

# EXHIBIT G

## LAND USE

### CHAPTER IX: MITIGATION AND DEVELOPMENT FEES

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**Section 1: RECREATION MITIGATION FEES**

**Sec. L-IX 1.1 Recreation Mitigation Fees for Truckee-Donner Recreation and Park District**

- A. A development impact mitigation fee for recreation is hereby established in unincorporated Nevada County, within the jurisdiction of the Truckee-Donner Recreation and Park District ( “the District” ).
- B. The amount of the mitigation fee shall be adopted by resolution of the Board of Supervisors, after approval of a fee study by the District that meets the requirements of the “Mitigation Fee Act” (Cal. Gov’ t Code § Government Code Sections 66000 ff. or “AB 1600” ). The study shall show a reasonable relationship, or nexus, between the purpose and amount of the fee, the need for public facilities to be financed by the fee, and the impacts and type of development on which the fee is imposed.
- C. The mitigation fee shall be imposed on new construction in a manner that is consistent with the Mitigation Fee Act. The mitigation fee proceeds shall be used exclusively for capital assets and improvements that mitigate impacts created by new development. The fee proceeds shall not be used to correct deficiencies, or to upgrade recreational facilities or service levels, for the primary benefit of existing development.
- D. This Section is intended to be fully consistent with the Mitigation Fee Act, the provisions of which are incorporated here by reference. In the event of any inconsistency between ArticleSection 1 of Chapter IX and the Act, the Act shall control. (Ord. 2281, (01/27/2009))

**Sec. L-IX 1.2 Park and Recreation Facilities Mitigation Fees for the Unincorporated Areas of Nevada County (Lying Outside of the Truckee-Donner Recreation and Park District)**

- A. All single-family and multi-family residential development within the unincorporated areas of Nevada County and which are outside of the boundaries of the Truckee-Donner Recreation and Park District shall pay to the County of Nevada the following sums at the time of building permit issuance that shall be phased in over time starting from the date of adoption. The final fee amount shall be collected each year thereafter.

<b>Western County Recreation Benefit Zone</b>	<b>Single Family Dwelling - Year 1</b>	<b>Single Family Dwelling - Year 2</b>	<b>Single Family Dwelling - Year 3</b>	<b>Multi-Family Dwelling - Year 1</b>	<b>Multi-Family Dwelling - Year 2</b>	<b>Multi-Family Dwelling - Year 3</b>
<b>Grass Valley and Nevada City Recreation Benefit Zone</b>						
≥ 2,500 Square Feet	\$ 1,410	\$ 2,096	\$ 2,782	\$ 1,410	\$ 2,096	\$ 2,355
750 - 2,499 Square Feet	\$ 1,128	\$ 1,677	\$ 2,226	\$ 1,128	\$ 1,677	\$ 2,226
< 750 Square Feet	\$ 846	\$ 1,258	\$ 1,669	\$ 846	\$ 1,258	\$ 1,669
<b>Twin Ridges Recreation Benefit Zone</b>						
≥ 2,500 Square Feet	\$ 1,410	\$ 2,096	\$ 2,782	\$ 1,410	\$ 2,096	\$ 2,355
750 - 2,499 Square Feet	\$ 1,128	\$ 1,677	\$ 2,226	\$ 1,128	\$ 1,677	\$ 2,226
< 750 Square Feet	\$ 846	\$ 1,258	\$ 1,669	\$ 846	\$ 1,258	\$ 1,669
<b>Oak Tree Recreation Benefit Zone</b>						
≥ 2,500 Square Feet	\$ 1,410	\$ 2,096	\$ 2,782	\$ 1,410	\$ 2,096	\$ 2,355
750 - 2,499 Square Feet	\$ 1,128	\$ 1,677	\$ 2,226	\$ 1,128	\$ 1,677	\$ 2,226
< 750 Square Feet	\$ 846	\$ 1,258	\$ 1,669	\$ 846	\$ 1,258	\$ 1,669
<b>Bear River Recreation Benefit Zone Lake of the Pines</b>						
≥ 2,500 Square Feet	\$ 674	\$ 1,003	\$ 1,331	\$ 674	\$ 1,003	\$ 1,127
750 - 2,499 Square Feet	\$ 539	\$ 802	\$ 1,065	\$ 539	\$ 802	\$ 1,065
< 750 Square Feet	\$ 404	\$ 602	\$ 799	\$ 404	\$ 602	\$ 799
<b>Remaining Development Area</b>						
≥ 2,500 Square Feet	\$ 1,410	\$ 2,096	\$ 2,782	\$ 1,410	\$ 2,096	\$ 2,355
750 - 2,499 Square Feet	\$ 1,128	\$ 1,677	\$ 2,226	\$ 1,128	\$ 1,677	\$ 2,226
< 750 Square Feet	\$ 846	\$ 1,258	\$ 1,669	\$ 846	\$ 1,258	\$ 1,669
<b>Western Gateway Recreation Benefit Zone Lake Wildwood</b>						
≥ 2,500 Square Feet	\$ 413	\$ 478	\$ 542	\$ 413	\$ 478	\$ 458
750 - 2,499 Square Feet	\$ 330	\$ 383	\$ 434	\$ 330	\$ 383	\$ 434
< 750 Square Feet	\$ 248	\$ 287	\$ 325	\$ 248	\$ 287	\$ 325
<b>Remaining Development Area</b>						
≥ 2,500 Square Feet	\$ 1,410	\$ 2,096	\$ 2,782	\$ 1,410	\$ 2,096	\$ 2,355
750 - 2,499 Square Feet	\$ 1,128	\$ 1,677	\$ 2,226	\$ 1,128	\$ 1,677	\$ 2,226
< 750 Square Feet	\$ 846	\$ 1,258	\$ 1,669	\$ 846	\$ 1,258	\$ 1,669

**Western County Recreation Benefit Zone**

The above referenced Recreation benefit Zones shall mean those zones as such identified in the Nevada County Park and Recreation Facilities Fee Nexus Study.

- A. The Park and Recreation Facilities Mitigation Fee Schedule shall be automatically adjusted annually for the inflation of construction and acquisition costs. The Fee Schedule will be adjusted annually on July 1 of each year

beginning in Year 2 (fiscal year 2020/21) from the date of adoption. The adjustment will be based on the 20-City Construction Index as reported in the Engineering News-Record (ENR) for the 12-month period ending in March of the year of the adjustment.

B. Fees will be collected from new residential development in the unincorporated Western County; use of these funds, however, may need to wait until a sufficient fund balance can be accrued. According to Cal. Gov' t Code § Government Code Section 66006, the County is required to deposit, invest, account for, and expend the fees in a prescribed manner. The fifth fiscal year following the first deposit into the fee account or fund, and every five (5) years thereafter, the County is required to make all of the following findings with respect to that portion of the account or fund remaining unexpended:

1. Identify the purpose for which the fee is to be put.
2. Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.
3. Identify all sources and amounts of funding anticipated to complete financing of incomplete facility improvements.
4. Designate the approximate dates on which the funding referred to in the above paragraph is expected to be deposited in the appropriate account or fund.

The County must refund the unexpended or uncommitted revenue portion of the fee for which a need could not be demonstrated in the above findings, unless the administrative costs exceed the amount of the refund.

C. The following types of development specifically are exempt from the Park and Recreation Facilities Mitigation Fee:

1. All federal and state agencies, public school districts, special districts, and the County will be exempt from the fee program, unless other arrangements or agreements are established with the County.
2. Any replacement or reconstruction of any structure that is damaged or destroyed as a result of fire, flood, explosion, wind, earthquake, riot, or other calamity, or act of God. If the building replaced or reconstructed exceeds the documented total floor area of the damaged/destroyed building, the excess square footage is subject to the Recreation Development Fee. If a structure is replaced with an alternative land use, such as replacing a commercial building with residential units, no exemption shall apply.
3. Residential accessory structures that do not increase covered building square footage such as open decks and pools. (Ord. 2460, (01/08/2019))

### Sec. L-IX 1.3 Quimby Act Dedications of Land and Fees In-Lieu of Dedications.

A. The provisions of the Quimby Act (hereafter “the Act” , or ~~Government Code Section~~Cal. Gov’ t Code § 66477) are incorporated here by reference. A requirement of the dedication of land, or the payment of fees in lieu thereof, or a combination of both, is hereby established throughout unincorporated County of Nevada, ~~County~~. The dedication, or payment of fees in-lieu, is for park and/or recreational purposes and is made a condition of the approval of a tentative map or parcel map [Cal. Gov’ t Code § ~~See~~. 66477(a)]. The land, fees, or combination thereof, are to be used only for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities to serve the subdivision [Cal. Gov’ t Code § ~~See~~. 66477(a)(3)].

B. The provisions of this Ssection are to be applied in coordination with any local public agency that has territorial jurisdiction for recreation and park services. Pursuant to Cal. Gov’ t Code § ~~See~~. 66477(c), the amount and location of land to be dedicated or fees to be paid shall be jointly determined by the County and such other local public agency.

C. All dedications of land for recreation and park purposes, that are required as a condition of the subdivision of land, shall meet all the requirements of the Act. This Section does not apply to subdivisions containing less than five parcels and not used for residential purposes [~~See~~Cal. Gov’ t Code §. 66477(a)(8)], nor does it apply to commercial or industrial subdivisions [~~See~~Cal. Gov’ t Code § 66477(d)].

D. The amount of Quimby Act fees in-lieu of dedication of land shall be prescribed by resolution of the Board of Supervisors, in a manner that is consistent with the requirements of the Act. Such fees shall be in addition to any applicable development impact mitigation fee for recreation that is imposed pursuant to Sections ~~L-IX~~ 1.1 or 1.2. Only the payment of fees may be required in subdivisions containing fifty (50) parcels or less [Cal. Gov’ t Code § ~~See~~. 66477(a)(7)].

E. Land or fees required under the Act shall be conveyed to, or be paid over to, the local public agency which provides park and recreational services on a communitywide level [~~S~~Cal. Gov’ t Code § ~~ee~~. 66477(b)]. (Ord. 2251<sub>.5</sub> (01/27/2009))

## **SECTION 2 FIRE PROTECTION DEVELOPMENT FEES**

### **Sec. L-IX 2.1 Purpose**

This ~~Article~~Section is enacted to provide the authority for and process by which development fees may be imposed for fire prevention, suppression and safety within the unincorporated territory of the County of Nevada. Such fees may be imposed for each fire protection district or agency which causes to be prepared and presented a study adequate to demonstrate the reasonable relationship between new development and the fee to be charged. It is intended hereby that new development shall pay its fair share to maintain the pre-existing level of service, thereby mitigating the impact of development on the fire protection district's ability to provide such service. (Ord. 1703. (04/09/1991))

### **Sec. L-IX 2.2 Definitions**

As used in this ~~Article~~Section:

- A. COSTS OF CAPITAL IMPROVEMENTS means any costs related to acquisition, construction, repair and financing, but does not include costs of routine maintenance.
  
- B. DEVELOPMENT PROJECT means any project, not specifically exempted herein, undertaken for the purpose of development, regardless of the intended use thereof, and includes all projects involving the issuance of a permit for construction, but not a permit to operate.
  
- C. FLOOR AREA means the area included within the surrounding exterior walls of a building, or portion thereof, exclusive of vent shafts and courts or other uncovered areas. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above. Such unenclosed floor area may be subject to a different, separately calculated fee only if the supporting study and fee resolution so provide.
  
- D. LOCAL AGENCY includes any agency of a public entity, specifically including school districts and special districts.
  
- E. PUBLIC ENTITY means state, county, city, city and county, district, public authority, public agency or public corporation or other political subdivisions.

F. PUBLIC FACILITIES includes facilities and equipment, public capital improvements, public services and amenities.

### **Sec. L-IX 2.3 Establishment of Fee, Exemptions, Credits**

A. A fire protection development fee is hereby established for all non-exempt new development projects within the unincorporated areas of Nevada County and within the boundaries of a fire protection district or area for which a fee is established pursuant to this ~~Article~~Section. The Board of Supervisors shall establish the amount of such fee for each individual fire protection district or agency by resolution at a publicly noticed meeting upon completion by the fire protection district or agency of an adequate study, commissioned, adopted and provided by such district or agency. Said study shall establish a reasonable development fee for the district or area and demonstrate by competent analysis the reasonable relationship between such fee and the impacts of such development, satisfying the statutory requirements for fees for development projects contained in Chapter 5 of Division 1 of Title 7 of the Government Code (~~Sections Cal. Gov' t Code § § 66000 - 66008, et seq.~~), commonly referred to as AB 1600. Said fees may from time to time be amended as circumstances warrant by the adoption of a subsequent resolution by the Board of Supervisors. Any action to adopt a resolution levying or increasing such fee for any individual fire protection district or agency shall follow the procedures set forth in ~~Government Code Sections Cal. Gov' t Code § § 66016 - 66019, et seq.~~, and any subsequent amendments thereto including, without limitation, notice, public hearing and effective date provisions.

B. Public facilities and projects being constructed for use by a public entity or local agency shall be exempt from fees hereunder. Remodeling of, or reconstruction within three (3) years of damage to, a lawfully existing structure shall not be considered to be a new development project subject to a fee hereunder if rebuilt for the same general use on the same site or in the same fire protection district or fee area, except to the extent the structure is increased in size, in which event it shall be subject to assessment based upon the net increase in floor area.

C. To the extent, if any, that a fire protection district 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.

### **Sec. L-IX 2.4 Application and Collection of Fee**

Any developer or owner applying for a building permit for any new development project in an area for which a fire protection development fee has been established pursuant to this ~~Article~~Section shall, as a condition to approval and issuance of said permit, be assessed and pay the assessed fee directly to the applicable fire protection district or agency. A certificate issued by the fire protection district or agency or other satisfactory evidence of such payment shall be presented to the Nevada County Building Division prior to issuance of a building permit. Notwithstanding the foregoing, to the extent ~~Government Code Section Cal. Gov' t Code §~~ 66007 requires a delay of payment of the fee on residential development until the date of the final inspection or the date the certificate of occupancy is issued, whichever occurs first, said provisions shall control and fees shall be collected and proof of payment submitted prior to issuance of a certificate of occupancy.

### **Sec. L-IX 2.5 Use of Fees, Hold Harmless**

A. All fire protection development fees shall be collected by the local fire protection district or agency on whose behalf they are imposed. Said respective fire protection districts or agencies shall be responsible for compliance with Government Code Sections 66000, et seq., with regard to the fees assessed and collected. As a further condition of the imposition and collection of fees as established by this ~~Article~~Section, each fire protection district or agency collecting such fees shall be conclusively presumed to have agreed to hold the County of Nevada harmless and to indemnify and defend the County from all actions, claims and damages related to said fees, including, without limitation, any challenge to the validity of or use of said fees. The fees collected, together with any interest 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.

B. The fire protection development fees shall be used by the local fire protection districts or agencies for capital expenditures to mitigate the impacts attributed to new development. Specifically, these fees shall be used to pay all of the applicable portion of the costs of capital improvements to public facilities necessitated by the development projects, whether identified by a capital improvement plan or otherwise. Fees remaining unexpended or uncommitted five (5) or more years after deposit shall be subject to the provisions of ~~Government Code Section Cal. Gov' t Code §~~ 66001.

### **Sec. L-IX 2.6 Appeal from Fee Assessment**

A. Any developer or owner assessed fees for a project established pursuant to this ~~Article~~Section may appeal the amount of such fees on the following grounds and no other:

1. That the project, in whole or in part, is exempt from any fee;
2. That the floor area upon which the fee was computed is in error; or
3. That the credit allocated to this project for prior exactions paid, as provided for in Section ~~LIX~~ 2.3.B, is in error.

B. Any such appeal shall be filed in writing with the office of the fire protection district or agency imposing said fee, within thirty (30) calendar days of the date the fee is assessed, and shall include a statement on appeal setting forth the grounds for the appeal and, where applicable, the fee acknowledged to be correct, the correct computations thereof and the basis therefor.

C. Upon the filing of such an appeal, it shall be considered at the next regular meeting of the Board of Directors or other governing Board of such fire protection district or agency for which such matter can properly be agendized. At that time, the Board shall determine if the appeal was filed within the applicable time limits and on an allowable ground and shall summarily reject any untimely or improper appeal. The Board shall further determine if the appeal contains sufficient information as required by subsection B. If the Board determines that the information is insufficient, it may summarily reject the appeal for that reason or immediately notify the appellant of the insufficiency and allow an additional seven (7) calendar days in which to correct such deficiency. If, upon the expiration of any additional time, the Board determines that the statement on appeal is still insufficient, it shall summarily reject the appeal.

D. Upon determination that an appeal is timely and sufficient, the Board shall set the matter for hearing as soon as time on their agenda permits and upon at least ten (10) days prior notice, then and there to consider all evidence presented by or on behalf of staff and appellant as to the correct amount of fees to be assessed. At the conclusion of the appeal hearing, the Board may approve or change the fee assessed to reflect proper computations or excuse all or part of any fee to the extent it determines the project is exempt pursuant to this ~~Article~~Section or the resolution establishing the applicable fee. Any action to change or excuse the fee shall be by not less than a majority of the full board, with any action culminating in fewer votes being deemed

to constitute a denial of the appeal resulting in no change of fees. The Board charged with hearing such appeals may adopt reasonable procedures for conduct of such appeal hearings and may charge a reasonable appeal fee, subject to refund if the appeal is upheld.

E. The decision of the Board of Directors or other governing board on such fee appeal may be appealed to the Board of Supervisors within ten (10) calendar days by filing a Notice of Appeal conforming to the requirements of and following the procedure set out in Sections governing Appeals in L-II 33.4, 33.6, 33.7, 33.8, 33.12, 33.13, 33.14 of the County' s ~~Land Use and Development~~ Code. The appeal shall be heard at a public hearing preceded by ten (10) days written notice to each appellant and the fire protection district or agency whose fee is being appealed. Appeal fees shall be paid in accordance with the latest schedule adopted by the Board of Supervisors. At the appeal hearing, evidence shall be limited to the issues properly raised in the notice of appeal. The Board of Supervisors shall have the authority to limit the amount of time that the appellant and the fire protection district or agency may have in the appeal hearing to not less than fifteen (15) minutes each. At the conclusion of the appeal hearing, the Board of Supervisors may sustain or overrule the appeal and may approve or change the fee assessed or excuse all or any part thereof to the extent the project is exempt. The decision of the Board of Supervisors shall be final.

### **ARTICLE SECTION 3 ROAD DEVELOPMENT FEES ON NEW DEVELOPMENT**

#### **Sec. L-IX 3.1 Purpose**

In order to implement the goals and objectives of the Circulation Element of the County of Nevada' s General Plan and to mitigate the cumulative impacts on roads caused by new development in the County, certain road improvements must be or had to be constructed. The Board of Supervisors has determined that a development impact fee is needed in order to finance these public improvements and to pay for the development' s fair share of the construction costs of these improvements. In establishing the fee described in the following sections, the Board of Supervisors has found the fee to be consistent with its General Plan and, pursuant to Government Code Section 65913.2, has considered the effects of the fee with respect to the County' s housing needs as established in the Housing Element of the General Plan. (Ord. 1829. (04/13/1993); Ord. 1809. (11/10/1992))

#### **Sec. L-IX 3.2 Road Development Fees, Reimbursement Fees**

A. ROAD DEVELOPMENT FEE. A road development fee is hereby established and shall be levied against development in the unincorporated territory of the County to pay for road improvements. The Board of Supervisors shall, in a separate Resolution, set forth the specific amount of the fee based upon a study describing the benefit and impact area on which the development fee is imposed, listing the specific public improvements to be financed, describing the estimated cost of these road improvements and describing the reasonable relationship between this fee and the various types of new developments. As set in the fee resolution, this development fee shall be calculated and paid as provided in Sec. ~~L-IX~~ 3.3. On an annual basis, the Department of Public Works shall review the study to determine whether the fee amounts are reasonably related to the impacts of developments and whether the described road improvements are still needed. (Ord. 2239. (05/29/2007))

B. REIMBURSEMENT FEE. In addition to said road development fee, any person developing real property may also be required to contribute a sum, including an amount attributable to interest, to reimburse any other person who has been required as a condition of development to construct road improvements of supplemental size, length or capacity in proportion to the benefit enjoyed. Payment of said sum may be included as a condition of approval of a development permit, provided, however, that said reimbursement amount shall be required to be paid, whether or not imposed as a condition of approval, when a reimbursement agreement is in effect with another property owner (developer) pursuant to Sec. ~~L-IX~~ 3.5 which identifies the person's property to be developed as being within the benefit area subject to charges thereunder. The rate and amount of interest shall be determined by the County Auditor consistent with the interest earned by County investments during the applicable period of time. (Ord. 2239. (05/29/2007); Ord. 1837. (07/13/1993); Ord. 1829. (04/13/1993); Ord. 1809. (11/10/1992))

### **Sec. L-IX 3.3 Calculation and Payment of Fees**

ROAD DEVELOPMENT FEE CALCULATION. The applicable road development fees shall be calculated in accordance with the development fee schedule in effect as of the date that the fees are paid by the developer, property owner or other responsible party.

A. ROAD DEVELOPMENT FEE PAYMENT. The fees may be paid at any point in time that the developer or property owner chooses following the determination by the County Planning Department that an application for development has been properly filed with the Department and the application has been found to be complete, or is deemed to be complete under ~~Government Code Sec.~~ Cal. Gov't Code § 65943 provided, however, that in no event shall the fees be paid any

later than upon the issuance of a building permit (as to any non-residential development) or upon the earliest of the final inspection, the issuance of a certificate of occupancy, or such time as may be authorized pursuant to Government Code Section Cal. Gov' t Code § 66007(b) (as to residential development).

#### B. ROAD DEVELOPMENT FEE ON AS-BUILT CONSTRUCTION.

In the event that development on real property exists without proper permits, the Road Development Fee will be calculated in accordance with the development fee schedule in effect as of the date of the issuance of a building permit.

In cases where a property is acquired with existing, unpermitted structures, the Road Development Fee may be calculated in accordance with the applicable fee schedule in effect at the time of original building construction. (Ord. 2376, (01/28/2014); Ord. 1829, (04/13/1993); Ord. 1809, (11/10/1992))

#### Sec. L-IX 3.4 Limited Use of Fees

The revenues raised by payment of this fee shall be placed in a separate and special account and such revenues, along with any interest earnings on that account, shall be used solely to:

A. Pay for the future construction of road improvements described in the Resolutions enacted pursuant to Sec. L-IX 3.2, or to reimburse the cost for those described or listed road improvements constructed with funds advanced from other sources to the advancing governmental entity, or

B. Reimburse developers who have been required or permitted by Sec. L-IX 3.5 to install such listed road improvements which are oversized with supplemental size, length, or capacity. (Ord. 2060, (06/05/2001); Ord. 1829, (04/13/1993); Ord. 1809, (11/10/1992))

#### Sec. L-IX 3.5 Developer Construction of Facilities

Whenever a developer is required, as a condition of approval of a development permit, to construct road improvements described in a resolution adopted pursuant to Sec. L-IX 3.2.A, which road improvements are determined by the County of Nevada to have supplemental size, length or capacity over that needed for the impacts of that development, and when such construction is necessary to ensure efficient and timely construction of the road network, a reimbursement agreement with the developer and a credit against the fee, which would otherwise be charged pursuant to this ArticleSection on the development project, shall be offered. When the road

improvements required as a condition of approval of a development are determined to have supplemental size, length or capacity over that needed for the impacts of that development, but said improvements are other than those described in a Resolution adopted pursuant to Sec. ~~L-IX~~ 3.2.A, a reimbursement agreement with the developer, without a credit against fees, may be offered with regard to other properties which have the right to use and stand to benefit from such improvements. In any event, the reimbursement amount shall not include the portion of the improvement needed to provide services or mitigate the need for the road improvements or the burdens created by the development project. (Ord. 1837. (07/13/1993); Ord. 1829. (04/13/1993); Ord. 1809. (11/10/1992))

## **SECTION 4 PROCEDURES FOR PROTEST, LITIGATION AND/OR REFUNDS OF DEVELOPMENT FEES**

### **Sec. L-IX 4.1 Intent of this ~~Article~~Section**

It is the intent of the Board of Supervisors in adopting this ~~Article~~Section to establish and to codify in the County of Nevada ordinances the procedures by which any person or party may file a protest and any litigation against the County contesting the propriety of the imposition of any development fee or other exaction as a condition of the approval of any development or development project (as those terms are defined in ~~Government Code Sections~~ Cal. Gov' t Code § § 65927 and 65928, respectively). To the extent that such procedures are established by State law, it is the intent of the Board that all applicable provisions of State law will be fully implemented within the County of Nevada, and to the extent that any reference is made herein to State law, such reference shall be made to the applicable code sections as they exist on November 10, 1992, and to any subsequent amendments thereto. To the extent that State law does not control, it is the intent of the Board to establish procedures and requirements which shall control as to the matters covered by this ~~Article~~Section.

### **Sec. L-IX 4.2 Requirements for Protest as Prerequisite to any Suit**

Any person or party on whom a fee, dedication, reservation, or other exaction has been imposed, the payment of which is required as a condition of approval of any development or development project (as defined in ~~Government Code Sec.~~ Cal. Gov' t Code § § 65927 and 65928, respectively), may protest the imposition of any such fee or other exaction. Any such protest shall be filed in accordance with the provisions of ~~Government Code Sec.~~ Cal. Gov' t Code § 66020 (including any subsequent amendments thereto) within 90 days of the date of the imposition thereof.

For the purposes of this ~~Article~~Section, the imposition of any fees, dedications, reservations, or other exactions occurs when the condition requiring the payment or dedication is incorporated into the approval of any development (project) through the approval of a tentative subdivision map or through the issuance of any use permit, site plan (permit), variance or any similar zoning permit.

### **Sec. L-IX 4.3 Statute of Limitations**

Any suit, litigation or other legal action to attack, review, set aside, void, or annul the imposition of any fees, dedications, reservations or other-s, including but not limited to, any request for the refund thereof, shall be filed within 180 days after the date of the imposition thereof. As a prerequisite to the filing of any such suit, a protest shall be filed in accordance with the provisions of Sec. ~~L-IX~~ 4.2. Thereafter, all persons or parties are barred from any action or proceeding to contest the propriety of the imposition of any such fees, dedications, reservations or other exactions and are barred from alleging the invalidity of any such imposition in defense of any action brought to enforce same.

### **Sec. L-IX 4.4 Procedures for the Discretionary Refund of Development Fees**

Whenever the Board of Supervisors finds that the County has imposed and collected any development fees which are in excess of the amounts which are reasonably required to be contributed by any development project or projects to (1) offset the individual or cumulative impacts created by the projects on the infrastructure owned or operated or controlled by the County; or (2) pay for the estimated reasonable cost of providing the service or facilities by the County, which funds have been held by the County for less than five (5) years, then the Board of Supervisors may order the refund of such fees as follows:

- A. Prior to authorizing the refund of such fees to any particular project, the Board shall review the record of the approval of the development project (including any applicable environmental documents therefor) and any applicable studies concerning the imposition of the development fees to determine if: (1) the fees, when imposed, were unwarranted as not being reasonably necessary to offset the individual or cumulative impacts created by the development project, or are in excess of the estimated reasonable cost of providing the public service or facilities and/or (2) the need for the fees has been extinguished or reduced as the infrastructure has been provided by some other funding source, and/or (3) the need for the infrastructure has been eliminated.

- B. Whenever the Board is considering refunding development fees to all project applicants on a pro rata basis (i.e., a 10% refund for all projects), the Board shall not be required to review individual project records, and instead the Board shall determine whether a refund is warranted based on any of the following findings:
1. The need for the fees has been extinguished or reduced as the infrastructure has been provided by some other funding source; and/or
  2. The need for the infrastructure has been eliminated; and/or
  3. The amount of the fees are in excess of that which was needed to provide infrastructure to offset the impact due to development.
- C. Any action by the Board to refund development fees shall be taken at a regularly scheduled meeting of the Board which shall be preceded by a notice of the intent to consider the refund which shall identify the development project or projects and shall be published pursuant to ~~Government Code Section~~ Cal. Gov' t Code § 6061 (publication once in a newspaper of general circulation) and shall be supported by evidence in the record.

#### **Sec. L-IX 4.5      Procedures for the Mandatory Refund of Development Fees**

In accordance with the provisions of ~~Government Code Section~~ Cal. Gov' t Code § 66001, the Board of Supervisors shall annually review all accounts containing development fees paid to the County to determine if there are any funds therein which have been in the account for five (5) or more years. If there are any such funds the Board shall review the reason for the imposition of the fee in order to identify the purpose to which the fee is to be put and to determine if there is (at the present) a reasonable relationship between the fee and the purpose for which the fee was imposed. For any fee as to which the Board determines that there no longer is a reasonable relationship between the fee and the purpose for which it was imposed, the Board shall order the refund of the fee to the then current record owner or owners of the lots or units of the development project or projects on a prorated basis together with the estimated interest that was earned thereon while on deposit with the County.

#### ~~ARTICLE SECTION 5 RESERVED DEVELOPMENT FEE FOR ELECTRICAL SERVICE AVAILABILITY~~

##### ~~Sec. L-IX 5.1 Purpose~~

~~The Mitigation Fee Act (Gov. Code Sections 66000 et seq.) authorizes the imposition of development fees to enable the County of Nevada to recover its costs of contracting, interest, and administration in the undertaking of a project for completion of a public improvement. The public improvement is the~~

~~electrical utility infrastructure necessary to make electrical service available to 73 parcels and one golf course restroom (a total of “74 services”) in Phase 3 of the DarkHorse Subdivision in unincorporated Nevada County.~~

#### ~~Sec. L-IX 5.2 Establishment and Imposition of the Electrical Service Availability Fee~~

~~An Electrical Service Availability Fee (“ESA Fee”) is hereby established and imposed upon certain of the parcels in Phase 3, specifically those 74 parcels or services identified in Exhibit B of the adopting ordinance [Ordinance No. 2276]. The information required by the Mitigation Fee Act for supporting this ESA Fee has been assembled by the County Community Development Agency (“CDA”). The CDA mailed this information on Nov. 6, 2008 to the record owners of the 74 parcels or services. This information constitutes the ESA Fee study for purposes of satisfying the requirements of the Mitigation Fee Act. By approving the adopting ordinance, the Board of Supervisors shall be deemed to have approved the ESA Fee study.~~

#### ~~Sec. L-IX 5.3 Authorization for a Contract with PG&E for Completion of the Infrastructure Necessary for Electrical Service Availability.~~

~~The Board of Supervisors of the County of Nevada is hereby authorized to adopt a resolution authorizing the execution of a contract with PG&E obligating the County to pay \$204,986.25 for completion of the infrastructure necessary for electrical service availability to the 74 services in Phase 3 of the DarkHorse Subdivision. The resolution of the Board of Supervisors may authorize execution by the Chair of the Board on such terms as are acceptable to the Board.~~

~~This contractual obligation shall be covered or reimbursed by the ESA Fee, and the Fee shall be put to no other use, except that the Fee shall enable the County of Nevada to recover all of its costs of paying for the PG&E contract, and all of its costs related to interest on funds and administration. The ESA Fee proceeds are specifically intended to reimburse any and all expenditures that may be made from the County General Fund.~~

#### ~~Sec. L-IX 5.4 Setting of the Fee Amount.~~

~~The ESA Fee shall be set on a per parcel or service basis. Except for time of payment, the Fee shall be uniform for each fiscal year as to each parcel or service. The share of each parcel or service is 1/74th. The ESA Fee shall be set by resolution of the Board of Supervisors in each fiscal year to ensure that the Fee is~~

~~based on current information and is reasonably related to covering the County's costs and no more. The ESA Fee is defined and structured as follows:~~

~~A. The "Voluntary Advance Payment" is applicable if payment of the Fee is made to CDA on or before November 18, 2008, and until Dec. 31, 2008, and it includes the full cost of the PG&E contract plus initial County administrative costs;~~

~~B. The "Initial Base Fee" is applicable if payment of the Fee is made to CDA in fiscal year (FY) 08-09 from January 1, 2009, through June 30, 2009, and it includes the cost of the PG&E contract, plus interest paid to PG&E, plus County costs for the fiscal year;~~

~~C. The "Adjusted Base Fee" is applicable if payment of the Fee is made in FY 09-10, or in any subsequent fiscal year, and it shall include the full cost of the PG&E contract, plus interest paid to PG&E (if any), or interest on General Funds expended and not reimbursed, at the County Treasurer's Annual Investment Pool Rate; provided that the Base Fee shall also be adjusted because of ESA Fee payments already received by the end of the prior fiscal year.~~

#### ~~Sec. L IX 5.5 When Fee is Due and Payable; County Remedies~~

~~Pursuant to Gov. Code Section 66007(b)(2), the ESA Fee on parcels which have not paid shall become due and payable on November 1, 2011, by which time the County will have paid PG&E in full. Accordingly, that date reflects when the Fee proceeds will become a reimbursement to the County. The County may resort to any and all legal remedies to collect payment in full promptly after November 1, 2011, including actions in small claims court.~~

~~At the sole discretion of the County, it may elect to defer Fee payment until the time specified in Sec. 66007(a), which is the time an application for utility service is received by the Building Department and/or PG&E. In the event of any deferral of Fee payment, the County may, in accordance with Sec. 66007(c), require the owner to enter a recordable contract for attachment of a lien on the parcel, and require appropriate escrow notification and escrow instructions if the parcel is listed for sale.~~

#### ~~Sec. L IX 5.6 Procedures for Protest, Litigation, and/or Refunds of the Fee~~

~~Procedures for the protest, litigation, and/or refunds of the Fee are set forth in Article 4 of Chapter IX of this Code. Also, the procedures set forth in Sections 66020 through 66025 of the Government Code shall apply, and shall supersede Article 4 of Chapter IX in the event of any conflict between the two.~~

~~Sec. L IX 5.7 Annual Reporting to the Board of Supervisors~~

~~As required for all mitigation and development fees in Sections 66001, 66006, and 66023 of the Government Code, the County shall prepare an annual report and accounting within 180 days of the end of each fiscal year.~~