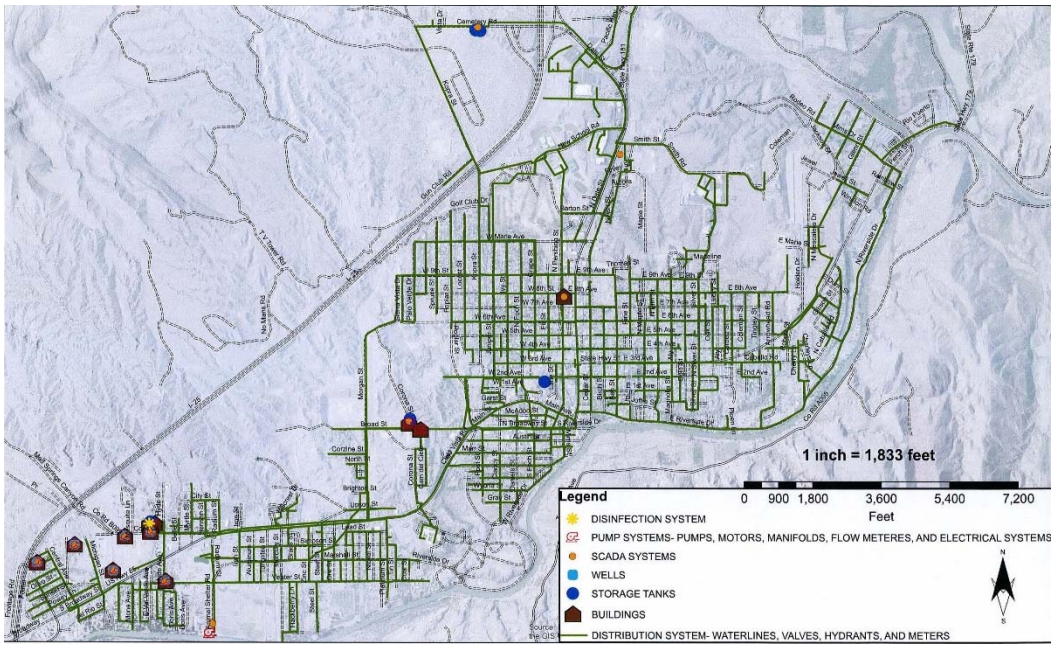



**FIGURE 6. EXISTING WATER SYSYTEM**

According to the Water System Improvement Preliminary Engineering Report (WSPER) the total production capacity of wells and the overall system are adequate to meet the anticipated future City water demands and the wells are suitable for continued use. One of the City's wells is currently off-line and is to be rehabilitated to provide production for current and future population. The water treatment, storage and the pumping stations are of sufficient capacity and improvements to these facilities will take in to account the aging system components and the proper sizing of the new component for future growth.

The objective of the Development Impact Fees are to require new development to pay a proportionate share of the infrastructure costs that the development imposes on to a community. The WSPER did not separate costs associated only with growth, so a factor will be utilized on

capital improvement costs associated with water and wastewater system improvements. The factor will be based on the difference in existing capacity versus what is needed for the future population as defined by the Wastewater Preliminary Engineering Report (WWPER), see Table 3. below.

### 6.1.2 Wastewater System

The Truth or Consequences wastewater system moves liquid waste from the City to a wastewater treatment plant. Like the water system, the Truth or Consequences wastewater system is shared with the Village of Williamsburg. In Williamsburg, the system is owned by the Village, which sends the liquid waste to the city of Truth or Consequences treatment facility.

The wastewater collection system began in the 1930's and initially served the core community now located in central Truth or Consequences, between Rio Grande and Broadway Ave, and the County Courthouse. There are now approximately forty miles of collection lines, force mains, and interceptor sewers, in the city. The system has been extended several times in the past decade. There are five lift stations and one vacuum station within the city system.

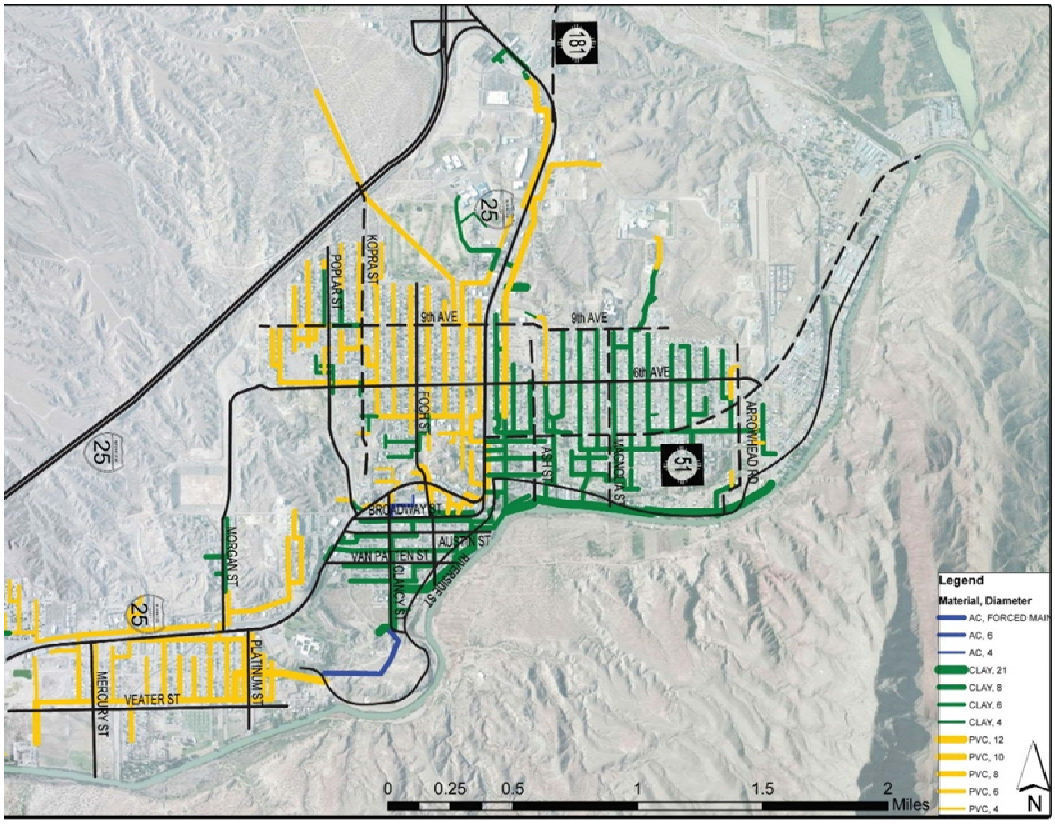



**FIGURE 7 EXISTING SEWER SYSTEM**

The original wastewater treatment plant for the City of Truth or Consequences and the Village of Williamsburg was constructed in 1978. The plant is located in the far southwest corner of the city, immediately east of the eastern boundary of Williamsburg. It has been found that most of the components of the wastewater treatment system are either close to reaching their operational capacity or have reached the end of their life cycle.

The plant was designed for a capacity of approximately 1.06 million gallons per day (MGD). The facility is currently operating at 75% of its rated capacity with an annual usage of 800,000 gallons per day or 0.8 MGD. According to the Wastewater Preliminary Engineering Report (WWPER), in previous years the treatment facility has operated at almost 95% of its design flow and the WWPER for the purposes of providing capacity uses 95% as its base point. Therefore, the WWPER's engineer's opinion of probable construction cost includes growth for a 1%

population increase as well as for upgrades to an aging facility. Based on the WWPER's population forecasts for their study period, projected increases in population provided a wastewater flow which was used to develop construction cost.

Also, included in the overall construction cost are repairs and upgrades to the aging wastewater system. The objective of the Development Impact Fees are to require new development to pay a proportionate share of the infrastructure costs that the development imposes on to a community. The WWPER did not separate costs associated only with growth, so a factor will be utilized on capital improvement costs associated with wastewater improvements. The factor will be based on the difference in existing capacity versus what is needed for the future population as defined by the WWPER, see Table 2.

**TABLE 2: WASTEWATER COST FACTOR FOR ADDITIONAL TREATMENT CAPACITY (INFORMATION FROM WWPER)**

| | ***Flow Projection per WWPER for a 1% Growth by # years*** | | | | |
|---|---|---|---|---|---|
| | ***Current Design*** | ***10*** | ***15*** | ***18*** | ***Design for Future*** |
| Population difference | | 818 | 1258 | 1520 | |
| Wastewater Flow (MGD) | 1.06 | 1.05 | 1.10 | 1.16 | 1.30 |
| Factor based on increased capacity | | -0.01 | 0.04 | 0.09 | ***0.21*** |

## 6.2 Facility Expansions Needed

### 6.2.1 Proposed Facilities Upgrade Under Consideration for Development Impact Fees

The concern is that Truth or Consequences cannot maintain or improve the level of water and wastewater service it currently provides. As the population increases, it will place more load on a system that is nearing its capacity. This load increasing on the water and wastewater infrastructure will make it difficult for the city to meet the current demand or to accommodate future needs and thus needs to be planned for early.

The city owns enough water rights to accommodate growth and the water system is adequately sized as indicated by the Water PER. Water rights and replacing existing transmission lines for

larger lines will not be analyzed. The needed expansion for the water system will only include the line extensions to those areas defined as Future Growth Areas, and a proportion of the current water system improvements identified in the City's Infrastructure Capital Improvement Plan (ICIP) to provide water delivery to the increase in population.

The city has been upgrading the existing wastewater treatment facility to 1.3 MGD in response to the increased wastewater flows as defined in the WWPER. The preliminary cost for Truth or Consequences Wastewater System Upgrade Projects includes the upgrades to the wastewater treatment facility. The WWPER has developed construction and project costs for the rehabilitation of the wastewater treatment facility. The costs for this project were developed in 2016 and these estimates are recent enough to be utilized in this analysis. The City's Infrastructure Capital Improvement Plan (ICIP) has listed this cost as current. The total project cost for the wastewater treatment plant improvements as described in the ICIP is $12,609,729. A majority (as defined in Table 4) of the improvements for this facility have been completed and the funding was provided through several grants and loans. The proportion amount of impact fees assigned to the wastewater treatment will be for the loan amount, interest, remaining and line extensions.

The costs defined in the Water and Wastewater Preliminary Engineering Report (PER) have been reviewed and will be used in this analysis as presented in the PER's. If construction is not completed within the time period defined in the ICIP, these costs should be adjusted accordingly until the project is funded.

### 6.2.2 Water & Wastewater Improvements needed and made a part of the CIP

The Growth area previously discussed will require improvements to provide water and wastewater to these areas, up to a point in which the developer may connect to the subdivision network for water distribution and wastewater collection.

In Future Growth Area A, water improvements will require a booster station to provide adequate water pressure to the higher areas. The lower areas will be supplied water through an existing line that can serve by gravity through the existing water tank. Wastewater improvements in

Future Growth Area A, will not need wastewater line extensions since the existing wastewater line currently extends to the area.

Future Growth Area C, will require a water line extension and a river crossing to a point where development can extend lines within the subdivision. Wastewater improvements in Future Growth Area C, will require a lift station, a forcemain to cross the Rio Grande, and gravity line to a point where development can make a connection from the subdivision's gravity system.

Future Growth Area E, will require a water line extension from the existing city's infrastructure to a point within the area where development can extend into the subdivision. Wastewater improvements in Future Growth Area E, will require a lift station, forcemain extending to an existing system, and gravity line to a point where development can make a connection from the subdivision's gravity system.

The overall water and wastewater system operate through a series of water booster stations and wastewater lift stations. These systems are sized accordingly, as aforementioned in this report, and would need to be upgraded as growth occurs. Therefore, the impact fee must also take into account the upgrades of those facilities in the Capital Improvements Plan (CIP). Since the City has already identified those improvements, they are made a part of this CIP.

In summary, the items included in the Capital Improvements Plan for this study are as follows:

Water Improvements

- Cook Street Water Treatment Facility Improvements
- Morgan Street Booster Station Improvements
- Improvements to Future Growth Area A
- Improvements to Future Growth Area C
- Improvements to Future Growth Area E

Wastewater Improvements

- Wastewater Treatment Plant Improvements
- Improvements to Future Growth Area C
- Improvements to Future Growth Area E

### 6.2.3 Offsets for Alternative Revenue

The City secured funding for the Wastewater treatment facility and only the cost associated with the loan and interest are eligible for Development Impact Fee. A table with the eligible cost is shown below in Table 3.

**TABLE 3.**
**WASTEWATER TREATMENT PLANT FUNDING BREAKDOWN FOR IMPACT FEE**

| Funding | Grant | Loan | Interest | Local Match | Total Eligible |
|---|---|---|---|---|---|
| USDA, RUS Loan | $4,515,400 | $715,000 | $38,500 | | $753,500 |
| NMFA 3171 | $675,000 | $75,000 | $0 | $75,000 | $150,000 |
| NMFA 3364 | $675,000 | $75,000 | $0 | $75,000 | $150,000 |
| USDA, RUS Loan | $3,582,000 | $910,000 | $37,052 | | $947,052 |
| Totals | $9,447,400 | $1,775,000 | $75,552 | $150,000 | **$2,000,552** |

Water improvement cost summary is shown on the tables below (Table 4 & Table 5). The individual cost spreadsheets are provided in the Appendix.

**TABLE 4: WATER SYSTEM IMPROVEMENTS AS DEFINED IN CAPITAL IMPROVEMENT PLAN**

| | | ***Costs with Growth Rates factors*** | | | |
|---|---|---|---|---|---|
| | CIP Cost | ***0.5 % Annual Growth*** | ***0.75% Annual Growth*** | ***1% Annual Growth*** | ***1.5% Annual Growth*** |
| Cook St. Water Treatment Facility Improvement | $ 2,099,000 | | | | |
| Factor | | 0.11 | 0.16 | 0.21 | 0.32 |
| Cook St. Cost attributed to Growth | | $220,395 | ***$330,593*** | $440,790 | $661,185 |
| Morgan St. Booster Station Improvements | $ 250,000 | | | | |
| Factor | | 0.11 | 0.16 | 0.21 | 0.32 |
| Morgan St. Cost attributed to Growth | | $27,500 | ***$40,000*** | $52,500 | $80,000 |

| TABLE 5: WATER SYSTEM IMPROVEMENTS FOR THE FUTURE GROWTH AREAS | | | | | |
|---|---|---|---|---|---|
| | *Costs with Growth Rates factors* | | | | |
| | CIP Cost | *0.5 % Annual Growth* | *0.75% Annual Growth* | *1% Annual Growth* | *1.5% Annual Growth* |
| Water Extension for Growth Areas | $ 1,023,100 | | | | |
| Phased cost for 10 year growth | | $ 33,762 | ***$52,634*** | $ 71,321 | $110,667 |
| Total Water Improvements | | | **$ 355,089** | | |

Wastewater improvement cost summary is shown on the tables below (Table 6 & Table 7). The individual cost spreadsheets are provided in the Appendix.

| TABLE 6: WASTEWATER TREATMENT COST AS DEFINED IN CAPITAL IMPROVEMENT PLAN | | | | | |
|---|---|---|---|---|---|
| | *Costs with Growth Rates factors* | | | | |
| | CIP Cost | *0.5 % Annual Growth* | *0.75% Annual Growth* | *1% Annual Growth* | *1.5% Annual Growth* |
| Adjusted Wastewater Treatment Plant | $ 2,000,552 | 0.11 | 0.16 | 0.21 | 0.32 |
| Cost attributed to Growth | | $210,058 | ***$315,087*** | $420,116 | $630,174 |

| TABLE 7: WASTEWATER SYSTEM IMPROVEMENTS FOR THE FUTURE GROWTH AREAS | | | | | |
|---|---|---|---|---|---|
| | *Costs with Growth Rates factors* | | | | |
| | CIP Cost | *0.5 % Annual Growth* | *0.75% Annual Growth* | *1% Annual Growth* | *1.5% Annual Growth* |
| Wastewater Extension for Growth Areas | $ 777,500 | | | | |
| Phased cost for 10 year growth | | $ 26,193 | ***$39,999*** | $54,200 | $84,101 |
| Total Water Improvements | | | **$ 355,087** | | |

### 6.2.4 Summary of Impact Fee Estimation for Average Homes

As discussed in previous sections, water and sewer impact fees can be determined using different kinds of information from the potential users. Some utilities based their fees on meter size, and some have a fixed impact fee per new construction. In addition, some utilities use the same size of the new home to calculate their impact fees. However, the current method used by the City is to charge the development by fixture unit. This is done by using the total growth and from that calculating the number of average homes needed to accommodate the increase in growth. By using the average home, a cost per fixture unit can be obtained as shown in the table below.

| TABLE 8: ANALYSIS OF EQUIVALENT FIXTURE UNIT FOR THE EXPECTED POPULATION INCREASE | | | | |
|---|---|---|---|---|
| ***Average # of Fixture Units per Home*** | ***Population Increase in 10 years at 0.75%*** | ***Population per Average Home*** | ***Total Number of Homes*** | ***Total Number of Fixture Unit for Population Increase*** |
| 20 | 507 | 1.94 | 261 | 5230 |

The total cost of improvements for water and wastewater will be shared by the number of total number of fixture units and that will determine the Development Impact Fee for new development. The net cost for Development Impact fees is shown in Table 9.

**TABLE 9:**
**WATER AND WASTEWATER CAPITAL NEEDS FOR THE STUDY PERIOD**

| | *Costs* | *Fixture Units* | *Cost per Fixture Units* | *Cost per Average House Unit* |
|---|---|---|---|---|
| **Water Improvement Costs** | $ 423,227 | 5230 | $80.92 | $1,618.46 |
| **Wastewater Improvement Costs** | $ 355,087 | 5230 | $67.89 | $1,357.89 |
| **Water & Wastewater Capital need per Fixture Units** | | | **$ 148.81** | **$ 2,976.35** |

## 7.0 METHODOLOGIES FOR SETTING IMPACT FEES

There are variety of approaches that can be used to set impact fees. In the previous impact fee study report the author looked at a couple of methods of which are:

a. Average Cost Pricing Method- which sets a flat connection fee.
b. Marginal Cost Pricing System Method- in the form of a three part tariff. One part is sewer services, such as a treatment plant; the second part is a charge for costs of delivering the new service, such as costs of the connections or extensions; the third part of the tariff is a charge for actual use, based on the costs of the producing the service.

Any methodology, however, must comply with the fundamental principle of impact fees, in which new development should not be charged for a higher level of service than existing development.

The City currently utilizes the Average Cost Pricing Method and has established a fee based a cost per fixture unit. An Average Cost Pricing Methodology relies on a list of planned capital improvements, and is basically calculated by dividing the cost of needed improvements over a given time period by the anticipated new fixture units (or population increase) over the same time period. We recommend continuing with this method as it provides the most flexibility for the City as well as provides fairness to the developer and home buyer. Therefore, Average Cost Pricing in the form of a cost per fixture unit, will be used to determine the potential development impact fees for the City of Truth or Consequences.

### 7.1.1 Fixture Units

The City currently assesses impact fees based on the amount of fixture units that are proposed per new residential or commercial unit. This approach provides a fairness in that less fixtures units use less of the water and wastewater resources.

The previous impact fee study utilized 20 fixture units per residential unit. The current impact fee per fixture unit is $150, at 20 units which equates to $3,000 for an average residential unit.

Twenty (20) fixture units is determined by using the International Plumbing Code to establish the number of units per a given fixture. The average two bath home uses approximately 20 fixture units and is based as shown below in Table 10. The previous impact fee study utilized 20 fixture units for the average home.

**TABLE 10. IPC FIXTURE UNIT VALUES PER FIXTURE**

| Individual Appliance, Appurtenance or Fixture | Minimum Size | Drainage Fixture Unit Values (DFU) | |
|---|---|---|---|
| | *(inch)* | Private Installations | Public Installations |
| Bar sink | 1 1/2 | 1 | 1 |
| Bathroom (water closet, lavatory, bidet and tub or shower) | 3 | 6 | - |
| Bathtub | 1 1/2 | 2 | 2 |
| Bidet | 1 1/4 | 1 | |
| Bidet | 1 1/2 | 2 | |
| Clothes Washer | 2 | 3 | 3 |
| Dishwasher, domestic | 1 1/2 | 2 | 2 |
| Drinking fountain | 1 1/4 | 0.5 | 0.5 |
| Floor drain | 2 | 2 | 2 |
| Shower | 2 | 2 | 2 |
| Laundry tub | 1 1/2 | 2 | 2 |
| Lavatory | 1 1/4 | 1 | 1 |
| Bar sink | 1 1/2 | 1 | |
| Kitchen sink, domestic | 1 1/2 | 2 | 2 |
| Laundry sink | 1 1/2 | 2 | 2 |
| Service or mop basin | 2 | | 3 |
| Urinal | 2 | 2 | 2 |
| Water closet with gravity tank | 3 | 3 | 4 |
| Water closet with flushometer tank | 3 | 3 | 4 |

## 8.0 CONCLUSION AND RECOMENDATION

The city of Truth or Consequences has reached a stage where new residential and commercial development will potentially outgrow the city's infrastructure. It will be difficult for the city to afford upgrades to handle the increased loads without financial assistance. Impact fees are one method of accumulating some of the vital financial resources necessary to handle growth.

In this study, existing conditions have been analyzed and adjusted for potential population growth. The potential future growth areas have also been taken into account. It is recommended that the City keep its Development Impact Fee at the current rate of **$150 per fixture unit**.

This study calculates the maximum fees that could be adopted by the City. The City, at their discretion, can choose to adopt the maximum fee or could reduce it and rely on other means for providing the funding such as, actively seeking grant money from the Federal and/or State agencies or phasing-in on a schedule. It is our recommendation that Development Impact fees be adopted as shown at the amounts calculated/described in this study.

The Development Fees Act requires that the Land Use Assumptions and Capital Improvements Plan be updated within five years from the date that the last capital improvements plan was adopted and as such we recommend that this report be updated every five (5) years.

# APPENDIX A

Table A-1 Water System Improvement - extension to the Growth Areas
Engineer's Opinion of Probable Construction Cost

| Future Growth Area A | | | | | |
|---|---|---|---|---|---|
| No | Description | UNIT | ESTIMATED QUANTITY | UNIT COST | TOTAL COST |
| | Mobilization / Demobilization | LS | 1 | $15,000 | $15,000 |
| | 6" Water line from supply to booster, complete in place | LF | 300 | $35 | $10,500 |
| | Booster Station with an approximate Capacity of 100 GPM yard piping and control valves, complete in place | LS | 1 | $165,000 | $165,000 |
| | Booster Station Building, site grading, complete in place | LS | 1 | $210,000 | $210,000 |
| | Site Electrical to pump station, site lighting, SCADA and miscellanous control wiring, complete in place | LS | 1 | $52,000 | $52,000 |
| | 8" Water line, including valves complete in place | LF | 500 | $40 | $20,000 |
| | | | | Construction Subtotal - 1 | $472,500 |
| | Contingency | % | 10% | | $47,250 |
| | NMGRT | % | 8.50% | | $44,179 |
| | | | | Construction Subtotal - 2 | $563,929 |
| | | | | | |
| | Engineering Design, Survey & Geotechnical | | | | $84,600 |
| | NMGRT | % | 8.31% | | $7,032 |
| | | | | Engineering Subtotal | $91,632 |
| | | | | | |
| | | | | **Project Total** | **$655,600** |

Table A-4 Wastewater System Improvement - extension to the Growth Areas
Engineer's Opinion of Probable Construction Cost

| Future Growth Area C | | | | | |
|---|---|---|---|---|---|
| No | Description | UNIT | ESTIMATED QUANTITY | UNIT COST | TOTAL COST |
| 1 | Mobilization / Demobilization | LS | 1 | $15,000 | $15,000 |
| 2 | 8" Gravity Sanitary Sewer line to the lift station, complete in place. | LF | 420 | $35 | $14,700 |
| 3 | 4' Diameter Manholes | EA | 2 | $4,200 | $8,400 |
| 4 | Duplex Lift Station with a Capacity of 150 GPM, pump and controls, complete in place | LS | 1 | $85,000 | $85,000 |
| 5 | 6' Diameter Wet Well and concrete valve Pit including yard piping from pumps to force main 5' beyond site, include dewatering, complete in place | LS | 1 | $55,000 | $55,000 |
| 6 | Site Electrical to pump station, site lighting and miscellanous control wiring, complete in place | LS | 1 | $15,000 | $15,000 |
| 7 | Site Grading and fencing, complete in place | LS | 1 | $8,000 | $8,000 |
| 8 | 4" Sewer Forcemain including clean outs, complete in place | LF | 500 | $30 | $15,000 |
| 9 | Forcemain River Crossing, within casing, complete in place | LF | 300 | $180 | $54,000 |
| | | | | Construction Subtotal - 1 | $270,100 |
| | Contingency | % | 10% | | $27,010 |
| | NMGRT | % | 8.50% | | $25,254 |
| | | | | Construction Subtotal - 2 | $322,364 |
| | | | | | |
| | Engineering Design, Survey & Geotechnical | | | | $48,400 |
| | NMGRT | % | 8.31% | | $4,023 |
| | | | | Engineering Subtotal | $52,423 |
| | | | | | |
| | | | | **Project Total** | **$374,800** |

Table A-5 Wastewater System Improvement - extension to the Growth Areas
Engineer's Opinion of Probable Construction Cost

| Future Growth Area E | | | | | |
|---|---|---|---|---|---|
| No | Description | UNIT | ESTIMATED QUANTITY | UNIT COST | TOTAL COST |
| | Mobilization / Demobilization | LS | 1 | $15,000 | $15,000 |
| | 8" Gravity Sanitary Sewer line to the lift station, complete in place. | LF | 420 | $35 | $14,700 |
| | 4' Diameter Manholes | EA | 2 | $5,000 | $10,000 |
| | Duplex Lift Station with a Capacity of 150 GPM, pump and controls, complete in place | LS | 1 | $65,000 | $65,000 |
| | 6' Diameter Wet Well and concrete valve Pit including yard piping from pumps to force main 5' beyond site, include dewatering, complete in place | LS | 1 | $50,000 | $50,000 |
| | Site Electrical to pump station, site lighting and miscellanous control wiring, complete in place | LS | 1 | $15,000 | $15,000 |
| | Site Grading and fencing, complete in place | LS | 1 | $8,000 | $8,000 |
| | 4" Sewer Forcemain including clean outs, complete in place | LF | 2250 | $30 | $67,500 |
| | Pavement removal and replacement | SY | 1000 | $45 | $45,000 |
| | | | | Construction Subtotal - 1 | $290,200 |
| | Contingency | % | 10% | | $29,020 |
| | NMGRT | % | 8.50% | | $27,134 |
| | | | | Construction Subtotal - 2 | $346,354 |
| | | | | | |
| | Engineering Design, Survey & Geotechnical | | | | $52,000 |
| | NMGRT | % | 8.31% | | $4,323 |
| | | | | Engineering Subtotal | $56,323 |
| | | | | | |
| | | | | **Project Total** | **$402,700** |

Table A-2 Water System Improvement - extension to the Growth Areas
Engineer's Opinion of Probable Construction Cost

| Future Growth Area C | | | | | |
|---|---|---|---|---|---|
| No | Description | UNIT | ESTIMATED QUANTITY | UNIT COST | TOTAL COST |
| | Mobilization / Demobilization | LS | 1 | $15,000 | $15,000 |
| | 8" Water line, including valves complete in place | LF | 600 | $35 | $21,000 |
| | Water line River Crossing, complete within place in casing | LF | 500 | $180 | $90,000 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | Construction Subtotal - 1 | $126,000 |
| | Contingency | % | 10% | | $12,600 |
| | NMGRT | % | 8.50% | | $11,781 |
| | | | | Construction Subtotal - 2 | $150,381 |
| | | | | | |
| | Engineering Design, Survey & Geotechnical | | | | $22,600 |
| | NMGRT | % | 8.31% | | $1,879 |
| | | | | Engineering Subtotal | $24,479 |
| | | | | | |
| | | | | **Project Total** | **$174,900** |

Table A-3 Water System Improvement - extension to the Growth Areas
Engineer's Opinion of Probable Construction Cost

| Future Growth Area E | | | | | |
|---|---|---|---|---|---|
| No | Description | UNIT | ESTIMATED QUANTITY | UNIT COST | TOTAL COST |
| | Mobilization / Demobilization | LS | 1 | $15,000 | $15,000 |
| | 8" Water line, including valves complete in place | LF | 2250 | $35 | $78,750 |
| | Pavement Removal and replacement | SY | 1000 | $45 | $45,000 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | Construction Subtotal - 1 | $138,750 |
| | Contingency | % | 10% | | $13,875 |
| | NMGRT | % | 8.50% | | $12,973 |
| | | | | Construction Subtotal - 2 | $165,598 |
| | | | | | |
| | Engineering Design, Survey & Geotechnical | | | | $24,900 |
| | NMGRT | % | 8.31% | | $2,070 |
| | | | | Engineering Subtotal | $26,970 |
| | | | | | |
| | | | | **Project Total** | **$192,600** |

# APPENDIX B

## 5-8-1. Short title.

This act [5-8-1 through 5-8-42 NMSA 1978] may be cited as the "Development Fees Act".

**History:** Laws 1993, ch. 122, § 1.

## 5-8-2. Definitions.

As used in the Development Fees Act:

A. "affordable housing" means any housing development built to benefit those whose income is at or below eighty percent of the area median income; and who will pay no more than thirty percent of their gross monthly income towards such housing;

B. "approved land use assumptions" means land use assumptions adopted originally or as amended under the Development Fees Act;

C. "assessment" means a determination of the amount of an impact fee;

D. "capital improvement" means any of the following facilities that have a life expectancy of ten or more years and are owned and operated by or on behalf of a municipality or county:

(1) water supply, treatment and distribution facilities; wastewater collection and treatment facilities; and storm water, drainage and flood control facilities;

(2) roadway facilities located within the service area, including roads, bridges, bike and pedestrian trails, bus bays, rights of way, traffic signals, landscaping and any local components of state and federal highways;

(3) buildings for fire, police and rescue and essential equipment costing ten thousand dollars ($10,000) or more and having a life expectancy of ten years or more; and

(4) parks, recreational areas, open space trails and related areas and facilities;

E. "capital improvements plan" means a plan required by the Development Fees Act that identifies capital improvements or facility expansion for which impact fees may be assessed;

F. "county" means a county of any classification;

G. "facility expansion" means the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development, including schools and related facilities;

H. "hook-up fee" means a reasonable fee for connection of a service line to an existing gas, water, sewer or municipal or county utility;

I. "impact fee" means a charge or assessment imposed by a municipality or county on new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, development fees and any other fee that functions as described by this definition. The term does not include hook-up fees, dedication of rights of way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks or curbs if the dedication or construction is required by a previously adopted valid ordinance or regulation and is necessitated by and attributable to the new development;

J. "land use assumptions" includes a description of the service area and projections of changes in land uses, densities, intensities and population in the service area over at least a five-year period;

K. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, and H class counties, including any home rule

municipality or H class county chartered under the provisions of Article 10, Section 6 of the constitution of New Mexico;

L. "new development" means the subdivision of land; reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units;

M. "qualified professional" means a professional engineer, surveyor, financial analyst or planner providing services within the scope of his license, education or experience;

N. "roadway facilities" means arterial or collector streets or roads that have been designated on an officially adopted roadway plan of the municipality or county, including bridges, bike and pedestrian trails, bus bays, rights of way, traffic signals, landscaping and any local components of state or federal highways;

O. "service area" means the area within the corporate boundaries or extraterritorial jurisdiction of a municipality or the boundaries of a county to be served by the capital improvements or facility expansions specified in the capital improvements plan designated on the basis of sound planning and engineering standards; and

P. "service unit" means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements or facility expansions.

**History:** Laws 1993, ch. 122, § 2.

## 5-8-3. Authorization of fee.

A. Unless otherwise specifically authorized by the Development Fees Act, no municipality or county may enact or impose an impact fee.

B. If it complies with the Development Fees Act, a municipality or county may enact or impose impact fees on land within its respective corporate boundaries.

C. A municipality and county may enter into a joint powers agreement to provide capital improvements within an area subject to both county and municipal platting and subdivision jurisdiction or extraterritorial jurisdiction and may charge an impact fee under the agreement, but if an impact fee is charged in that area, the municipality and county shall comply with the Development Fees Act.

D. A municipality or county may waive impact fee requirements for affordable housing projects.

**History:** Laws 1993, ch. 122, § 3; 2001, ch. 176, § 1.

## 5-8-4. Items payable by fee.

A. An impact fee may be imposed only to pay the following specified costs of constructing capital improvements or facility expansions:

(1) estimated capital improvements plan cost;

(2) planning, surveying and engineering fees paid to an independent qualified professional who is not an employee of the municipality or county for services provided for and directly related to the construction of capital improvements or facility expansions;

(3) fees actually paid or contracted to be paid to an independent qualified professional, who is not an employee of the municipality or county, for the preparation or updating of a capital improvements plan; and

(4) up to three percent of total impact fees collected for administrative costs for municipal or county employees who are qualified professionals.

B. Projected debt service charges may be included in determining the amount of impact fees only if the impact fees are used for the payment of principal and interest on bonds, notes or other obligations issued to finance construction of capital improvements or facility expansions identified in the capital improvements plan.

**History:** Laws 1993, ch. 122, § 4.

## 5-8-5. Items not payable by fee.

Impact fees shall not be imposed or used to pay for:

A. construction, acquisition or expansion of public facilities or assets that are not capital improvements or facility expansions identified in the capital improvements plan;

B. repair, operation or maintenance of existing or new capital improvements or facility expansions;

C. upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;

D. upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;

E. administrative and operating costs of a municipality or county except as provided in Paragraph (4) of Subsection A of Section 4 [5-8-4 NMSA 1978] of the Development Fees Act;

F. principal payments or debt service charges on bonds or other indebtedness, except as allowed by Section 4 of the Development Fees Act; or

G. libraries, community centers, schools, projects for economic development and employment growth, affordable housing or apparatus and equipment of any kind, except capital improvements defined in Paragraph (3) of Subsection C [D] of Section 2 [5-8-2 NMSA 1978] of the Development Fees Act.

**History:** Laws 1993, ch. 122, § 5.

## 5-8-6. Capital improvements plan.

A. A municipality or county shall use qualified professionals to prepare the capital improvements plan and to calculate the impact fee. The capital improvements plan shall follow the infrastructure capital improvement planning guidelines established by the department of finance and administration and shall address the following:

(1) a description, as needed to reasonably support the proposed impact fee, which shall be prepared by a qualified professional, of the existing capital improvements within the service area and the costs to upgrade, update, improve, expand or replace the described capital improvements to adequately meet existing needs and usage and stricter safety, efficiency, environmental or regulatory standards;

(2) an analysis, which shall be prepared by a qualified professional, of the total capacity, the level of current usage and commitments for usage of capacity of the existing capital improvements;

(3) a description, which shall be prepared by a qualified professional, of all or the parts of the capital improvements or facility expansions and their costs necessitated by and attributable to new development in the service area based on the approved land use assumptions;

(4) a definitive table establishing the specific level or quantity of use, consumption, generation or discharge of a service unit for each category of capital improvements or facility expansions and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial and industrial;

(5) the total number of projected service units necessitated by and attributable to new development within the service area based on the approved land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;

(6) the projected demand for capital improvements or facility expansions required by new service units accepted over a reasonable period of time, not to exceed ten years; and

(7) anticipated sources of funding independent of impact fees.

B. The analysis required by Paragraph (2) of Subsection A of this section may be prepared on a system-wide basis within the service area for each major category of capital improvement or facility expansion for the designated service area.

C. The governing body of a municipality or county is responsible for supervising the implementation of the capital improvements plan in a timely manner.

**History:** Laws 1993, ch. 122, § 6.

## 5-8-7. Maximum fee per service unit.

The fee shall not exceed the cost to pay for a proportionate share of the cost of system improvements, based upon service units, needed to serve new development.

**History:** Laws 1993, ch. 122, § 7.

## 5-8-8. Time for assessment and collection of fee.

A. Assessments of an impact fee shall be made at the earliest possible time. Collection of the impact fee shall occur at the latest possible time.

B. For land that has been platted in accordance with the subdivision or platting procedures of a municipality or county before the effective date of the Development Fees Act or for land on which new development occurs or is proposed without platting, the municipality or county may assess the impact fees at the time of development approval or issuance of a building permit, whichever date is earlier. The assessment shall be valid for a period of not less than four years from the date of development approval or issuance of a building permit, whichever date is earlier.

C. For land that is platted after the effective date of the Development Fees Act, the municipality or county shall assess the fees at the time of recording of the subdivision plat and this assessment shall be valid for a period of not less than four years from the date of recording of the plat.

D. Collection of impact fees shall occur no earlier than the date of issuance of a building permit.

E. For new development that is platted in accordance with the subdivision or platting procedures of a municipality or county before the adoption of an impact fee, an impact fee shall not be collected on any service unit for which a valid building permit has been issued.

F. After the expiration of the four-year period described in Subsections B and C of this section, a municipality or county may adjust the assessed impact fee to the level of current impact fees as provided in the Development Fees Act.

**History:** Laws 1993, ch. 122, § 8.

## 5-8-9. Additional fee prohibited; exception.

Except as provided in Subsection F of Section 8 [5-8-8 NMSA 1978] of the Development Fees Act, after assessment of the impact fees attributable to the new development or execution of an agreement for payment of impact fees, additional impact fees or increases in fees may not be assessed for any reason unless the number of service units to be developed increases. In the event of an increase in the number of service units, the impact fees to be imposed are limited to the amount attributable to the additional service units.

**History:** Laws 1993, ch. 122, § 9.

## 5-8-10. Agreement with owner regarding payment.

A municipality or county is authorized to enter into an agreement with the owner of a tract of land for which a plat has been recorded providing for a method of payment of the impact fees over an extended period of time otherwise in compliance with the Development Fees Act.

**History:** Laws 1993, ch. 122, § 10.

## 5-8-11. Collection of fees if services not available.

Impact fees may be assessed but shall not be collected unless the:

A. collection is made to pay for a capital improvement or facility expansion that has been identified in the capital improvements plan and the municipality or county commits to complete construction within seven years and to have the service available within a reasonable period of time after completion of construction considering the type of capital improvement or facility expansion to be constructed but in no event longer than seven years;

B. municipality or county agrees that the owner of a new development may construct to adopted municipal or county standards or finance the capital improvements or facility expansions and agrees that the costs incurred or funds advanced will be credited against the impact fees otherwise due from the new development or agrees to reimburse the owner for such costs from impact fees paid from other new developments that will use such capital improvements or facility expansions, which fees shall be collected and reimbursed to the property owner of record at the time the plat of the other new development is recorded; or

C. time period set forth in Subsection A of this section can be extended, provided the municipality or county obtains a performance bond or similar surety securing performance of the obligation to construct the capital improvements or facility expansions but in no event longer than seven years from commencement of construction of the capital improvements or facility expansion for which fees have been collected. The municipality or county shall establish written procedures to ensure that the owner of a new development shall not lose the value of the credits. Any refund for fees shall be made as provided in Section 17 [5-8-17 NMSA 1978] of the Development Fees Act.

**History:** Laws 1993, ch. 122, § 11.

## 5-8-12. Entitlement to services.

Any new development for which an impact fee has been paid is entitled to the permanent use and benefit of the services for which the fee was exacted and is entitled to receive prompt service from any existing facilities with actual capacity to serve the new service units.

**History:** Laws 1993, ch. 122, § 12.

## 5-8-13. Authority of municipality or county to spend funds or enter into agreements to reduce fees.

Municipalities or counties may spend funds from any lawful source or pay for all or a part of the capital improvements or facility expansions to reduce the amount of impact fees. A developer and a municipality or county may agree to offset or reduce part or all of the impact fee assessed on that new development, provided that the public policy which supports the reduction is contained in the appropriate planning documents of the municipality or county and provided that the development's new proportionate share of the system improvement is funded with revenues other than impact fees from other new developments.

**History:** Laws 1993, ch. 122, § 13

## 5-8-14. Requirement for governmental entities to pay fees.

Governmental entities shall pay all impact fees imposed under the Development Fees Act.

**History:** Laws 1993, ch. 122, § 14.

## 5-8-15. Credits against facilities fees.

Any construction of, contributions to or dedications of on-site or off-site facilities, improvements, or real or personal property with off-site benefits not required to serve the new development, in excess of minimum municipal and county standards established by a previously adopted and valid ordinance or regulation and required by a municipality or county as a condition of development approval shall be credited against impact fees otherwise due from the development. The credit shall include the value of:

A. dedication of land for parks, recreational areas, open space trails and related areas and facilities or payments in lieu of that dedication; and

B. dedication of rights of way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks or curbs.

**History:** Laws 1993, ch. 122, § 15.

## 5-8-16. Accounting for fees and interest.

A. The order, ordinance or resolution imposing an impact fee shall provide that all money collected through the adoption of an impact fee shall be maintained in separate interest-bearing accounts clearly identifying the payor and the category of capital improvements or facility expansions within the service area for which the fee was adopted.

B. Interest earned on impact fees shall become part of the account on which it is earned and shall be subject to all restrictions placed on the use of impact fees under the Development Fees Act.

C. Money from impact fees may be spent only for the purposes for which the impact fee was imposed as shown by the capital improvements plan and as authorized by the Development Fees Act.

D. The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours of the municipality or county.

E. As part of its annual audit process, a municipality or county shall prepare an annual report describing the amount of any impact fees collected, encumbered and used during the preceding year by category of capital improvement and service area identified as provided in Subsection A of this section.

**History:** Laws 1993, ch. 122, § 16.

## 5-8-17. Refunds.

A. Upon the request of an owner of the property on which an impact fee has been paid, the municipality or county shall refund the impact fee if existing facilities are available and service is not provided or the municipality or county has, after collecting the fee when service was not available, failed to complete construction within the time allowed under Section 11 [5-8-11 NMSA 1978] of the Development Fees Act or service is not available within a reasonable period of time after completion of construction considering the type of capital improvement or facility expansion to be constructed, but in no event later than seven years from the date of payment under Subsection A of Section 11 of the Development Fees Act.

B. Upon completion of the capital improvements or facility expansions identified in the capital improvements plan, the municipality or county shall recalculate the impact fee using the actual costs of the capital improvements or facility expansion. If the impact fee calculated based on actual costs is less than the impact fee paid, including any sources of funding not anticipated in the capital improvements plan, the municipality or county shall refund the difference if the difference exceeds the impact fee paid by more than ten percent, based upon actual costs.

C. The municipality or county shall refund any impact fee or part of it that is not spent as authorized by the Development Fees Act within seven years after the date of payment.

D. A refund shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Section 56-8-3 NMSA 1978.

E. All refunds shall be made to the record owner of the property at the time the refund is paid. However, if the impact fees were paid by a governmental entity, payment shall be made to the governmental entity.

F. The owner of the property on which an impact fee has been paid or a governmental entity that has paid the impact fee has standing to sue for a refund under this section.

**History:** Laws 1993, ch. 122, § 17.

## 5-8-18. Compliance with procedures required.

Except as otherwise provided by the Development Fees Act, a municipality or county shall comply with that act to levy an impact fee.

**History:** Laws 1993, ch. 122, § 18.

## 5-8-19. Hearing on land use assumptions.

To impose an impact fee, a municipality or county shall schedule and publish notice of a public hearing to consider land use assumptions within the designated service area that will be used to develop the capital improvements plan.

**History:** Laws 1993, ch. 122, § 19.

## 5-8-20. Information about assumptions available to public.

On or before the date of the first publication of the notice of the hearing on land use assumptions, the municipality or county shall make available to the public its land use assumptions, the time period of the projections and a description of the general nature of the capital improvement facilities that may be proposed.

**History:** Laws 1993, ch. 122, § 20.

## 5-8-21. Notice of hearing on land use assumptions.

A. The municipality or county shall publish notice of the hearing conforming to locally adopted regulations governing change-of-zone requests, except as otherwise provided in this section.

B. The notice shall contain:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON LAND
USE ASSUMPTIONS RELATING
TO POSSIBLE ADOPTION OF
IMPACT FEES";

(2) the time, date and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the land use assumptions that will be used to develop a capital improvements plan under which an impact fee may be imposed;

(4) an easily understandable map of the service area to which the land use assumptions apply; and

(5) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the land use assumptions.

C. The municipality or county, within thirty days after the date of the public hearing, shall approve or disapprove the land use assumptions.

D. An ordinance, order or resolution approving land use assumptions shall not be adopted as an emergency measure and its adoption must comply with the procedural requirements of the Development Fees Act.

**History:** Laws 1993, ch. 122, § 21.

## 5-8-22. System-wide land use assumptions.

A. A municipality or county may adopt system-wide land use assumptions for water supply and treatment facilities in lieu of adopting land use assumptions for each service area for such facilities.

B. Prior to adopting system-wide land use assumptions, a municipality or county shall follow the public notice, hearing and other requirements for adopting land use assumptions.

C. After adoption of system-wide land use assumptions, a municipality or county is not required to adopt additional land use assumptions for a service area for water supply, treatment and distribution facilities or wastewater collection and treatment facilities as a prerequisite to the adoption of a capital improvements plan or impact fee, provided the capital improvements plan and impact fee are consistent with the system-wide land use assumptions.

**History:** Laws 1993, ch. 122, § 22.

## 5-8-23. Capital improvements plan required after approval of land use assumptions.

If the governing body adopts an ordinance, order or resolution approving the land use assumptions, the municipality or county shall provide for a capital improvements plan to be developed by qualified professionals using generally accepted engineering and planning practices in accordance with Section 6 [5-8-6 NMSA 1978] of the Development Fees Act.

**History:** Laws 1993, ch. 122, § 23.

## 5-8-24. Hearing on capital improvements plan and impact fee.

Upon completion of the capital improvements plan, the governing body shall schedule and publish notice of a public hearing to discuss the adoption of the capital improvements plan and imposition of the impact fee. The public hearing must be held by the governing body of the municipality or county to discuss the proposed ordinance, order or resolution adopting a capital improvements plan and imposing an impact fee.

**History:** Laws 1993, ch. 122, § 24.

## 5-8-25. Information about plan available to public.

On or before the date of the first publication of the notice of the hearing on the capital improvements plan and impact fee, the plan shall be made available to the public.

**History:** Laws 1993, ch. 122, § 25.

## 5-8-26. Notice of hearing on capital improvements plan and impact fee.

A. The municipality or county shall publish notice of the hearing conforming to locally adopted regulations governing change-of-zone requests, except as otherwise provided in this section.

B. The notice must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON CAPITAL IMPROVEMENTS PLAN AND ADOPTION OF IMPACT FEES";

(2) the time, date and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the proposed capital improvements plan and the adoption of an impact fee;

(4) an easily understandable map of the service area in which the proposed fee will be imposed;

(5) the amount of the proposed impact fee per service unit; and

(6) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the plan and proposed fee.

**History:** Laws 1993, ch. 122, § 26.

## 5-8-27. Advisory committee comments on capital improvements plan and impact fees.

The advisory committee created under Section 37 [5-8-37 NMSA 1978] of the Development Fees Act shall file its written comments on the proposed capital improvements plan and impact fees before the fifth business day before the date of the public hearing on the plan and fees.

**History:** Laws 1993, ch. 122, § 27.

## 5-8-28. Approval of capital improvements plan and impact fee required.

A. The municipality or county, within thirty days after the date of the public hearing on the capital improvements plan and impact fee, shall approve, disapprove or modify the adoption of the capital improvements plan and imposition of an impact fee.

B. An ordinance, order or resolution approving the capital improvements plan and imposition of an impact fee shall not be adopted as an emergency measure and its adoption must comply with the procedural requirements of the Development Fees Act.

**History:** Laws 1993, ch. 122, § 28.

## 5-8-29. Consolidation of land use assumptions and capital improvements plan.

A. In lieu of separately adopting the land use assumptions and capital improvements plan for a service area containing not greater than three hundred units, a municipality or county may consolidate the land use assumptions and the capital improvements plan, and adopt the assumptions, the plan and the impact fee simultaneously.

B. If a municipality or county elects to consolidate the land use assumptions and capital improvements plan as authorized by Subsection A of this section, the municipality or county shall first comply with Section 20 [5-8-20 NMSA 1978] of the Development Fees Act and follow the public notice and hearing requirements for adopting a capital improvements plan and impact fee as provided in Section 21 [5-8-21 NMSA 1978] of that act, except:

(1) the headline for the notice by publication shall read as follows:

"NOTICE OF PUBLIC HEARING ON
ADOPTION OF LAND USE
ASSUMPTIONS AND
IMPACT FEES";

(2) the notice shall state that the municipality or county intends to adopt land use assumptions, a capital improvements plan and impact fees at the hearing and does not intend to hold separate hearings to adopt the land use assumptions, capital improvements plan and impact fees;

(3) the notice shall specify a date, not earlier than sixty days after publication of the first notice, and must state that if a person, by not later than the date specified, makes a written request for separate hearings, the governing body shall hold separate hearings to adopt the land use assumptions and capital improvements plan; and

(4) the notice shall provide the name and mailing address of the official of the municipality or county to whom a request for separate hearings shall be sent.

C. In addition to the requirements of Subsection B of this section, the municipality or county shall comply with all other requirements for adopting land use assumptions, a capital improvements plan and an impact fee.

**History:** Laws 1993, ch. 122, § 29.

## 5-8-30. Periodic update of land use assumptions and capital improvements plan required.

A. A municipality or county imposing an impact fee shall update the land use assumptions and capital improvements plan at least every five years. The initial five-year period begins on the day the capital improvements plan is adopted.

B. The municipality or county shall review and evaluate its current land use assumptions and shall cause an update of the capital improvements plan to be prepared in accordance with the Development Fees Act.

**History:** Laws 1993, ch. 122, § 30.

## 5-8-31. Hearing on updated land use assumptions and capital improvements plan.

The governing body of the municipality or county shall, within sixty days after the date it receives the update of the land use assumptions and the capital improvements plan, schedule and publish notice of a public hearing to discuss and review the update and shall determine whether to amend the plan.

**History:** Laws 1993, ch. 122, § 31.

## 5-8-32. Hearing on amendments to land use assumptions, capital improvements plan or impact fee.

A public hearing shall be held by the governing body of the municipality or county to discuss the proposed ordinance, order or resolution amending land use assumptions, the capital improvements plan or the impact fee. On or before the date of the first publication of the notice of the hearing on the amendments, the land use assumptions and the capital improvements plan, including the amount of any proposed amended impact fee per service unit, shall be made available to the public.

**History:** Laws 1993, ch. 122, § 32.

## 5-8-33. Notice of hearing on amendments to land use assumptions, capital improvements plan or impact fee.

A. The municipality or county shall publish notice of the hearing conforming to locally adopted regulations governing change-of-zone requests, except as otherwise provided in this section.

B. The notice must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON AMENDMENTS
TO LAND USE ASSUMPTIONS, CAPITAL
IMPROVEMENTS PLAN OR
IMPACT FEES";

(2) the time, date and location of the hearing;

(3) a statement that the purpose of the hearing is to consider amendments to land use assumptions, capital improvements plan or impact fees;

(4) an easily understandable description and map of the service area on which the update is being prepared; and

(5) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the update.

**History:** Laws 1993, ch. 122, § 33.

## 5-8-34. Advisory committee comments on amendments.

The advisory committee created under Section 37 [5-8-37 NMSA 1978] of the Development Fees Act shall file its written comments with the applicable municipality or county on the proposed amendments to the land use assumptions, capital improvements plan or impact fees before the fifth business day before the date of the public hearing on the amendments.

**History:** Laws 1993, ch. 122, § 34.

## 5-8-35. Approval of amendments required.

A. The municipality or county, within thirty days after the date of the public hearing on the amendments, shall approve, disapprove, revise or modify the amendments to the land use assumptions, the capital improvements plan or impact fees.

B. An ordinance, order or resolution approving the amendments to the land use assumptions, the capital improvements plan or impact fees shall not be adopted as an emergency measure and such adoption must comply with the procedural requirements of the Development Fees Act.

**History:** Laws 1993, ch. 122, § 35.

## 5-8-36. Determination that no update of land use assumptions, capital improvements plan or impact fee is needed.

A. If at the time an update under Section 30 [5-8-30 NMSA 1978] of the Development Fees Act is required, the governing body determines that no changes to the land use assumptions, capital improvements plan or impact fees are needed, it may, as an alternative to the updating requirements of Sections 30 through 35 [5-8-30 through 5-8-35 NMSA 1978] of the Development Fees Act, publish notice of its determination conforming to locally adopted regulations governing change-of-zone requests, except as otherwise provided in this section.

B. The notice shall contain the following:

(1) a headline to read as follows:

"NOTICE OF DETERMINATION NOT TO
UPDATE LAND USE ASSUMPTIONS,
CAPITAL IMPROVEMENTS PLAN OR
IMPACT FEES";

(2) a statement that the governing body of the municipality or county has determined that no change to the land use assumptions, capital improvements plan or impact fees are necessary;

(3) an easily understandable description and a map of the service area in which the updating has been determined to be unnecessary;

(4) a statement that if, within a specified date, which date shall be at least sixty days after publication of the notice, a person makes a written request to the designated official of the municipality or county requesting that the land use assumptions, capital improvements plan or impact fees be updated, the governing body may accept or reject such request by following the requirements of Sections 30 through 35 of the Development Fees Act; and

(5) a statement identifying the name and mailing address of the official of the municipality or county to whom a request for an update should be sent.

C. The advisory committee shall file its written comments on the need for updating the land use assumptions, capital improvements plan and impact fees before the fifth business day before the earliest notice of the governing body's decision that no update is necessary is mailed or published.

D. If by the date specified in Paragraph (4) of Subsection B of this section, a person requests in writing that the land use assumptions, capital improvements plan or impact fees be updated, the governing body shall cause, accept or reject an update of the land use assumptions and capital

improvements plan to be prepared in accordance with Sections 30 through 35 of the Development Fees Act.

E. An ordinance, order or resolution determining the need for updating land use assumptions, capital improvements plan or impact fees shall not be adopted as an emergency measure and its adoption must comply with the procedural requirements of the Development Fees Act.

**History:** Laws 1993, ch. 122, § 36.

## 5-8-37. Advisory committee.

A. On or before the date on which the order, ordinance or resolution is adopted under Section 19 [5-8-19 NMSA 1978] of the Development Fees Act, the governing body of a municipality or county shall appoint a capital improvements advisory committee.

B. The advisory committee shall be composed of not less than five members who shall be appointed by a majority vote of the governing body. Not less than forty percent of the membership of the advisory committee must be representative of the real estate, development or building industries. No members shall be employees or officials of a municipality or county or other governmental entity.

C. The advisory committee serves in an advisory capacity and shall:

(1) advise and assist the municipality or county in adopting land use assumptions;

(2) review the capital improvements plan and file written comments;

(3) monitor and evaluate implementation of the capital improvements plan;

(4) file annual reports with respect to the progress of the capital improvements plan and report to the municipality or county any perceived inequities in implementing the plan or imposing the impact fee; and

(5) advise the municipality or county of the need to update or revise the land use assumptions, capital improvements plan and impact fee.

D. The municipality or county shall make available to the advisory committee any professional reports with respect to developing and implementing the capital improvements plan.

E. The governing body of the municipality or county shall adopt procedural rules for the advisory committee to follow in carrying out its duties.

**History:** Laws 1993, ch. 122, § 37.

## 5-8-38. Duties to be performed within time limits.

If the governing body of the municipality or county does not perform a duty imposed under the Development Fees Act within the prescribed period, a person who has paid an impact fee or an owner of land on which an impact fee has been paid has the right to present a written request to the governing body of the municipality or county stating the nature of the unperformed duty and requesting that it be performed within sixty days after the date of the request. If the governing body of the municipality or county finds that the duty is required under the Development Fees Act and is late in being performed, it shall cause the duty to commence within sixty days after the date of the request and continue until completion.

**History:** Laws 1993, ch. 122, § 38.

## 5-8-39. Records of hearings.

A record shall be made of any public hearing provided for by the Development Fees Act. The record shall be maintained and be made available for public inspection by the municipality or county for at least ten years after the date of the public hearing.

**History:** Laws 1993, ch. 122, § 39.

## 5-8-40. Prior impact fees replaced by fees under Development Fees Act.

An impact fee that is in place on the effective date of the Development Fees Act shall be replaced by an impact fee imposed under that act by July 1, 1995. Any municipality or county having an impact fee that has not been replaced under that act by July 1, 1995 shall be liable to any party who, after the effective date of that act, pays an impact fee that exceeds the maximum permitted under that act by more than ten percent for an amount equal to two times the difference between the maximum impact fee allowed and the actual impact fee imposed, plus reasonable attorneys' fees and court costs.

**History:** Laws 1993, ch. 122, § 40.

## 5-8-41. No effect on taxes or other charges.

The Development Fees Act does not prohibit, affect or regulate any tax, fee, charge or assessment specifically authorized by state law.

**History:** Laws 1993, ch. 122, § 41.

## 5-8-42. Moratorium on development prohibited.

A moratorium shall not be placed on new development for the sole purpose of awaiting the completion of all or any part of the process necessary to develop, adopt or update impact fees.

**History:** Laws 1993, ch. 122, § 42.

## 5-8-43. Purpose; transfer of development rights.

A. The purpose of this section is to:

(1) clarify an application of existing authority;

(2) provide guidelines for counties and municipalities to regulate transfers of development rights consistent with comprehensive plans;

(3) encourage the conservation of ecological, agricultural and historical land; and

(4) require public notification of transfers of development rights.

B. A municipality or county may, by ordinance, provide for voluntary transfer of all or partial development rights from one parcel of land to another parcel of land.

C. The ordinance shall identify on a zoning map areas from which development rights may be transferred and areas to which development rights may be transferred.

D. The ordinance shall provide for:

(1) the voluntary transfer of a development right from one parcel of land to increase the intensity of development of another parcel of land;

(2) joint powers agreements, if applicable, for administration of transfers of development rights across jurisdictional boundaries;

(3) the method of transfer of development rights, including methods of determining the accounting for the rights transferred;

(4) the reasonable rules to effect and control transfers and ensure compliance with the provisions of the ordinance; and

(5) public notification to the areas to which development rights may be transferred.

E. Transference of a development right shall be in writing and executed by the owner of the parcel from which the development right is being transferred and acknowledged by the transferor. A development right shall not be subject to condemnation.

F. As used in this section, "development right" means the rights permitted to a lot, parcel or area of land under a zoning ordinance or local law respecting permissible use, area, density or height of improvements executed thereon, and development rights may be calculated and allocated in accordance with density or height limitations or any criteria that will effectively quantify a development right in a reasonable and uniform manner.

G. Nothing in this section shall be construed to authorize a municipality or a county to impair existing property rights.

**History:** Laws 2003, ch. 229, § 1.