



MEMORANDUM

TO: Chris Yuen, County of Hawai'i Planning Department
FROM: Clancy Mullen, Duncan Associates
DATE: March 1, 2006
RE: Infrastructure and Public Facility Needs Assessment Study – Ordinance Issues Memo

The purpose of this memorandum is to present the consultant team's recommendations on major policy issues that will be involved in implementing an impact fee ordinance for Hawai'i County. A glossary of impact fee terms is also attached as an appendix.

Impact fees are subject to specific requirements that do not apply to other types of fees or taxes. The courts have developed guidelines for constitutionally valid impact fees, based on a "rational nexus" that must exist between the regulatory fee or exaction and the activity that is being regulated.

I. SUMMARY OF RECOMMENDATIONS

A. Types of Fees. The proposed impact fees are for roads, parks, fire, police, solid waste and wastewater facilities.

B. Treatment of Existing Lots. Instead of making a recommendation, we have laid out a number of alternatives in the following discussion, which are briefly summarized below.

Option 1: Existing lots of record can build one dwelling unit without paying a fee.

Option 2: The County pays the fees for existing lots of record to build one single-family unit.

Option 3: Owners of existing lots of record have 2-5 years after ordinance adoption during which they could apply for a building permit for one dwelling unit without paying impact fees.

Option 4: Exclude the Puna and Ka'u Districts, where most of the existing lots are located, from the impact fee system, which means no impact fees would be collected there and no impact fee money would be spent there.

C. Time of Assessment/Collection. It is our recommendation that the impact fees should be collected at the time the building permit is issued. Impact fees could be assessed (meaning that applicants for development approvals are given notice of the obligation to pay impact fees) at an earlier time (e.g., subdivision approval).

D. Pre-Ordinance Credits. If developers have paid fair share assessments or made in-kind contributions for projects that have not been completed, impact fees should be reduced or eliminated for any remaining development in those projects.

E. Post-Ordinance Reimbursements. If developers are required or agree to dedicate land or make eligible improvements for impact fee facilities after the effective date of the ordinance, they should be reimbursed from impact fees for the value of those improvements.

F. Assessment Districts. All fees should be calculated county-wide and assessed with a uniform, county-wide fee schedule.

G. Benefit Districts. Fees should be earmarked to be spent on the side of the island (east or west) in which they were collected (see Figure 1). Park fees should have five benefit districts (see Figure 2).

H. Affordable Housing Projects. Rather than waive fees for affordable housing projects, the County intends to appropriate other funding to pay the impact fee for such projects.

I. Progressive Residential Fees. Single-family fees should vary by the size of the dwelling unit to reduce fees for smaller units.

J. Cost Recovery. The impact fee study will calculate maximum fees that can be charged. Preliminary analysis indicates that the total maximum impact fees will exceed the current total fair share assessments. The County will be able to adopt impact fees at any percentage up to 100 percent of the maximum fees.

K. Phase-in Period. The recommended effective date of the impact fee ordinance is one year after the adoption date. During the one-year phase-in period, the fair share assessments would continue to be in effect. Following this initial phase-in period, the fees could be gradually increased up to the ultimate desired “cost recovery” level over a year or more.

II. DETAILED DISCUSSION

A. TYPES OF FEES

The proposed impact fees would replace the current fair share assessments for roads, parks, fire, police and solid waste facilities. An additional fee is proposed for wastewater facilities in areas where this service is available.

B. TREATMENT OF EXISTING LOTS

The most critical issue is how to treat existing lots of record. In most jurisdictions that have adopted impact fees, how to treat existing lots is a minor issue. Generally, the supply of such lots is limited, and if they are grandfathered or otherwise exempted from impact fees the overall effect on impact fee revenues is short-lived and relatively minor. However, this is not the case in Hawai'i County. A recent analysis indicates that there are about 64,000 undeveloped residential lots in the county. This exceeds the total number of housing units on the island at the time of the 2000 census (62,674). Of the roughly 2,000 permits of single-family detached units issued by the County annually, it has been estimated that about one-third of these new homes are being built on lots that were created in the 1950s and 1960s.

The perception exists that many of these lots are owned by local residents who intend to build a home for themselves in these older subdivisions. While this is undoubtedly true to some extent, it is far from the typical case. An analysis of property tax records indicates that only about 14 percent of existing vacant residential lots are owned solely by Big Island residents, and two-thirds are under the exclusive ownership of non-Big Island residents (see Table 1). The remaining 17 percent are owned by multiple owners with some Big Island resident participation, but it is likely that most of these lots are being held as an investment, rather than as a future home site. The investment motive probably holds for a good number of the Big Island owners as well. So the number owned by Big Island residents who plan to build a home on them is probably considerably less than 9,000 lots. To put that number in perspective, it represents less than five years of single-family building permit activity in Hawai'i County at current development rates.

Table 1
OWNERSHIP OF VACANT RESIDENTIAL LOTS

Ownership	# of Lots	Percent
Big Island-Single Owner	9,123	14.20%
Big Island-Multiple Owners	175	0.30%
Mixed Big Island/Other Owners	10,747	16.70%
No Big Island Owners	44,175	68.80%
Total Vacant Residential Lots	64,220	100.00%

Source: Hawai'i County Real Property Tax Administrator, January 7, 2006 (data base excludes lots that are (1) over 20 acres, (2) already improved with \$10,000 or more worth of yard or outbuilding improvements, or (3) commercial, industrial or resort hotel tax classifications or zoning, and all roadway, governmental and utility parcels.

There are several alternative for dealing with this issue. Four options are outlined below.

Option 1. One of the options that is under consideration is to allow any existing lot of record to be developed with one dwelling unit without paying an impact fee. Any additional dwelling units or any nonresidential development on the lot would be required to pay an impact fee. A concern here is that if the amount of development not paying the fee is large, the impact fees will not be sufficient to provide the level of service that the fees are intended to provide.

Option 2. Instead of waiving fees for the first dwelling unit on existing lots of record, an alternative would be for the County to use other funding sources to pay the impact fees for a single-family dwelling unit on existing lots. This approach ensures that the funding in the impact fee account is sufficient to maintain the level of service on which the impact fees are based. The County would not need to pay fees for existing lots for which fair share assessments had been paid, since the credit for such payments would likely offset any impact fees assessed.

Assuming total impact fees of \$10,000 per unit and that 1,000 of the 2,000 single-family houses being built each year are on existing lots of record for which fair share assessments had not been paid, a \$10 million annual appropriation would be required. Since the likely source of the appropriation would be property taxes, and since new development paying the fee would be generating some of those property tax revenues, the fees would need to be reduced by a credit that takes this into account to avoid double-charging (new development paying the fee should not have to pay the full share of their costs, while also having to pay for part of the costs attributable to new development that is having their fee paid by the County).

Option 3. An alternative to a permanent waiver of fees for the first dwelling unit is to make it a temporary transition provision. For example, the state impact fee enabling act in Texas allows owners of lots that were subdivided prior to the impact fee ordinance to pull a building permit within one year following adoption of the ordinance without being required to pay the fee. A longer time period than one year could be considered, but it should probably not exceed five years. The transition exemption could be a blanket one that applies to all building permits for all existing lots, or a more limited one such as the one-unit-per lot approach described above. If structured as a transition provision, the effects of the exemption would be minimal when viewed from a long-term perspective. For example, assume that a park impact fee includes a three-year “grace period” during which fees are not charged on one unit per lot. In the first year, none of the 2,000 single-family permits is assessed a fee, while virtually all 3,000 multi-family units pay. In the next two years, the number of units exempted would likely drop as the supply of newly-created lots declines, so perhaps a total of 4,000 single-family units would be exempted. Over the first ten years of the program, about 50,000 units would be built, of which less than 10 percent would be exempted due to the transition provision. The percentage would be even less for road, fire and police impact fees, which also apply to nonresidential development.

Option 4. A fourth alternative would be to exclude the area where most of the existing lots are located (i.e., Puna and Ka‘ū Districts) from the impact fee system. Exclusion means that no impact fees would be collected in this area, and no impact fees would be spent there. Exclusion would not have to be permanent. For example, for Kansas City, Missouri, we first developed arterial street impact fees for the area north of the Missouri River, before preparing impact fees for the southern part of the city. In each area, the older part of the city that was annexed prior to 1950 was excluded from the impact fee system.

C. TIME OF COLLECTION/ASSESSMENT

The current fair share assessments are imposed during the rezoning process, and are collected prior to final subdivision approval for single-family lots and prior to site plan approval for multi-family and hotel/motel development. Collection at time of subdivision would be incompatible with our recommendation that single-family homes be assessed on the basis of dwelling unit size, since the square footage of the home is not known at that time. While there is no inherent reason why multi-family and nonresidential fees could not be collected at time of site plan approval, site plan approval is not required for single-family units, and it would seem to be simpler and more administratively efficient to collect all impact fees at the same point in the development process. For these reasons, we recommend that the impact fees be collected at the time of building permit for all land uses.

While the fees should be collected at building permit, they could be assessed at an earlier time. Assessment can mean several things. It can simply be notice that impact fees will need to be paid at building permit, based on the fee schedules that are in place when the building permit is applied for. Or it can mean that the fee schedule in place at the time of assessment is the one that will apply to the property. Assessment of fees at subdivision would essentially be the same as waiving impact fees for any existing lot that was already subdivided at the time of ordinance adoption or that could be developed without subdivision.

D. PRE-ORDINANCE CREDITS

Some building permits will be issued in projects for which developers have already paid fair share assessments. To prevent double-charging, it will be necessary to either reimburse the developer, or to reduce or eliminate the impact fees that are charged for those building permits. Since the developers passed along the cost of the fair share assessment to the extent possible in the sale of the lots, reimbursing the developers would have the effect of handing them windfall profits. A better alternative might be to reduce or eliminate the impact fees due to be paid at building permit.

We recommend the following approach. Prior to the effective date of the ordinance, County planning staff would need to identify all parcels or subdivisions for which fair share assessments have been paid, and the amounts paid for each type of facility. If the project is built-out, no credits would be needed. If no development has yet occurred, the credit would be the amount paid, adjusted for inflation since the time of payment. If building permits have already been issued for a particular subdivision, but some development potential remains, the credit would be the amount paid, adjusted for inflation, less what the subdivision would have generated in impact fees had the fee schedule been in place. The resulting credit amounts would be available to offset impact fees otherwise due for building permits issued for the applicable parcels or within the subdivisions on a first-come, first-served basis until the credits are exhausted. The amount of the credits would be annually adjusted for inflation, using the same index that is used for the impact fees. A time limit, such as ten years, could be imposed on the use of the credits.

Fair share assessments that were imposed as a condition of zoning approval, but have not yet been paid by the effective date of the impact fee ordinance (because the property has not been subdivided or site-planned) would be replaced by the obligation to pay impact fees at the time of building permit.

Another issue that must be addressed is credits for developers who made impact fee-eligible contributions prior to the impact fee ordinance, but who did not receive credit against fair share

assessments for the value of those contributions. We recommend that credits be provided for these types of improvements in much the same way as credits for fair share assessments.

E. POST-ORDINANCE REIMBURSEMENTS

For fair share assessments and pre-ordinance contributions, we have recommended credits that run with the land rather than developer reimbursements. So it may make sense to use the same approach when dealing with new developer exactions that occur after the impact fee ordinance is in place. However, an alternative approach is at least worthy of consideration, since the fair share credits affect a limited number of parcels and will expire in a certain number of years.

The alternative approach is to reimburse developers who make eligible improvements with impact fees collected from other developers who do not. This approach was pioneered by Raleigh, North Carolina when it established road and park impact fees in 1987, and although it has not been widely emulated by other jurisdictions, we think it has much to recommend it. Raleigh enters into a reimbursement agreement with each developer who makes an impact fee-eligible improvement. If the improvement is an expensive one, the reimbursement is scheduled to occur over a five-year period, subject to available funding. The City also categorizes each developer contribution as Priority I or Priority II. Priority I projects include dedication of land or right-of-way and projects in the City's five-year capital improvements plan. Each year, the City sets aside a percentage of impact fees collected in each benefit zone (20 percent of park fees and 27 percent of road fees) into reimbursement accounts. If the reimbursement account has sufficient funds to pay all reimbursements owed for that year, all developers with outstanding reimbursements for that year receive full payment. If the funds are insufficient to reimburse all developers, developers with Priority I improvements are reimbursed first. If funds are still insufficient, each Priority I developer receives a pro rata share of his reimbursement amount, with the unpaid amount rolled over to the next year.

The reimbursement approach used by Raleigh is considerably simpler to administer than a credit approach, and it also has the advantage that a predictable percentage of impact fee revenue is available to the local government to program for priority improvements. The first advantage would not be as pronounced for Hawai'i County for the first few years, since staff would need to track fair share assessment credits for a number of years. However, those credits would affect a limited number of properties and would disappear after a few years. After that, the collection of fees at the building permit counter would be automatic for all permits, with no need to check to see if credits are available to offset the fees. The second advantage would also be somewhat attenuated in the first few years, since fair share credits would reduce the amount of fees collected, but the County would be guaranteed that subsequent developer contributions would not consume more than a fixed percentage of potential impact fee revenues.

Our recommendation is that the County consider using a reimbursement approach similar to Raleigh's for post-ordinance developer contributions.

F. ASSESSMENT DISTRICTS

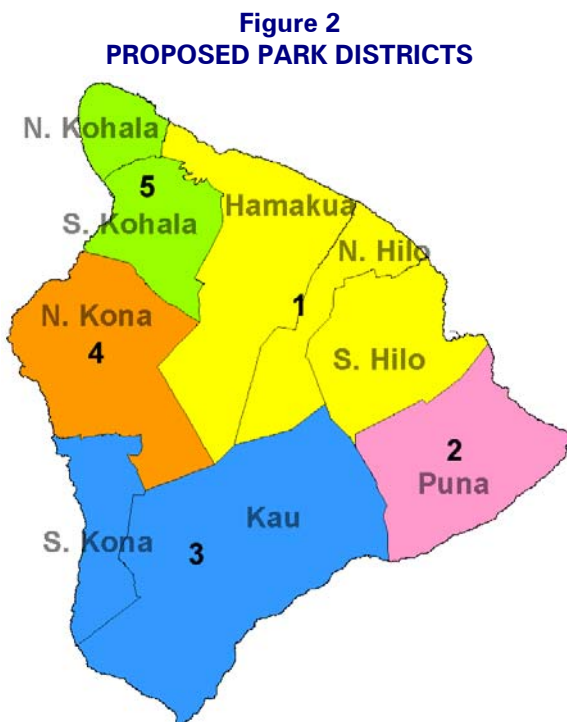
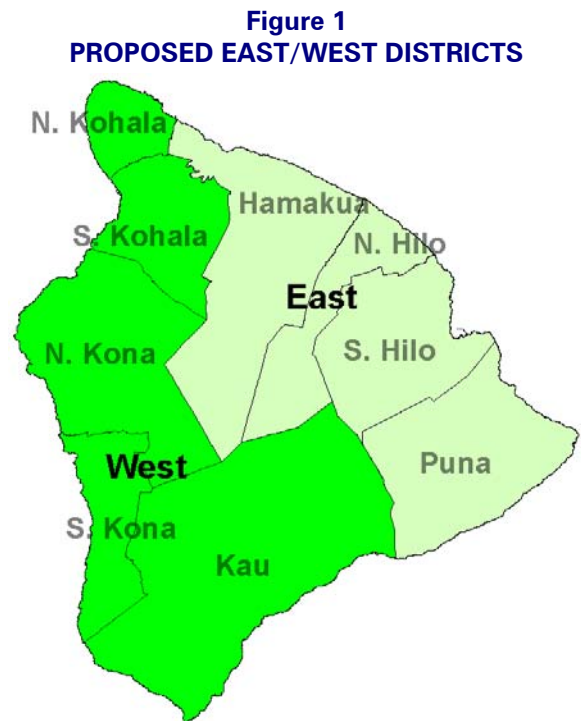
In an impact fee system, it is important to clearly define the geographic areas within which impact fees will be collected and within which the fees collected will be spent. There are really two types of geographic areas that serve different functions in an impact fee system: assessment districts and benefit districts. Assessment districts, which may also be called service areas, define the area within which a set of common capital facilities provides service, and for which a fee schedule based on average costs within

that district is calculated. It is recommended that there be only one, county-wide assessment district. In other words, all fees will be calculated on a county-wide basis. While there may be some geographic variations in land and construction costs, any additional accuracy in fee calculations would be offset by greater complexity and administrative difficulty.

G. BENEFIT DISTRICTS

Benefit districts represent an area within which the fees collected must be spent. They ensure that improvements funded with impact fees are constructed within reasonable proximity of the fee-paying developments as a means of helping to ensure that developments benefit from the improvements.

Concern has been expressed that a broad-based impact fee should be restricted to internal subdivision improvements like roads and parks, because otherwise owners of individual lots would not feel they were getting any benefit. However, It would not be practical to make every subdivision its own benefit district, as some of them will have little development. Most types of facilities serve a much larger area. Given the size of the island, it may be necessary at a minimum to have East and West benefit districts for all types of facilities. Any benefit district boundaries should match judicial district boundaries to the extent practical. Suggested benefit district boundaries for roads, fire, police and solid waste facilities are illustrated in Figure 1. The proposed east/west benefit district boundaries conform with existing judicial district boundaries. In proposing the benefit district boundaries, the Consultant attempted to balance current population and projected population growth.



Since parks tend to serve a smaller geographic areas than other facilities, it is recommended that the County create several benefit districts for park impact fees. The County currently restricts fair share assessments to the judicial district in which they were collected. There are nine judicial districts, and these were utilized in developing five proposed park development districts shown in Figure 2. Some of the judicial districts were combined since fewer benefit districts provide greater flexibility in the expenditure of fees collected. In developing the districts, the consultant looked at existing parks and development patterns and combined several districts to create five park and recreation impact fee benefit districts.

Wastewater impact fees could be subject to either the east/west or the five benefit districts, but would need to be further restricted to be spent only to improve the system that the fee payer is physically connected to. Language in the ordinance would allow revenues collected

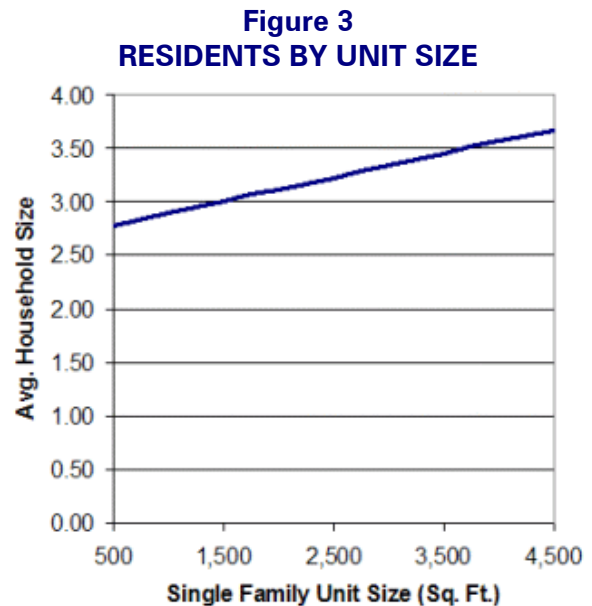
in any district to be spent on county-wide facilities. For example, landfill improvements should be funded from solid waste fees from all benefit districts, since the County's one functioning landfill serves the entire island.

H. AFFORDABLE HOUSING PROJECTS

The key characteristic of an impact fee is that the amount of the fee is proportional to the impact on facilities. To waive fees for affordable housing projects or other policy goals may weaken the defensibility of the impact fee system, since opponents could argue that it is not actually an impact fee, but an illegal tax disguised as a fee. Consequently, any waiver of fees for affordable housing or other purposes should be paid by other funding sources.

I. PROGRESSIVE RESIDENTIAL FEES

One thing that can be done to mitigate the effect on affordable housing is to reduce fees for the smaller and more affordable units to the extent that it can be demonstrated that smaller units have less of an impact on the need for facilities. We recommend that the County's impact fees incorporate progressive fees for single-family homes that vary by the size of the dwelling unit. For the most part, the variation in fees will reflect the average number of people residing in units of varying sizes. The relationship determined in the Growth Policy Memorandum is illustrated in Figure 3. The observed variation is not dramatic, since even very small units tend to have an average of almost three residents, and very large units tend to have less than four residents. Nevertheless, these data do justify some variation in fees by dwelling size.



The graphed relationship shows that the larger the dwelling unit, the more people it is likely to contain. As can be seen in Table 4, a single-family detached unit with less than 1,000 square feet has an average of 2.78 persons, while a unit with 4,000 square feet averages 3.68 residents. Fees directly based on population, such as park fees, would vary proportionately with average household size, and fees indirectly based on population, such as road impact fees, would also vary in a similar manner. The dwelling size categories shown below are suggested for use in the fee schedules.

Table 2
SINGLE-FAMILY HOUSEHOLD SIZE BY SQUARE FEET

Dwelling Size Category	Approximate midpoint (sq. ft.)	Average Household Size
Less than 1,000 sq. ft.	750	2.84
1,000 - 1,499 sq. ft.	1,250	2.95
1,500 - 1,999 sq. ft.	1,750	3.06
2,000 - 2,999 sq. ft.	2,500	3.23
3,000 - 3,999 sq. ft.	3,500	3.45
4,000 sq. ft. or more	4,500	3.68

Source: Average household size is derived by substituting the midpoint for x and solving for y in the equation illustrated in Figure 3.

J. COST RECOVERY

The impact fee study will calculate maximum fees that can be charged. Preliminary analysis indicates that the total maximum impact fees will exceed the current total fair share assessments. The fair share assessments are compared with California and national average impact fees in Table 4. Hawai'i County's assessments for roads and parks are significantly higher than the national average, although they are right in line with average fees charged in California. The total fair share assessment in Hawai'i County is on par with what the average jurisdiction in California charges in impact fees for the same facilities.

Table 3
FAIR SHARE ASSESSMENTS PER SINGLE-FAMILY UNIT

Facility	Hawai'i Co.	CA Avg.	Nat'l Avg.
Roads	\$4,281	\$3,922	\$2,037
Parks	\$4,818	\$4,856	\$1,810
Fire	\$459	\$584	\$329
Police	\$232	\$843	\$302
Solid Waste	\$201	na	\$179
Total	\$9,991	\$10,205	\$4,657

Source: Hawai'i County fair share assessments; California and national average fees from Duncan Associates survey, January 4, 2006

The maximum fees that will be calculated in the impact fee study will represent the full cost to provide new development with the existing level of service of capital facilities. However, the County will be able to adopt impact fees at some percentage less than 100 percent of the maximum fees.

K. PHASE-IN PERIOD

Following the adoption of the impact fee ordinance, there will need to be a period of time before the impact fees actually go into effect and being to be collected. Some delay is necessary in order to give development projects already well underway time to apply for building permits and complete their projects. County staff will also need time to put the administrative processes in place to implement the

ordinance. After discussions with staff, it is recommended that the impact fees go into effect one year from the date of ordinance adoption. The fair share assessments would continue to be in effect during this period, but would be repealed on the effective date of the impact fees.

In addition, we often recommend that substantial new or increased impact fees be phased-in over 6-18 months. For example, the fees might go into effect initially at 50 percent, then go up to 75 percent after six months and 100 percent or whatever the ultimate level is after a year.

APPENDIX A: IMPACT FEE GLOSSARY

Assessment Districts refer to geographic areas subject to a uniform impact fee schedule.

Benefit Districts refer to geographic areas in which impact fees collected are earmarked to be spent.

Deficiencies, Existing refers to the cost to provide development existing at the time of adoption of an impact fee ordinance with the higher-than-existing level of service on which the impact fees are based.

Development, Residential refers to subdivision of land for or construction of single-family detached or multi-family dwelling units.

Development, New refers to development that is not in existence at the time of adoption of an impact fee ordinance.

Development, Nonresidential refers to subdivision of land for or construction of buildings for uses other than residential development.

Fair Share Assessments refers to the County's informal policy of requiring applicants for residential and hotel rezoning to agree to pay fees at time of platting, site plan or building permit to cover primarily off-site infrastructure costs relating to roads, parks, fire, police and solid waste facilities. The amount of the fees are based on a 1990 study, with annual inflation adjustments based on the Consumer Price Index.

Grace Period refers to a period of time following ordinance adoption during which an owner of a lot of record in existence at the date of ordinance adoption may apply for a building permit without being required to pay a fee.

Impact Fees are one-time charges assessed on new development to cover primarily off-site infrastructure costs as authorized by Chapter 46, Part VIII of Hawai'i Revised Statutes.

Level of Service is a measure of the service provided by a certain type of capital facility. In impact fee analysis, level of service is typically expressed as a ratio of some characteristic of the facility type to the amount of development being served. For example, a common level of service measure for parks is acres of parkland per 1,000 residents.

Level of Service, Existing refers to the actual level of service provided by the County at the time of adoption of an impact fee ordinance.

Level of Service, Higher-than-Existing refers to the calculation of impact fees based on the cost of providing a better level of service than is being provided to existing development at the time of the adoption of an impact fee ordinance.

Lot of Record, Existing refers to a parcel of property in existence on the date of adoption of an impact fee ordinance on which a building or structure could legally be constructed without going through the County's subdivision process.

Lots in Older Subdivisions refers to lots that were created in the early 1950s and 1960s and do not conform to present-day subdivision code requirements. Many of these lots were created without County facilities and services: they have private roads, which are often unpaved, no County water system, no parks, police or fire substations in the vicinity, and are on cesspool. A large number of these lots are in the Puna and Ka‘ū Districts.

Phase-In Period refers to the time between the date of ordinance adoption and the date the impact fees go into effect.

Rational Nexus refers to the doctrine articulated by the courts for constitutionally-valid impact fees, based on a “rational nexus” that must exist between the regulatory fee or exaction and the activity that is being regulated. The standards set by court cases generally require that an impact fee or other developer exaction meet a two-part test: (1) the need for new facilities must be created by new development; and (2) the expenditure of impact fee revenues must provide benefit to the fee-paying development.

State Enabling Act refers to Chapter 46, § 141 to 148 of Hawai‘i Revised Statutes, which was passed by the Legislature in 1992 and authorizes counties to assess, impose, levy and collect impact fees upon conducting a facility needs assessment study and the adoption of an impact fee ordinance.