MONTROSE COUNTY LAW ENFORCEMENT CAPITAL EXPANSION IMPACT FEE

PREPARED FOR: MONTROSE COUNTY

PREPARED BY: RPI CONSULTING SEPTEMBER 2007

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EXECUTIVE SUMMARY

INTRODUCTION

The purpose of this document is to establish an appropriate capital expansion impact fee for the Montrose County Law Enforcement Departments.

METHODOLOGY

The methodology in this report utilizes common impact fee calculations and structures including: demand units, capital facility inventory, level of service (LOS), proportionate share, and crediting.

NEED

The population of Montrose County is forecast to grow at a rate of 2.33%. In the past 6 years almost 2,200 new housing units were built and over 1 million square feet of non-residential space was added. As a consequence of this growth the Law Enforcement Departments have seen significant workload increases.

IMPACT FEE

The final impact fee once a system of crediting has been applied is $496 per residential unit and $700 per 1,000 square feet of non-residential development.

Figure 1. Montrose County LED Impact Fee

	Residential	**Non Residential**
Fee Schedule	$ 578	$ 778
Credit	$ 82	$ 78
Total	$ 496	$ 700

INTRODUCTION

The purpose of this document is to establish an appropriate capital expansion impact fee for the Montrose County Law Enforcement Departments.

Capital facilities are a critical element in the maintenance of publicly provided service levels. As any town, city, or County experiences development and growth, demands are placed upon infrastructure, administration, and other capital resources. This additional demand for services presents governments with two options; first, to maintain current funding levels and decrease service levels, or second, to find additional methods of revenue generation in order to maintain current service levels. If decreasing service levels are not acceptable governments must find a mechanism by which new growth pays its fair share of the increasing costs. Without additional revenue provided by new growth, taxpayers at large will have to bear the increased financial burden - this is in effect a subsidy of new growth by current residents.

Law enforcement provides absolutely vital services to the community through maintenance of law and order, enforcement of laws, and the detention of criminals.

Numerous data sources and complex calculations underlie the basic logic that this report is based upon. However, the foundation and concept of this report is relatively simple and is essentially answers the following questions:

1. Does Montrose County have a need for an impact fee to charge new development its share of the cost of expanding law enforcement and judicial center facilities?
2. Does Montrose County have the legal authority to charge such a fee?
3. How do residential and non-residential land uses draw upon facilities for basic County services relative to one another?
4. How much does it cost to buy into existing facilities?
5. What is the current level of service for Law Enforcement facilities?
6. What should the fee amounts be?
7. Should credits or waivers be offered to any types of development?
8. How much revenue might the County expect the fees to yield?
9. What steps and considerations are involved in implementing the fee?

Impact fees are designed to maintain an existing level of service for capital facilities as populations and non-residential development increase. The analysis in this report relies on a 20 year planning horizon, thus projection and calculations are carried through 2027.

LEGAL AUTHORITY

The following legal analysis was provided by Lindsey Nicholson of Goldman, Robbins, Nicholson P.C. as a subcontractor to RPI Consulting LLC. The analysis is intended to provide third party legal analysis of impact fee legislation and application in Colorado; RPI Analysts are not attorneys nor does RPI retain attorneys on staff. The appropriateness and legality of imposing this or any other impact fee schedule is entirely at the Montrose County Board of Commissioners, and County Attorney discretion and judgment. RPI does not make any claims as to the legality or appropriateness of impact fees or the accuracy of the following legal analysis.

IMPACT FEES GENERALLY

The authority for counties to levy direct fees on new development to help offset the impacts of such development derives from C.R.S. § 29-20-104.5, adopted in 2001. This statute grants local governments the authority to impose growth-related impact fees as a condition of approval of an application for new development. However, the statute requires that such impact fees be:

(1) Legislatively adopted;

(2) Generally applicable to a broad class of property owners; and

(3) Intended to defray the projected impacts on capital facilities directly caused by proposed development1.

In addition, the statute requires that the collected impact fees be used to "fund expenditures by such local government on capital facilities needed to serve new development".2 "Capital facilities" are defined as "improvements or facilities" that:

(1) Are directly related to any service that the local government is authorized to provide;

(2) Have an estimated useful life of five years or longer; and

(3) Are required by the charter or general policy of the local government pursuant to resolution or ordinance3.

It is not clear under current law whether a "capital facility" would include equipment.

[1] C.R.S. § 29-20-104.5(1).
[2] *Id.*
[3] C.R.S. § 29-20-104.5(4).

The statute is clear, however, that the collected fees must be used to offset new impacts and that they cannot be used to remedy any current deficiency in capital facilities – i.e., one that exists without regard to the impacts of new development.4 Accordingly, the statute requires a local government, before adopting any impact fee, to:

(1) Quantify the reasonable impacts of the proposed development on existing capital facilities;

(2) Establish the fee at a level no greater than necessary to defray the impacts directly related to the proposed development5; and

(3) Include provisions in the legislatively-adopted fee structure to "avoid double-charging developers an impact fee for the same facility that the jurisdiction has imposed an exaction."6

The required quantification of the impacts and calculation of the fee so as not to be greater than necessary to defray directly-related impacts of development is typically met by the preparation of an impact fee study, such as this one. There are no reported cases construing these quantification requirements; however, based upon the holdings of the Colorado Supreme Court in a case7 that shortly predates the adoption of the impact fee statute, legal commentators8 believe that the requirements are meant to be less restrictive than the case-specific "essential nexus" and "rough proportionality" tests that are applied to government exactions (i.e., requirements that an owner give up a portion of his property for public use as a condition of approval of development). In the referenced case, the Colorado Supreme Court held that because the setting of impact fees is a "legislative function that involves many questions of judgment and discretion, [the courts] will not set aside the methodology chosen by an entity with ratemaking authority unless it is inherently unsound".9 Further, the impacts of each specific development proposal need not be quantified, but may be looked at cumulatively, and an impact fee schedule may differentiate among different types of development and their likely impacts, so long as there is a rational basis for the differentiation.

PERMISSIBLE USES OF IMPACT FEES IMPOSED BY MONTROSE COUNTY

Based on the foregoing statutory requirements, Montrose County may adopt a schedule of impact fees applicable to new development; provided, however, that such fees will be used to

[4] C.R.S. § 29-20-104.5(2).
[5] *Id.*
[6] C.R.S. § 29-20-104.5(3).
[7] Krupp v. Breckenridge San. Dist., 19 P.3d 687 (Colo. 2001).
[8] Carolynne C. White, "Municipal Perspective on Senate Bill 15: Impact Fees", 31 Colo. Law. 93 (May 2002).
[9] Krupp, 19 P.3d at 694.

fund capital facilities that are directly related to a service that the County is authorized by other law to provide. Statutory counties, like Montrose County, have limited express powers provided by statute and such implied powers as may be reasonably necessary to carry out the express powers.

It is our understanding that the County intends to adopt impact fees for the purpose of funding expenditures by or for the following departments: road and bridge; general administration; law enforcement; health and human services; and fairgrounds. Assuming that the County is authorized by other law to provide the services provided by these departments10, and further assuming that the fees generated will be used to purchase or construct "capital facilities" serving such departments (not to simply go into the general fund for such departments), the County has the authority to adopt impact fees for these departments. Again, the use of the funds must be prospective and cannot be used to remedy any existing deficiencies in the facilities of these departments.

TIMING OF IMPOSITION OF IMPACT FEE

With regard to the timing of the imposition of a newly enacted impact fee ordinance or resolution, the statute prohibits the imposition of any impact fee on any "development permit for which the applicant submitted a complete application" prior to the adoption of the impact fee schedule[11]. Accordingly, whether an impact fee can be imposed on an application that was put "into the pipeline" prior to the formal adoption of the impact fee resolution would need to be determined by reference to what constitutes a "complete application" under the local land use regulations.

With respect to whether impact fees can be imposed on building permit applications for lots in projects that were approved well before the impact fees were adopted, the statute is not clear. The statute provides that the payment of impact fees can be imposed as a condition of approval of a "development permit", which is defined as "any preliminary or final approval of an application for rezoning, planned unit development, conditional or special use permit, subdivision, development or site plan, or similar application for new construction".[12] With the exception of the last phrase "or similar application for new construction," all of the types of development permits listed are permits issued by a local government's planning department, rather than its building department. A conservative reading of the statute would be that the

[10] Counties have the express powers to lay out, alter and maintain roads (C.R.S. § 30-11-107(1)(h)) and to provide for the general administration of county affairs (C.R.S. § 30-11-107). The powers to provide and maintain fairgrounds and to provide law enforcement and health and human services may be reasonably implied powers; however, we defer to the legal opinion of the Montrose County Attorney on this issue.

[11] C.R.S. § 29-20-104.5(6).

[12] C.R.S. § 29-20-103(1).

impact fees cannot be imposed as a condition of approval of a building permit in an approved development; however, reasonable minds can differ in this interpretation, and we understand that some local governments nonetheless impose fees at the building permit stage. We also understand that some local governments have remedied the situation by requiring the submittal of a site plan to the planning department as a prerequisite to the issuance of a building permit and including such site plan within the definition of "development permit" under their land use regulations.

ACCOUNTING FOR RECEIVED IMPACT FEES

Finally, all impact fees received by the County must be collected and accounted for in accordance with C.R.S. § 29-1-803.[13] This statute requires that all collected impact fees be deposited in an interest-bearing account that clearly identifies the category, account, or fund of capital expenditure for which the fee was imposed. Each such category, account, or fund must be accounted for separately, and interest earned on the fees must be credited to the account.

Limitation and Disclaimer (Lindsey Nicholson): This opinion letter is delivered solely for the benefit of Montrose County as general background information regarding its proposed adoption of impact fees. It is not to be relied on by any other party or for any other purpose. We are not familiar with and have not, in connection with this opinion letter or otherwise, undertaken any independent investigation of factual matters affecting this opinion, and we disclaim any obligation to do so. The final interpretation of state statutes and case law regarding impact fees and the legality and appropriateness of Montrose County's adoption of any impact fee program should be determined by the Montrose County Attorney and/or its Board of County Commissioners.

[13] C.R.S. § 29-10-104.5(5).

METHODOLOGY

An impact fee can be derived for any service that a county or municipality is authorized to provide to its constituents. While impact fee support studies differ from service to service (roads, law enforcement, parks, administration, etc.) there are a few underlying concepts present in all impact fee analysis:

1. Demand Units
2. Capital Facilities Inventory
3. Level of Service (LOS)
4. Proportionate Share
5. Credits
6. Final Fee

Demand Units: the differing sectors of a population that demand specific services. Typically demand units are divided between the residential, non-residential sectors, and when relevant, report specific units (example: oil and gas wells).

Demand for Law Enforcement services originates from the residential and non-residential sector. The Sheriff's Department responds to calls from both sectors, the courts handle commercial and residential cases, and both sectors produce numerous traffic violations. The demand units for this analysis are residential units and 1000 non-residential floor area.

Capital Facilities Inventory: provides a value of the capital employed by a department to provide a service. This inventory is composed of all capital valued at over $5,000 or that has a life span of more than five years (see Appendix).

Level of Service: measured in two ways, the amount of capital per demand unit and the amount of employees per demand unit. It is an important concept that assigns capital value and employees to current demand units, this is then use as a measure of service levels. Level of service (LOS) is used to extrapolate future capital needs due to growth. For example, if there are 1000 residents and one Town Marshal the current level of service would be .001, if the town grows by 1000 people it would be necessary add an additional Marshal in order to maintain the .001 LOS.

Proportionate Share: the relative amount of demand for services experienced by different sectors. Services provided by governments are not uniformly distributed to all sectors of society due to the differing needs of each sector. Proportionate shares are analyzed on a case by case basis, using many different variables in order to provide a percentage breakdown of how services are used in a given population. For example in a small rural town without significant amounts of commercial properties most demand will originate from the residential sector; but in a large city with shopping malls, office buildings, and manufacturing complexes much of the demand will originate from the non-residential sector.

Credits: provide an equitable method for calculating impact fees. Often governments pay for capital expenditures from general fund accounts that are derived from taxes on the demand unit sectors (property taxes, sales taxes, motor vehicle taxes, etc.). Credits prevent double dipping, thus preventing overcharge. For example, if a portion of road and bridge department capital is paid for by a mill levy upon property, residents and businesses are contributing monies used to a capital expenditures account. If developers were required to pay an impact fee while simultaneously paying property taxes, the resulting fee schedule would account for more than the developer's fair-share. Because this is both unfair and possibly un-statutory, credits must be developed where necessary.

Each credit is spread over a 20 year period; this is to account for the useful lifespan of most capital. By spreading out the credit the full per unit contribution is captured thus eliminating double dipping over a wide time-span. Credits are calculated on a per unit basis and then simply subtracted on a per unit basis from the fee schedule resulting in the final impact fee.

The following basic equations sum up impact fee methodology:

(Proportional Share * Capital Facilities Value) / Demand Units = Fee Schedule

((Departmental Revenues* Proportional Share)/Demand Units)*% Spent on Capital= Credit

Fee Schedule - Credit= Impact Fee

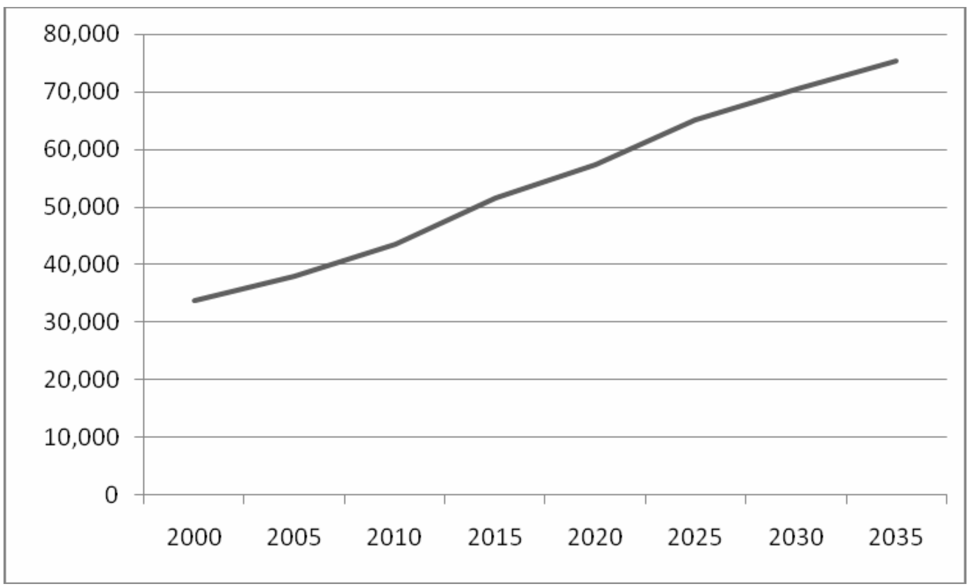
There are additional complexities in each department that depend on a variety of variables, the above equations are meant to outline the general methods by which impact fees are calculated.

NEED, TRENDS, AND RATIONAL NEXUS

POULATION

The Colorado Department of Local Affairs (DOLA) conducts population forecasts for counties and municipalities in Colorado. DOLA forecasts that Montrose will grow at an average rate of 2.33% annually. At this rate, Montrose County's population will total over 75,000 residents by the year 2035.

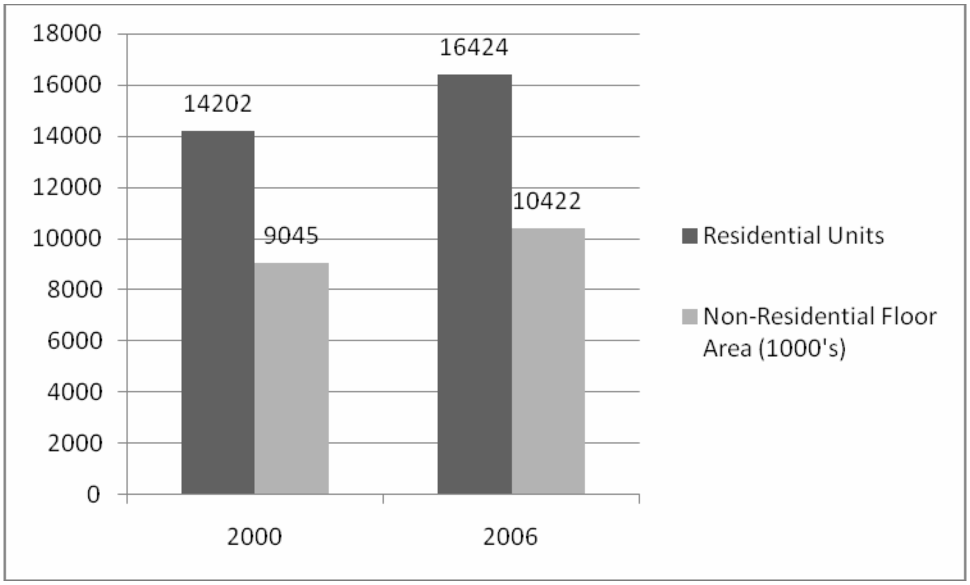
Figure 2 . DOLA Population Forecast Through 2035



CURRENT RESIDENTIAL AND NON-RESIDENTIAL COUNTS

In the past six years Montrose County has experienced a, relatively typical, growth rate of 2.45% in the residential sector and has gained approximately 2,200 new housing units. Additionally, non-residential square footage increased at 2.40%. As the number of housing units and non-residential square footage grows additional strains are placed upon the infrastructure and organizational systems that are charged with providing certain services. Additional demand from houses means additional work for Law Enforcement employees

Figure 3. Number of Housing Units and 1000's of Non-Residential Floor Space 2000 & 2006

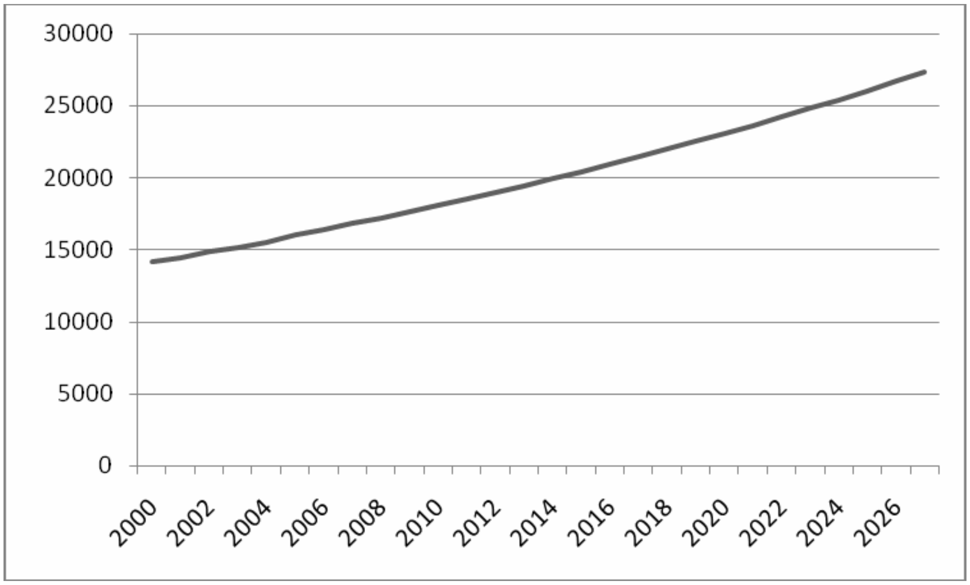


HOUSING PROJECTIONS

Impact fees are meant to provide revenue for capital expansion and maintain existing service levels in the face of future anticipated growth. The analysis in this report relies on growth projections through the year 2027. Projections, as opposed to forecasts, are base upon historical data in order to provide a best estimate as to future conditions. Projections are however subject to a variety of economic, political and, environmental factors that could drastically alter projection numbers.

To acquire a growth rate RPI analysts conducted a number of queries based upon building classification and year built fields with in the Montrose County Assessor Database. The projections are based upon housing counts from the years 2000-2006, this method allowed RPI analysts to get specific demand unit historical data. By 2027 Montrose County is expected to gain more than 11,000 additional housing units.

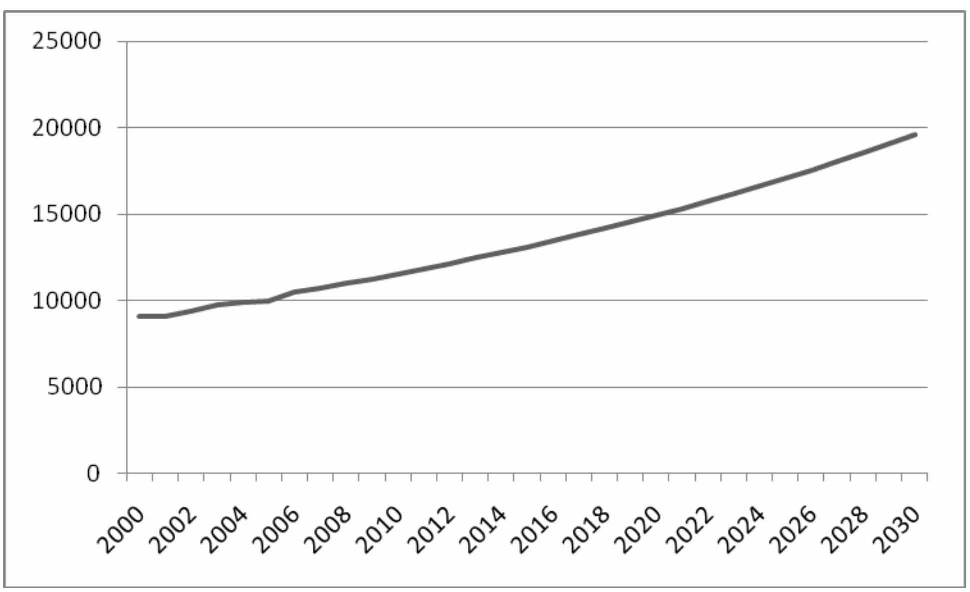
Figure 4. Housing Unit Projection



NON-RESIDENTIAL SQUARE FOOTAGE PROJECTION

The non-residential projection included all properties that cannot be considered residential dwellings, including commercial space, industrial space, and governmental/institutional buildings. By 2030 Montrose County could expect to have a total of 19.5 million square feet of non-residential floor area.

Figure 5. Non-Residential Square Footage Projection (in 1000's)



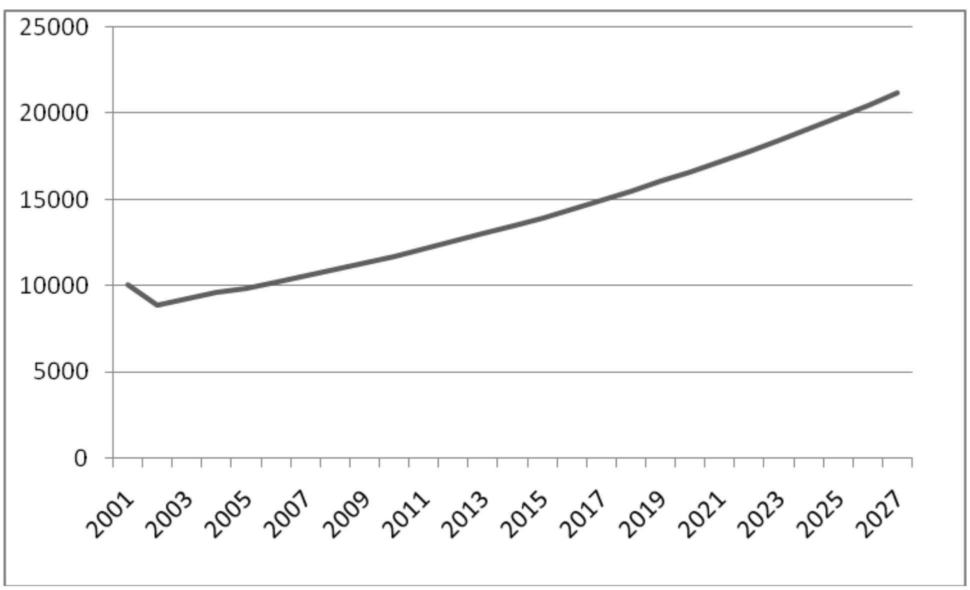
NEED

Historical data makes it clear that Montrose County is experiencing significant housing, non-residential and population growth. Montrose County should expect these trends to continue. The County should be prepared to handle future growth and demands associated with growth, in order to continue to provide its residents with current service levels.

The analysis in this report defines existing capital infrastructure service levels to the residents of Montrose County. A snapshot of 2006 base year was used to obtain current level of service (LOS). If the capital facilities utilized by the Law Enforcement department does not keep pace with growth the level of service currently provided will decline. Thus Montrose County must either accept a declining service rate or find a mechanism for which to pay for the necessary increases for capital facilities.

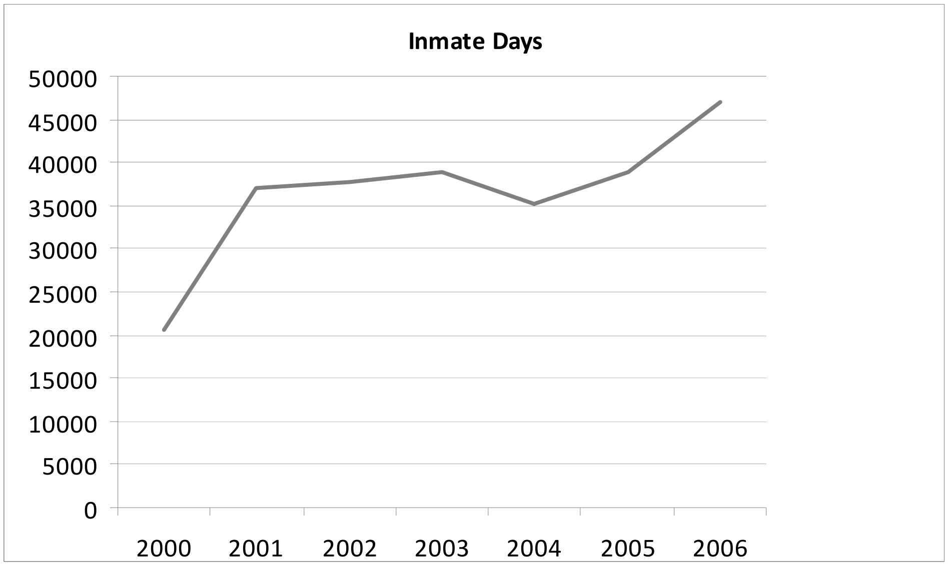
By examining the historical call logs of the Montrose County Sherriff's Department RPI analysts were able to calculate a projection of the total anticipated calls through 2027. Total calls from 2001-2005 grew at an annual average rate of 3.55%. If this rate remains constant, by 2027 the Sherriff's Department can expect to receive over 21,000 calls. This is about twice as many calls as were received in 2005.

Figure 6. Historical Call Data and Total Call Projection



Additionally the number of inmate days provided by the Montrose County Justice Center has increased at an average annual rate of 18%. More inmates results in additional work for Law Enforcement Employees.

Figure 7. Montrose County Justice Center Inmates



IMPACT FEE BASE INFORMATION

The proportionate share, capital inventory, and level of service (LOS) are essential components of impact fee calculations and establish a base value of capital per demand unit upon which the impact fee is further developed.

PROPORTIONATE SHARE

The proportionate share calculation for the Law Enforcement impact fee is based on call data from 2006. Because the majority of law enforcement work originates from a dispatch call this methodology is an accurate way to measure each sectors proportional burden. RPI analysts first obtained a categorical list of all call responses by the Montrose County Sheriff's Department, this included traffic violations. Each type of call was attributed to the appropriate sector. For example fraud, littering and burglary are mostly associated with the non-residential sector while civil matters and domestic calls are attributable to the residential sector (Appendix figure 18).

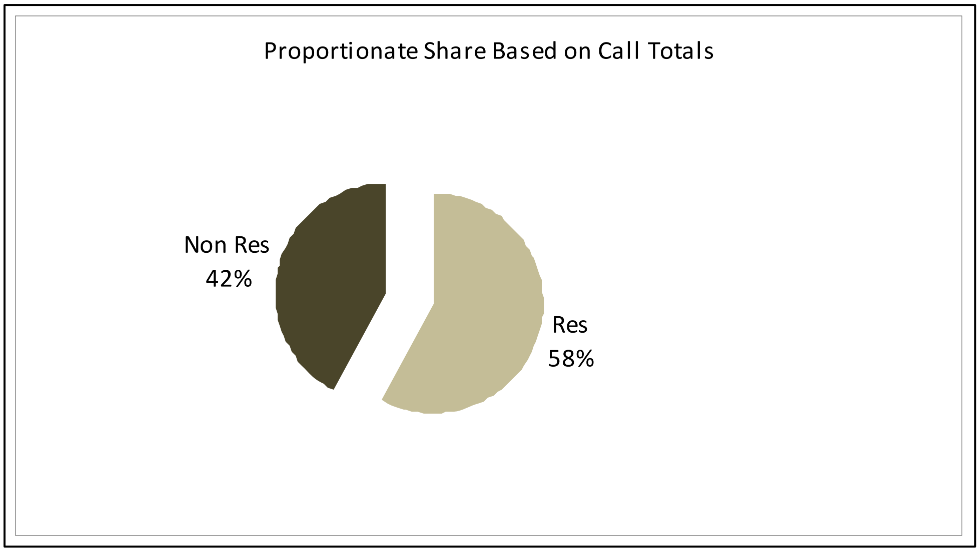
Because traffic related calls are the most common, attributing them solely to one sector or the other would skew the proportional share. Traffic related calls were split between the two populations based upon a simple average daily trip (ADT) methodology. RPI analysts multiplied the average ADT rates[14] for residential and non-residential properties by the total number of demand units. This resulted in a traffic origin percentage which was then applied to the total number of traffic calls handled. The resulting total proportionate share was 58% residential and 42% non-residential (figure 7 and 8).

Figure 7. Proportional Share Based on Responses

Sector	Non Traffic Responses	Traffic Responses	Total	Proportional Share
Residential	3350	2469	5818	58%
Non Residential	1984	2281	4265	42%

[14] *Source: Institute of Transportation Engineers, Trip Generation Handbook 7th Edition*

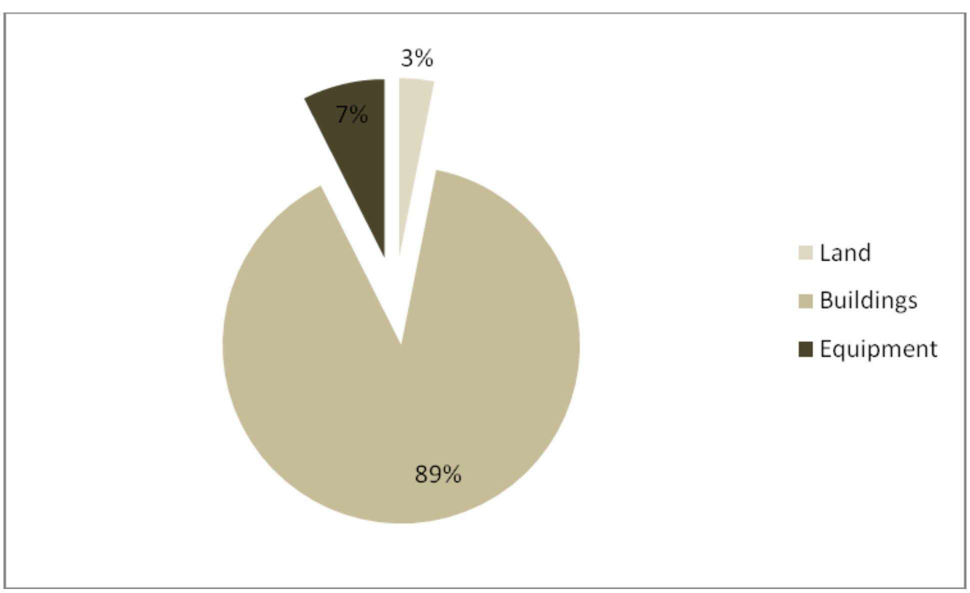
Figure 8. Law Enforcement Proportional Share



CAPITAL INVENTORY

With an active asset listing provided by the Montrose County Finance Director and the Montrose County CIRSA, RPI analysts separated existing capital employed by the County into various departments. Further, RPI analysts utilized the Montrose County Assessor Database to derive an average price per acre for vacant land ($31,186). These calculations were necessary because land is considered capital and must be included in the total value of capital employed by each department. By combing the equipment and building values from the asset listing with the overall price of land a total capital amount is calculated.

Figure 9. Law Enforcement Capital Facility Breakdown



LEVEL OF SERVICE

The analysis used for the Law Enforcement Department partially relies on the employee LOS approach. This approach was used because the demand for Law Enforcement services is directly related to the number of employees facilitating administrative services. Impact fees are designed to help jurisdictions combat the rising costs of capital associated with increasing demand for services. Thus as populations grow in order to maintain the same LOS the County must hire more employees, these additional employees need additional office space and capital investments in order to properly carry out their responsibilities. By using the employee LOS RPI analysts tie the capital cost of an employee to the LOS and ultimately to demographic trends. Simply stated, new growth demands increased services, increases in services necessitate additional employees, and additional employees require additional capital infrastructure.

Figure 10. Law Enforcement LOS

Sector	*Employees/ Sector*	*Employees/ Demand Unit*
Res LOS	*60.01*	*0.007*
Non Res LOS	*43.99*	*0.013*

FEE SCHEDULE, CREDITING, FINAL FEE AND CASH FLOW

FEE SCHEDULE

The fee schedule for the Law Enforcement Departments has two components. The first component is based on a capital cost per employee and an employee LOS. The second component accounts for the services provided by the Justice Center and is based on an inmate days served and inmate capacity LOS.

EMPLOYEE LOS COMPONENT

Calculating the fee schedule for Law Enforcement first required dividing the capital facilities into the three different capital categories; land, buildings, and equipment (excluding the Justice Center). Each of these categories is measured by a specific variable or unit, buildings by square feet, land by acreage and equipment by a dollar value. The units were then converted into a monetary value. For building costs RPI analyst ran a building cost model obtained from the Real Estate Journal; this model is both geographically and structurally relevant. The model yielded a cost of $ 163 dollars per square foot. Land costs were obtained from the Montrose County Assessors database, by sorting parcels of land sold within the last 5 years RPI analyst concluded an average price per acre of $31,186. Equipment is already expressed in dollar terms and no conversion is necessary. Each employee (current service level) requires 55 square feet, this includes: conference rooms, break rooms, bathrooms and hallways. From the costs per unit and the units per employee it is possible to calculate the capital cost per employee. The total capital cost per employee is almost $23,000. These costs were then multiplied by the residential and non-residential LOS to derive a per unit cost (figure 10).

Figure 11. Law Enforcement Employee LOS Impact Fee Calculation

	Unit	Cost/ Unit	Unit/Employee	Cost/Employee	Res LOS	Non Res LOS
Building	Square Feet	$ 163	55	$ 8,934	$ 62.98	$ 115.97
Land	Acreage	$ 31,186	0.008365	$ 261	$ 1.84	$ 3.39
Equipment	$	-	$ 13,520	$ 13,520	$ 95.31	$ 175.51
TOTALS				$ 22,715	$ 160	$ 295

JUSCTICE CENTER BUY-IN

Currently the Montrose County Justice Center (JC) is not operating at full capacity. When operating at full capacity the Justice Center can provide a total of 67,890 annual inmate days.[15] In 2006 the county provided 46,889 inmate days, thus the JC is operating at about 69% of its capacity. Because there is excess capacity at the JC this component of the Law Enforcement impact fee is considered a buy-in. New development is contributing to a capital project that was built in the past but was constructed to provide services to future development.

To calculate the buy-in, analysts first multiplied the gross capital value of the Justice Center by the % of excess capacity to arrive at a value of the unused capacity. This value was then divided by the excess number of days which derived a per inmate day cost. To calculate the inmate days each residential and non-residential unit demands, analysts multiplied the 2006 operating capacity by the proportionate share and then divided the proportional days by each sector's demand unit. It is important to note that this demand does not necessarily mean that on average each housing unit creates demand for 1.42 days of inmate detention. Demand unit's benefit from the services provided by the Justice Center and thus the 1.42 measures both generation and benefit in terms of inmate days served. The days per unit was then multiplied by the cost per day to calculate the final price of the buy-in.

Figure 12. Justice Center Buy-in

Capital Value of Justice Center		$ 17,238,548
Max Capacity	*Total Beds * 365*	67890
Operating Capacity	*2006 Recorded Inmate Days*	46889
Excess Capacity	*Max Capacity - Operating Capacity*	21001
% Excess		31%
% Operating		69%
Buy In Value of Capital	*% Excess * Capital Value*	$ 5,332,549
Excess Capacity Cost per Day	*Buy In Value/ Excess Capacity*	$ 254
Days / Unit Residential	*(Operating Capacity* Proportional Share)/Demand Units*	1.65
Days / Unit Non Residential	*(Operating Capacity* Proportional Share)/Demand Units*	1.90
Residential Cost	*Days/ Unit *Cost Per Day*	$ 418
Non Residential Cost	*Days/ Unit *Cost Per Day*	$ 483

Both LOS methodologies and the buy-in are combined to calculate the final fee schedule (figure 12).

[15] 5 beds are currently contracted out to Ouray County, these 5 beds were not included in the fee structure.

Figure 13. Total Fee Schedule for the Law Enforcement Departments

	Employee LOS Component	Justice Center Component	Total
Residential	$ 160	$ 418	$ 578
Non Residential	$ 295	$ 483	$ 778

CREDIT

To ensure that an accurate and equitable fee is calculated a system of crediting is developed to avoid overcharging new developments fair share of increased capital costs. Although Montrose County does not specifically earmark any revenue for capital facility expenditures, RPI analysts included a crediting section in order to calculate the most accurate fee possible and capture revenue already spent on capital facilities.

The first step in creating the Law Enforcement credit was to analyze historical general fund budgeting trends for the General Fund. RPI analysts obtained the 2004-2006 budgets and created a general fund crediting mechanism that included revenues from: non-departmental sources, administrative departments, law enforcement, and the health department. This process was also applied to the Social Services fund. In addition to revenues, expenditures on capital were averaged over three years. Revenue averages were then multiplied by the appropriate proportionate share. For example, use taxes are all attributable to the residential sector while law enforcement revenue is attributable to both sectors. These calculations resulted in a sector specific revenue contribution. The sector contribution was then divided by the department specific demand units to arrive at a per household contribution. Final calculations involved computing the percentage of revenue spent of capital - this was simply expenditures on capital divided by the sum of the above revenues. On average 1.24% of these revenues is spent on expanding capital. The following equations sum up the general fund credit mechanism:

Capital Expenditures/ Revenues= % to Capital

(((Revenues*Proportional Share)/Demand Units)*% to Capital)*Dept. % of Capital Expenditures= Non-Departmental Revenue Credit

(((Revenues*Proportional Share)/Demand Units)*% to Capital)= LED General Fund Credit

The Law Enforcement credit is summed in figure 14.

Figure 14. LED Credits

	Non-Departmental Credit	General Fund Credit	Total Credit	20 Year Contribution
Residential	$ 2.38	$ 1.72	$ 4.10	$ 82
Non-Residential	$ 2.44	$ 1.45	$ 3.89	$ 78

FINAL IMPACT FEE

The final impact fee is simply the fee schedule minus the 20 year creditable contribution. The final fees are summarized in figure 15.

Figure 15. LED Capital Improvement Impact Fee

	Residential	**Non Residential**
Fee Schedule	$ 578	$ 778
Credit	$ 82	$ 78
Total	$ 496	$ 700

CASH FLOW

RPI analysts performed 2 differing cash flow analyses to provide a picture of what the County could realize in funds with the institution of a Law Enforcement impact fee. The first cash flow analysis is based upon the number of single family building permits issued for the years 2000-2006. Had the fee be in place beginning in the year 2000 the County would have realized $354,985. On average the County would have had almost an additional $50,000 per year to spend on Law Enforcement related capital improvements.

Figure 16. Historical Cash Flow 2000-2006

Year	Permits	LED
2000	102	$ 50,642
2001	90	$ 44,684
2002	95	$ 47,167
2003	87	$ 43,195
2004	122	$ 60,572
2005	127	$ 63,055
2006	134	$ 66,530
Total		$ 375,845

The second cash flow analysis is based upon the residential and non-residential projections. This analysis is less conservative and includes non-residential development. Neither of these analyses should be used for budgeting purposes, they are simply intended to provide the County with an idea of what the revenue streams from this impact fee could look like. Because the fee is only applicable to development in the non-incorporated area of Montrose County un-incorporated projections were used to find the total amount of revue that could be expected by 2027. RPI emphasizes that these cash flow analyses are meant to be conservative by nature and these revenue streams are suspect to any number changes in that might occur in Montrose County.

Figure 17. Total Revenue through 2027 from LED Impact Fee

	LED Impact Fee Projected Revenue Totals Through 2027
Residential Revenue	$ 1,377,768
Non Residential Revenue	$ 588,107
Total	$ 1,965,875

IMPLEMENTATION AND ADMINISTRATION

WHO IS SUBJECT TO THE FEE?

RPI recommends that the fee should be applied to all building permits for new residential construction in the County boundaries. The fee should be applied to development on existing platted vacant lots and to development that may occur in the future. The fee should not apply to residential remodels since these do not typically result in increased traffic generation. The fee should not be applied to the replacement of any existing legal residential unit, as this is against the law.

EXEMPTION FOR AFFORDABLE HOUSING

The impact fee Statute includes specific provisions allowing (but not requiring) local governments to exempt "low or moderate income affordable employee housing" from impact fees:

> *…a local government may waive an impact fee or other similar development charge on the development of low- or moderate- income housing or affordable employee housing as defined by the local government.*[16]

If the County chooses to consider an exemption or reduction in fees for affordable housing, several issues should be explored.

1. How does the County define affordable housing? The first step would be to determine how to measure affordability. Typically, affordability is based on the earning power of local households or prospective newcomer households, but local circumstances might make additional considerations necessary (such as commuter households with higher earnings in adjacent counties).

2. After affordability is defined, the question becomes: How does this affordability, or local households' ability to pay for housing relate to the construction of *new units* of various types and sizes? In other words, how does the County go from defining affordability (usually defined in terms of an affordable price) to setting some exemption threshold? Would the exemption be based on size, unit type, location? Other issues relate to real estate market dynamics and the

16 CRS. 29-20-104.5

fact that housing that is affordable in today's market may be unaffordable in next year's market.

3. A waived fee can be a market cue, creating incentives for certain types of development and disincentives for other types. For example, the County conducts an analysis and finds that affordable housing, as defined by local earning power, includes mobile homes and apartments. If the County grants an exemption for affordable housing defined in such a way, it may create incentives for this type of development. This may be good, bad, or benign, depending on the County's ability to provide services to these denser development types without jeopardizing service levels or other community goals or values.

4. Finally, if the County waives fees for development of a certain type, or below a certain size, how does it propose to maintain service levels for County services given the waived revenue? The population occupying the affordable housing will draw upon general government facilities the same as other residents, but will not be paying the fee. Maintaining service levels may require the County to make up for the waived revenue from other funds.

In short, the County likely has full authority to create a waiver or discount for affordable housing, but implementing such waivers or discounts requires careful analysis of regional labor force dynamics, real estate markets, and may require some expenditure out of other funds to compensate for waived revenues.

EXEMPTIONS FOR CERTAIN PUBLIC FACILITIES

Montrose County may wish to waive impact fees for some public facilities (classified as government /institutional /community facilities). For example, the County might consider exempting all government and special district facilities from the impact fee. Fundamentally, services and facilities provided by governments (local, state, and federal) and special districts all serve the same end, to provide some type of service to residents, businesses, and visitors.

WHEN TO COLLECT THE FEE

Given the Impact Fee Statue language, it may be advisable for the County to collect the Law Enforcement Impact Fee prior to the issuance of a building permit when permit fees are collected. This approach is sensible in the context of impact fees because the impacts are experienced when the development takes place. Furthermore, Developers generally prefer this method because it minimizes the amount of time they are required to carry the cost of the fee before they can pass it off to the buyer. Ultimately this decision is up to the County, as of yet the State Statues do not provide a clear cut time upon which impact fees need to be paid.

OTHER CONSIDERATIONS

- Be certain that the goal of requiring new development to pay its fair share of the costs of LED capital related improvements is a clearly stated goal, objective, or policy in the County's Master Plan.
- Adopt the fee schedule by resolution or ordinance into the land use code.
- The fee schedule, applicability, and purpose should be located or referenced in the Zoning Development Permit section of the Code.
- The Zoning Development Permit section of the Code should be amended to require the payment of the adopted LED impact fees prior to the issuance of a building permit.
- Include within the resolution or ordinance legislating code amendments a statement concerning the purpose of the fee (to require new development to pay its fair share of the costs of LED related improvements). Also note provisions to sequester the funds and stipulate the purposes of their expenditure.
- Adopt language into the code allowing for an administrative appeal process for the Law Enforcement impact fee. The ability to appeal should be granted to applicants for development as well as to the fee administrator. In practice, an applicant for appeal would be appealing a determination of the fee administrator. Given that the fee administrator will most likely be the County Manager or an assistant to the Manger, the appeal would best be directed towards the County Commissioners. Additionally, an appeal could be delegated to the specific department head. Generally, an appeal of a determination of an impact fee must occur within a certain window of time after the fee determination is made (15 days is typical). Statutory time limits on appeals can also limit the amount of time the County has to schedule the appeal hearing, and public notice should be provided to adjacent property owners and affected parties or more broad public notice should occur in the newspaper. [17] A fair administrative appeal process is a necessary tool for resolving conflicts and avoiding litigation.

UPDATING THE FEE

All of the revenue received from the implementation of this impact fee must be kept in a separate interest bearing account, and must be used only for projects that are related to Law Enforcement capital improvement. It is important that the monies garnered be placed in an account to accrue interest so that the fee revenues are not devalued by inflation.

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17 The County will need to research the specific time limits and noticing requirements surrounding this type of appeal.

Furthermore, RPI recommends that the fee undergo periodic revision and updating. The fee should be updated every year to account for inflation in the cost of construction. McGraw Hill construction is the authority on construction inflation and conducts ongoing studies of construction costs to produce a construction inflation index. Since 1990 the construction prices have increased on average 3% due to inflation (figure 17 and 19).

Figure 18. Inflationary Increase to the LED Impact Fee

Year	Residential	Non Residential
2007	$ 496	$ 700
2008	$ 511	$ 721
2009	$ 527	$ 743
2010	$ 543	$ 765
2011	$ 559	$ 788
2012	$ 576	$ 812
2013	$ 593	$ 836
2014	$ 611	$ 861
2015	$ 629	$ 887
2016	$ 648	$ 914
2017	$ 667	$ 941
2018	$ 687	$ 969
2019	$ 708	$ 998
2020	$ 729	$ 1,028
2021	$ 751	$ 1,059
2022	$ 774	$ 1,091
2023	$ 797	$ 1,124
2024	$ 821	$ 1,157
2025	$ 845	$ 1,192
2026	$ 871	$ 1,228
2027	$ 897	$ 1,265

Note on using 2006 dollars: All of the costs and fees are calculated in 2006 dollars throughout this support study. This is a consistent method because RPI assumes that the revenues collected will be invested to keep up with inflation while the fee amount will be adjusted at least every two years to keep up with inflation. So long as these accounting practices are followed, this revenue system will very closely keep up with inflation. For this reason, it was not necessary to calculate costs using dollar values from future or past years.

APPENDIX

Figure 19. Law Enforcement Capital Inventory

ASSET	DESCRIPTION	LAST APPR VAL
'199__	'MASTRIII 150.8-174__	$ 5,039
'200__	'MASTRIII 150.8__	$ 5,039
'202__	'MOTOROLA RADIO COMM EQUIPMENT__	$ 12,831
'204__	'1994 FORD BRONCO SW__	$ 17,459
'205__	'1994 FORD BRONCO SW__	$ 17,459
'206__	'1994 FORD BRONCO SW__	$ 14,370
'208__	'1995 FORD BRONCO SW__	$ 14,226
'209__	'1995 FORD BRONCO SW__	$ 14,226
'210__	'1995 FORD BRONCO SW__	$ 14,226
'211__	'1995 CHEVY TAHOE__	$ 28,000
'213__	'1996 CHEVY ASTRO VAN__	$ 22,258
'214__	'1996 CHEVY TAHOE__	$ 32,816
'215__	'1996 JEEP CHEROKEE SW__	$ 17,436
'216__	'1996 JEEP CHEROKEE SW__	$ 16,906
'220__	'1997 CHEVY BLAZER S-10__	$ 23,850
'221__	'1997 CHEVY BLAZER S-10__	$ 23,850
'222__	'1997 CHEVY PICK-UP__	$ 20,661
'224__	'1997 CHEVY TAHOE__	$ 28,907
'225__	'1998 CHEVY PICK-UP 1500-GMAC__	$ 24,188
'226__	'1999 JEEP CHEROKEE__	$ 22,183
'227__	'1999 JEEP CHEROKEE__	$ 22,183
'228__	'1999 JEEP CHEROKEE__	$ 22,183
'229__	'1999 JEEP CHEROKEE__	$ 22,183
'230__	'1999 JEEP CHEROKEE__	$ 22,183
'233__	'2001 GMC PICK-UP__	$ 22,925
'234__	'2001 JEEP CHEROKEE__	$ 22,015
'235__	'2001 JEEP CHEROKEE__	$ 22,015
'236__	'2001 JEEP CHEROKEE__	$ 22,015
'237__	'2001 JEEP CHEROKEE__	$ 22,015
'239__	'2001 JEEP CHEROKEE__	$ 22,015
'240__	'2001 JEEP CHEROKEE__	$ 22,015
'241__	'LINESCAN SECURITY MACHINE__	$ 34,275
'243__	'FUJITSU DX2300 PRINTER__	$ 12,431
'245__	'2000 CHEVY ASTRO VAN__	$ 11,691
'246__	'2000 CHEVY ASTRO VAN__	$ 11,691
'264__	'MONTROSE COUNTY JUSTICE COMPLEX__	$ 592,003

'336__	'2004 FORD EXPEDITION XLT 4X4__	$ 24,415
'337__	'2004 FORD EXPEDITION XLT 4X4__	$ 27,257
'338__	'2004 FORD EXPEDITION XLT 4X4__	$ 27,608
'339__	'2004 E-350 FORD TRANSPORT VAN__	$ 24,011
'340__	'2004 FORD F-250 CREW CAB PICK-UP__	$ 25,966
'341__	'2005 TAHOE TRAILER 5TH WHEEL__	$ 31,967
'346__	'RASPBERRY REPEATER RADIO__	$ 14,997
'347__	'THERMAL IMAGER__	$ 17,029
'348__	'DAY/NIGHT VISION CAMERA__	$ 12,820
'357__	'2005 FORD EXPEDITION__	$ 28,422
'358__	'2005 FORD EXPEDITION__	$ 27,710
'359__	'2005 FORD EXPEDITION__	$ 27,898
'360__	'2005 FORD EXPEDITION__	$ 28,073
'361__	'2005 FORD EXPEDITION__	$ 27,495
'451__	'RAID ARRAY & TAPE DRIVE PEI SERVER UPGDE__	$ 7,240
'585__	'RADIO COMBINERS FOR COMMAND TRAILER__	$ 190,000
'594__	'PRIMS PROPERTY ROOM INFO SYSTEM__	$ 5,969
'647__	'2006 FORD EXPLORER XLT 4X4__	$ 26,237
'648__	'2006 FORD EXPLORER XLT 4X4__	$ 25,902
'649__	'2006 FORD EXPLORER XLT 4X4__	$ 28,382
'651__	'2006 DODGE CARAVAN__	$ 17,354
'653__	'2006 FORD EXPLORER XLT 4X4__	$ 25,797
'654__	'2006 FORD EXPLORER XLT 4X4__	$ 26,679
'656__	'2006 CHEVROLET IMPALA__	$ 17,100
'663__	'RAINIER DUAL CORE PENTIUM D TOWER SERVER__	$ 5,603

Figure 20. Construction Inflation

McGraw Hill Construction Inflation Index	*% Inflation*	
1990	*4732*	
1991	*4835*	*2.2%*
1992	*4985*	*3.1%*
1993	*5210*	*4.5%*
1994	*5408*	*3.8%*
1995	*5471*	*1.2%*
1996	*5620*	*2.7%*
1997	*5826*	*3.7%*
1998	*5920*	*1.6%*
1999	*6059*	*2.3%*
2000	*6221*	*2.7%*
2001	*6343*	*2.0%*
2002	*6538*	*3.1%*

2003	*6694*	*2.4%*
2004	*7115*	*6.3%*
2005	*7888*	*3.2%*
Average		*3.0%*
Source: McGraw Hill Construction		