

A Primer on GMA-Based Impact Fees

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What are Impact Fees?

- A one-time charge imposed as a condition of permit approval on new development.
- Intended to cover a portion of the costs of the new public facilities needed to serve the new development.
- Authorized as part of GMA.
- Relevant statutes: RCW 82.02.050-.100

How are Impact Fees Imposed?

- Through local ordinances implementing the RCWs.
- RCW 82.02.060 sets forth mandatory and permissive components.
- Must include a formula for calculating IFs that considers both the type of new development (residential, commercial, industrial, etc.) and the cost of the necessary public facilities per unit of development.

What Limitations Apply to Impact Fees?

- For System Improvements Only
- System improvements = public facilities that are included in the jurisdiction's capital facilities plan and that are designed to provide services to service areas within the community at large.

What Limitations Apply to Impact Fees?

- Limited to:
 - Public streets and roads
 - Publicly owned parks, open space and recreational facilities
 - School facilities
 - Fire protection facilities outside a fire protection district
- IFs may not be used to fund project improvements.
- IFs may not be used to remedy pre-existing deficiencies; must serve new development.

Other limitations: Compliant Capital Facilities Plan

- Jurisdictions planning under the GMA are prohibited from imposing or collecting impact fees when their Comprehensive Plans are out of compliance with the GMA.
- Case: *James v. Kitsap* (2005) – raised but not addressed

Other limitations: No “Double Dipping”

- A jurisdiction cannot require a developer to pay in more than one way for the same improvement.
- Jurisdictions are required to provide a credit against impact fees for the cost of any project improvements that are also on the jurisdiction’s capital facilities plan.
- Interplay with SEPA.
- Case: *United Development Corporation v. City of Mill Creek* (2001)

Other limitations: Dual Rational Nexus Test

- BIG ISSUE. The language of the statutes and the case law interpretations seem contradictory.
- Statutory language: RCW 82.02.050(3), 82.02.090(3)
- Case: *Drebick v. City of Olympia* (2006).
- National attention for evisceration of nexus and rough proportionality requirements.

Other limitations:
Geographic Scope of IFs

- Limited to a jurisdiction's corporate boundaries.
- Case: *Nolte v. Olympia* (1999)
- Interlocal agreement "fix."

Other limitations:
System improvements must have
other public funding sources.

- IFs intended to provide only a portion of the total cost of any public facility necessary to serve new development.

Other limitations:
Mandatory Administrative Appeal
Process

- Jurisdictions are required to provide an administrative appeal process for challenging the imposition or amount of IFs.
- Modifications to IFs authorized based on “principles of fairness.”

Other limitations:
Deadline for Expenditure and
Refunds

- In general, IFs must be expended or *encumbered* within 6 yrs of collection.
- If not expended or encumbered within established period, must be refunded with interest.

Other limitations: Payment Under Protest

- Developer not required to wait until its IF challenge is resolved to move forward with project.
- BUT, developer must expressly “pay under protest” to reserve right to appeal.
- *Case: Sundquist Homes v. Snohomish County*, (WD Wash 2003)

Other Big Picture Issues: Are IFs Taxes or Development Regulations?

- Balance currently tipped in favor of concluding that IFs are like taxes, not development regulations.
- Result: NO VESTING. IFs may be imposed up until and through final construction permit approvals.

Taxes or Regulations?

- Cases:

Pavlina v. City of Vancouver (2004)

Wellington River Hollow, LLC, v. King County (2004)

United Development Corporation v. City of Mill Creek (2001)

Other Big Picture Issues: Appeal Deadline

- Case: *James v. Kitsap* (2006).
- Holding: Impact fee challenges are subject to LUPA's strict 21-day appeal period.
- Highlights again tax v. regulation issue.