

**Infrastructure and
Public Facilities
Needs Assessment:**

**Policy Analysis
Memorandum**

prepared for

**Planning Department
County of Hawai'i**

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EXECUTIVE SUMMARY

The purpose of this memorandum is to assist Hawai'i County in determining whether and how to replace its existing system of fair share assessments with an impact fee program. An impact fee is a one-time charge on development, designed to cover the cost of growth's impact on infrastructure.

Background

Since the early 1990s, the County of Hawai'i ("the County") has imposed "fair share assessments" on applicants for new residential (including agricultural zoning allowing lots one acre or less in size) and hotel zoning. The fees, which are imposed as a condition of zoning approval, are collected prior to securing final subdivision approval for new residential lots or prior to obtaining final plan approval for multi-family or hotel development. The fees, which are adjusted annually for inflation, currently total \$9,761 per single-family unit for roads, parks, fire, police and solid waste facilities.

While the fair share assessment amounts are substantial, they have not generated much revenue. An analysis done in 2004 determined that over \$74 million had been assessed on new zoning in the ten years of the program, but only \$3.6 million had been collected in cash and another \$15.2 million had been provided by developers in the form of in-kind contributions in return for credits. This is because most of the land that has been subject to fair share assessments at zoning has not yet been subdivided. If the fair share assessment amounts had been in the form of impact fees collected at time of building permit, they would have generated \$103 million in cash and credits since January 2000, and if they had been assessed on nonresidential as well as residential development, they would have generated \$170 million.

General Approach

The County should consider replacing its fair share assessments with a true impact fee system that follows the requirements for the State of Hawai'i's impact fee enabling act. Unlike the current assessments, impact fees would be assessed on all new development, including nonresidential development and residential development in areas with existing zoning. An impact fee collected from all new development would be more legally defensible, more equitable and generate significantly more revenue than the current "fair share" system. This additional revenue would translate into capital improvements that would benefit all fee payers.

Lots in Older Subdivisions

One of the reasons for the failure of a previous impact fee initiative in 1990 was a lack of support for assessing individual property owners. The Island of Hawai'i has many buildable lots in older subdivisions that have not been fully developed. Many of these subdivisions were created in the 1950's and 1960's prior to the comprehensive subdivision code that was adopted in 1967. The perception is that many of these lots are owned by local residents who have owned them for years with the expectation that one day they would build a house on them. The fear is that imposition of impact fees may hurt this opportunity. Development in these older subdivisions could be a major source of the island's affordable housing. The current fair share system only charges developers who require rezoning, at the cost of generating very little revenue for needed capital improvements.

There are two reasonable approaches to dealing with this issue in the context of an impact fee system. One approach is to allow one dwelling unit to be built on any existing lot of record at the time of impact

fee adoption without paying an impact fee. The other approach is to give owners of existing lots a grace period during which they could build without having to pay the fees. Either approach would ensure that current owners of individual residential lots would not have their opportunity to build a home impaired by a new fee.

Progressive Residential Fees

We recommend that the County's impact fees incorporate progressive fees for single-family homes that vary by the size of the dwelling unit.

Assessment and Benefit Districts

We recommend that all impact fees be calculated based on county-wide average costs and county-wide levels of service. Given the size of the island, it will probably be necessary at a minimum to have East and West benefit districts for all types of facilities. Park impact fees could continue to be earmarked to be spent in the judicial district in which they are collected.

Types of Fees

There do not appear to be any technical obstacles to preparing impact fee studies for the facilities of interest to the County – namely roads, parks, fire, police, solid waste and wastewater facilities.

Methodology

Basing the impact fees on a higher-than-existing level of service creates existing deficiencies that must be funded and requires credit against the impact fees for the revenue generated by new development and used to remedy the deficiencies. To avoid these complications, the recommended approach is to base all impact fees on the existing level of service.

INTRODUCTION

The purpose of this memorandum is to assist Hawai'i County in determining whether and how to replace its existing system of fair share assessments with an impact fee program.

The impact fee project has been divided into two phases. The first phase will identify facilities for which it would be feasible to develop impact fees based on available data and other factors. The specific methodology and approach to be used in developing the fees will also be refined during this phase. The second phase will entail the preparation of detailed impact fee studies and ordinance amendments to implement the policy decisions made in Phase I.

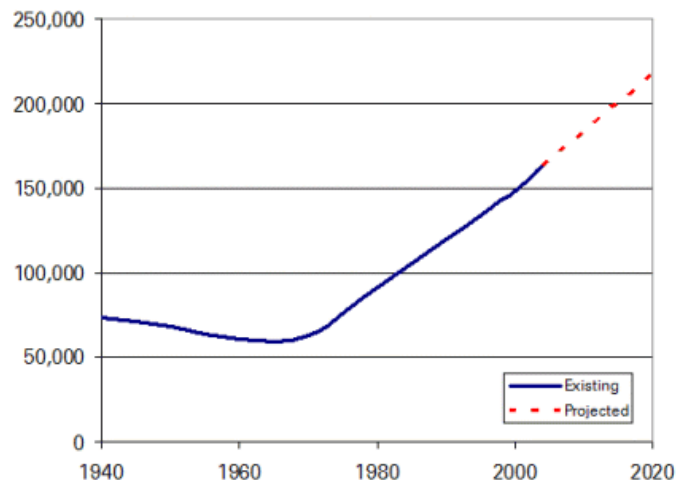
This memorandum is the major consultant work product for Phase I. It is intended to provide background information and guidance to the County in deciding whether and how to proceed with the development of an impact fee program in Phase II.

Background

The County of Hawai'i encompasses the entire island of Hawai'i and has the largest land area of Hawai'i's counties. The land area of the County is approximately twice the combined land area of all the other islands of the State.

Traditionally, agriculture has played an important role in the County's economy and much of the County's population growth and development was tied to the growth and employment needs of its agricultural economy. The island's population declined after World War II with the decreasing need for agricultural workers. Since the 1960s, however, tourism has emerged as the primary economic activity. In addition, the County has seen substantial population growth beyond what would be expected from economic opportunities in the County's primary industries; such population growth has most likely been due to in-migration of people drawn to the quality of life in the County.

Figure 1
POPULATION GROWTH, 1940-2020



The County of Hawai'i is currently the second most populous county in Hawai'i. The 2000 U.S. Census recorded the County's population as 148,677. Figure 1 shows the population growth since 1940, and the projected growth through 2020.

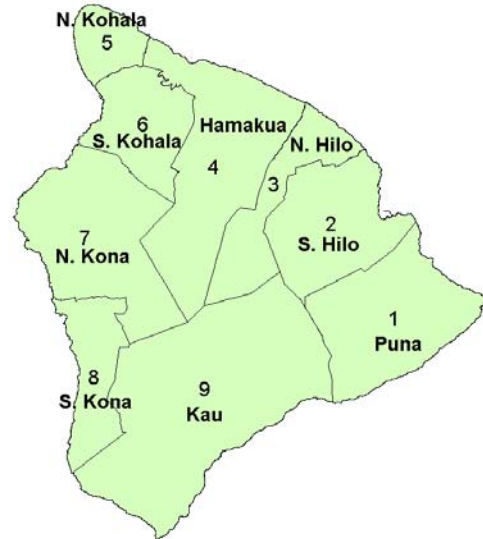
The County of Hawai'i's population growth has remained relatively constant over the last two decades, with a slight decline from an annual rate of 2.71 percent in the 1980s to 2.14 percent in the 1990s. According to population projections provided in the medium series projections in the *Hawai'i County General Plan*, Hawai'i County's population is expected to grow at about 1.9 percent a year over the next

two decades. Under this growth assumption, the County's population is expected to be about 217,718 in 2020.

As shown in Table 1, certain districts experienced much more rapid growth during the 1990s than the county as a whole. The bulk of the growth occurred in the districts of Puna, South Kohala and North Kona. The districts of North Kohala and Ka'u at opposite ends of the island also grew at a faster rate than the island average, but they started from a relatively small population base.

In the 1950s and 1960s, the County allowed many subdivisions with minimal improvements, mostly in Puna and Ka'u, with a few in South Kona. Today, there are about 53,000 residential lots in Puna, of which about 40,000 are vacant. Ka'u has about 16,000 residential lots, of which about 13,000 are vacant (mostly in Hawai'ian Ocean View Estates). Thirty-seven percent of the island's population increase in the 1990s occurred in Puna, almost entirely in these older subdivisions.

**Figure 2
JUDICIAL DISTRICTS**



**Table 1
COUNTY POPULATION GROWTH BY DISTRICT, 1990-2000**

Judicial District	1990	2000	Growth	Growth Share	Growth Rate
1-Puna	20,781	31,335	10,554	37.21%	4.19%
2-South Hilo	44,639	47,386	2,747	9.69%	0.60%
3-North Hilo	1,541	1,720	179	0.63%	1.10%
4-Hamakua	5,545	6,108	563	1.99%	0.97%
5-North Kohala	4,291	6,038	1,747	6.16%	3.47%
6-South Kohala	9,140	13,131	3,991	14.07%	3.69%
7-North Kona	22,284	28,543	6,259	22.07%	2.51%
8-South Kona	7,658	8,589	931	3.28%	1.15%
9-Ka'u	4,438	5,827	1,389	4.90%	2.76%
Total	120,317	148,677	28,360	100.00%	2.14%

Source: County of Hawai'i Data Book, Section 1 <<http://www.hawaii-county.com/>>.

In addition to the development potential on zoned and subdivided lots, there is also significant development that can occur without rezoning but that will require subdivision. According to County Planning Department staff, eight areas outside of major resorts could be subdivided to accommodate 11,000 dwelling units without additional rezoning.¹

¹ Waikoloa Village, Bridge Ainalea, Kohala Ranch Project IV, former "Y.O." property, University Terrace, Wilder Road property, Parker Ranch 2020 Plan in Waimea, former Haseko property south of Kona Palisades per Hawai'i County Planning Department memorandum, March 9, 2005

In addition to the resident population, Hawai'i County has a significant daily tourist population. Table 2 shows the resident population and visitor industry projections through 2020. Based on data from the *Hawai'i County General Plan*, there were 1,265,700 visitors and 10,041 hotel rooms in the County in 2000. The average daily visitor census data illustrates the significance of tourism. The average daily number of visitors is projected to increase by 2.00 percent annually, from 21,831 in 2000 to 32,440 in 2020.

**Table 2
HAWAII COUNTY POPULATION AND VISITORS**

Year	Resident Population	Avg. Daily Visitors	Hotel Rooms
1985	105,900	8,040	7,511
1990	120,317	16,970	8,952
1995	137,290	18,650	9,575
2000	148,677	21,831	10,041
2005	159,908	24,103	10,513
2010	176,937	26,612	10,892
2015	195,965	29,382	11,200
2020	217,718	32,440	11,452

Source: Hawai'i County General Plan, Table 1-5; Average Daily Visitor Census, 1985 to 2000, from Hawai'i County Data Book, Table 7.3, data from 2005-2020 derived used total visitor growth rate projected increase of 2% per year from Hawai'i County General Plan.

Nonresidential growth appears to be outpacing residential construction, based on building permit data. Since the year 2000, the number of housing units has increased by about three percent annually, while nonresidential square footage has been increasing by almost six percent annually.

**Table 3
GROWTH RATES, 2000-2005**

Land Use	2000 Census	2000-2005 Permits	2005 Estimate	Annual Increase
Single-Family Detached	48,231	9,066	57,297	2.91%
Multi-Family/Other	14,056	2,762	16,818	3.04%
Total Residential Units	62,674	11,855	74,529	2.93%
Total Nonresidential Sq. Ft.	17,233,626	6,727,881	23,961,507	5.65%

Source: Residential data from 2000 U.S. Census and January 1, 2000 through August 31, 2005 building permit data; 2005 nonresidential square footage estimate from Hawai'i County tax records (data as of January 1, 2005 assessment date for 2005 tax year); 2000-2005 nonresidential permit data from County of Hawai'i for January 1, 2000 through August 31, 2005; 2000 nonresidential estimate is difference.

LEGAL FRAMEWORK

Impact fees are one of the most direct ways for local governments to require new developments to pay a larger portion of the costs they impose on the community. In contrast to traditional “negotiated” developer exactions, impact fees are charges that are assessed on new development based on a standard formula and objective characteristics, such as the number of dwelling units constructed or vehicle trips generated. The fees are one-time, up-front charges. Essentially, impact fees require that each developer of a new residential or commercial project pay its pro-rata share of the cost of new infrastructure facilities required to serve that development.

General Principles

Since impact fees were pioneered in states that lacked specific enabling legislation, such fees have generally been legally defended as an exercise of local government’s broad “police power” to protect the health, safety and welfare of the community. Over time, various state 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. 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 (first prong of the dual rational nexus test); and
- 2) The expenditure of impact fee revenues must provide benefit to the fee-paying development (second prong of the dual rational nexus test).

A Florida district court of appeals described the dual rational nexus test in 1983 as follows, and this language was quoted and followed by the Florida Supreme Court in its 1991 *St. Johns County* decision:²

In order to satisfy these requirements, the local government must demonstrate a reasonable connection, or rational nexus, between the need for additional capital facilities and the growth in population generated by the subdivision. In addition, the government must show a reasonable connection, or rational nexus, between the expenditures of the funds collected and the benefits accruing to the subdivision. In order to satisfy this latter requirement, the ordinance must specifically earmark the funds collected for use in acquiring capital facilities to benefit the new residents.

In addition to the dual rational nexus test, impact fees may also need to meet Federal constitutional requirements for developer exactions. The most important recent legal development regarding development exactions is the 1994 decision of the U.S. Supreme Court in *Dolan v. City of Tigard*.³ In *Dolan*, the Supreme Court expanded upon the rational nexus test, adding to it a requirement that there be a “rough proportionality” between the impact of a proposed development and the burden of the exaction imposed on it. While this case involved an ad hoc land dedication requirement and may not

² *Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 611-12 (Fla. 4th DCA), review denied, 440 So. 2d 352 (Fla. 1983), quoted and followed in *St. Johns County v. Northeast Florida Builders Ass’n*, 583 So. 2d 635, 637 (Fla. 1991).

³ *Dolan v. City of Tigard*, 512 U.S. 374, 129 L. Ed. 2d 304, 114 S. Ct. 2309 (1994)

apply to legislatively-adopted fees, impact fees are more likely to comply with this standard than other types of developer exactions.

These principles have some important corollaries, which may be broadly categorized under the headings of “proportionality,” “credits” and “benefit.” The proportionality rules require that the fees cover only those costs that can be attributed to new development, and specifically exclude costs attributable to remedying existing deficiencies. In addition, applicants must have the option of attempting to demonstrate that their development will have less impact on the need for public facilities than is indicated by the fee schedule.

The credit rules are designed to ensure that new development is not overcharged. These rules address both revenue credits, which are calculated up-front in the preparation of the fee schedule, and construction credits, which are determined on a case-by-case basis prior to fee payment. Revenue credits reduce the impact fee schedules to account for other revenues that will be generated by new development and used to retire debt for existing facilities or to construct new facilities of the same type funded by the impact fees. Construction credits are used to offset an individual development’s impact fees by the value of required land dedications or other developer improvements or contributions for the same types of facilities.

Finally, the benefit rules require that the fee revenues be spent within a reasonable period of time on improvements that expand system capacity to accommodate the demands of the fee-paying development.

State Enabling Act

To date, 26 states, including Hawai’i, have adopted impact fee enabling legislation. Like most other state enabling acts, Hawai’i’s impact fee enabling act for counties reflects the constitutional standards enumerated above. Hawai’i’s impact fee enabling act, adopted in 1992, authorizes counties to adopt impact fees for any “types of public facility capital improvements specifically identified in a county comprehensive plan or a facility needs assessment study.” The only use of this authority to-date has been the adoption in 2002 of a road impact fee by the City and County of Honolulu for the Ewa region.⁴

Counties in Hawai’i are authorized by state law to enact impact fee ordinances, provided that they follow the requirements of Chapter 46, Part VIII of Hawai’i Revised Statutes (Section 46-141 through 46-148). This section provides a brief summary of those requirements most relevant to Hawai’i County.

Generally, developers prefer to pay impact fees as late in the development process as possible, and most state acts prohibit the collection of impact fees prior to the time of issuance of a building permit or certificate of occupancy. Hawai’i’s act states in Section 46-146 that “Assessment of impact fees shall be a condition precedent to the issuance of a grading or building permit and shall be collected in full before or upon issuance of the permit.” Hawai’i County’s Corporation Counsel has interpreted this language to mean that the County may assess and collect impact fees at any time, up to and including the time of building permit issuance.

⁴ Chapter 33A of the Revised Ordinances of Honolulu (the fee for a single-family unit is \$1,836)

A fundamental principle of impact fees is that new development cannot be charged for a higher level of service than is provided to existing development. Section 46-142(b) states that an impact fee study “shall specify the service standards for each type of facility subject to an impact fee; provided that the standards shall apply equally to existing and new public facilities.” If, for example, a County currently provides five acres of parkland per 1,000 residents, it cannot base park impact fees for new development on a standard of ten acres of parkland per 1,000 residents, unless certain conditions are met. First, another source of funding other than park impact fees would have to be identified and committed to fund the capacity deficiency created by the higher level of service. Second, the park impact fees must generally be reduced to ensure that new development does not pay twice for the same level of service, once through impact fees and again through general taxes that are used to remedy the capacity deficiency for existing development. Section 46-143(d)(1) requires counties to consider the “means, other than impact fees, by which existing deficiencies will be eliminated within a reasonable period of time...” in formulating an impact fee. In order to avoid these kinds of complications, the general practice is to base the impact fees on the existing level of service.

A corollary principle is that new development should not have to pay twice for the same level of service. As noted above, if impact fees are based on a higher-than existing level of service, the fees should be reduced by a credit that accounts for the contribution of new development toward remedying the existing deficiencies. A similar situation arises when the existing level of service has not been fully paid for. Outstanding debt on existing facilities that are counted in the existing level of service will be retired, in part, by revenues generated from new development that will also pay impact fees to maintain the existing level of service. Consequently, impact fees should be reduced to account for future tax payments that will retire outstanding debt on existing facilities. The Hawai'i enabling act addresses this issue in Section 46-143(d)(6), which provides that one of the seven factors that shall be considered in determining “a proportionate share of public facility capital improvement costs” is the “extent to which a developer required to pay impact fees over the next twenty years may reasonably be anticipated to contribute to the cost of existing public facility capital improvements through user fees, debt service payments, or other payments, and any credits that may accrue to a development because of future payments ...”

The State act implies that credit may also be due for other types of revenues besides those used to pay debt service on existing capital facilities. Section 46-143(d)(2) states that another factor that shall be considered is the “availability of other funding for public facility capital improvements, including but not limited to user charges, taxes, bonds, intergovernmental transfers, and special taxation or assessments ...” Also, Section 46-141 defines “proportionate share” to mean “the portion of total public facility capital improvement costs that is reasonably attributable to a development, less: (1) Any credits for past or future payments, adjusted to present value, for public facility capital improvement costs made or reasonably anticipated to be contributed by a developer in the form of user fees, debt service payments, taxes, or other payments...”

Aside from debt service payments, however, credit against impact fees may not be required for other types of funding that have historically been used for growth-related, capacity-expanding improvements, or which may even be committed to be spent in the future for such purposes. While new development may contribute toward such funding, so does existing development, and both existing and new development benefit from the higher level of service that the additional funding makes possible. To insist that historical capacity funding patterns must be continued after the adoption of impact fees, and that new development is entitled to a credit for its contribution to those funding sources, would be to argue that local governments cannot require “growth to pay for growth” unless they have always done

so. Local funding that is committed to be used for capacity expansion in the future needs to be taken into account only in cases where there is no reasonable need for or benefit from higher levels of service than the existing level of service embodied in the impact fee calculations. As long as the fees are based on new development paying to maintain existing levels of service that have been paid for in full by existing development, and additional funding can reasonably be used to raise the level of service for existing and new development alike, no additional revenue credits are warranted.

Hawai'i's statute is one of only a handful of state enabling acts that require credit for past property tax payments. Section 46-143(d)(5) states that the "extent to which a developer required to pay impact fees has contributed in the previous five years to the cost of existing public facility capital improvements and received no reasonable benefit therefrom, and any credits that may be due to a development because of such contributions" shall be taken into consideration in the impact fee calculation. And the definition of "proportionate share" cited above makes clear that this refers not just to developer exactions, but also to past property tax payments. Prior to development, the owners of a vacant parcel of land paid property taxes that may have been used, in part, to construct capital facilities of the type for which impact fees are being assessed. Consequently, it will be necessary to reduce impact fees by the present value of property tax payments over the last five years that were used to construct existing capital facilities of the type for which the fees are being charged.

FAIR SHARE ASSESSMENTS

Since the early 1990s, the County of Hawai'i ("the County") has imposed "fair share assessments" on applicants for new residential (including agricultural lots zoned one acre or less in size) and hotel zoning. The fees, which are imposed as a condition of zoning approval, are collected prior to securing final subdivision approval for newly created lots or prior to obtaining final plan approval for multi-family or hotel development. The fees, which are adjusted annually for inflation based on the Honolulu Consumer Price Index (CPI), currently (as of November 2005) total approximately \$9,991.20 per dwelling unit; \$6,411.25 for multi-family; and \$10,994.22 for resort, per rental unit. The assessments are collected for roads, parks, fire, police and solid waste facilities.

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 4
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 County's fair share assessments have never been adopted as an ordinance, although the Council did pass a general authorization in 1992 for the collection of such fees as a condition of development approval in 1992 (Hawaii County Code §2-162). The fees are based on an impact fee study that was prepared by a consultant in 1990, but was never formally approved or adopted by the County.⁵ The fees calculated in that report are adjusted annually based on the change in the Honolulu Consumer Price Index.

Many of the zoning ordinances passed by the Hawai'i County Council in recent years contain a provision requiring that in the event an impact fee ordinance is adopted, it will give credit for the fair share assessments. A typical provision reads as follows: "Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for imposition of exactions or assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance."⁶

⁵ Ann Usagawa, *Development Impact Fee Pricing Technical Report*, August 1990

⁶ Ordinance No. 05-74, adopted on May 18, 2005

While the fair share assessment amounts are substantial, they have not generated much revenue. An analysis done in 2004 determined that over \$74 million had been assessed on new zoning in the ten years of the program, but only \$3.6 million had been collected in cash and another \$15.2 million had been provided by developers in the form of in-kind contributions in return for credits.⁷ This is because most of the land that has been subject to fair share assessments at zoning has not yet been subdivided. If the fair share assessment amounts had been in the form of impact fees collected at time of building permit, they would have generated \$103 million in cash and credits since January 2000, and if they had been assessed on nonresidential as well as residential development, they would have generated \$170 million in less than six years, as shown in Table 5.

Table 5
POTENTIAL REVENUE, 2000-2005

Facility	Residential	Nonresidential	Total
Roads	\$44,176,556	\$58,813,053	\$102,989,609
Parks	\$50,038,557	\$0	\$50,038,557
Police	\$2,273,269	\$2,743,975	\$5,017,244
Fire	\$4,783,316	\$3,618,026	\$8,401,342
Solid	\$2,102,646	\$1,812,255	\$3,914,901
Total	\$103,374,344	\$66,987,309	\$170,361,653

Source: Estimated revenue based on building permits issued from January 1, 2000 through August 31, 2005 and annual fair share assessment rates based on "Fair Share Contributions—Adjustments for inflation using the Honolulu Consumer Price Index."

⁷ Hawai'i County Planning Department, *Fair Share Contributions Annual Report 2004*, May 21, 2004

APPROACH

The County should consider replacing its fair share assessments with a true impact fee system that follows the requirements of Hawai'i's impact fee enabling act. An impact fee collected from all new development would be more legally defensible, more equitable and generate significantly more revenue than the current "fair share" system. This additional revenue would translate into capital improvements that would benefit all fee payers.

Impact fees would essentially replace the fair share assessments. Lots that had paid fair share assessments would get credit against the impact fees or be exempt from having to pay impact fees for the same type of facilities. Fair share assessments made at zoning but not yet collected at the time of the effective date of the impact fee ordinance (because the property had not yet been subdivided) would become void; instead of paying fair share assessments, the properties would pay impact fees instead. A major difference is that impact fees would be assessed on all new development, including nonresidential development and residential development in areas with existing zoning.

Lots in Older Subdivisions

One of the reasons for the failure of the previous impact fee initiative in 1990 was the lack of support for assessing owners of individual residential lots. The Island of Hawai'i has many buildable lots in older subdivisions that have not been fully developed. Many of these subdivisions were created in the 1950's and 1960's prior to the comprehensive subdivision code that was adopted in 1967. The perception is that many of these lots are owned by local residents who have owned them for years with the expectation that one day they would build a home on them. The fear is that imposition of impact fees at the building permit level may hurt this opportunity. Development in these older subdivisions could be a major source of the island's affordable housing. The current fair share system addresses this concern by only charging developers who require rezoning, but at the cost of generating very little revenue for needed capital improvements. There are two reasonable approaches to dealing with this issue in the context of an impact fee system.

One approach is to allow one dwelling unit to be built on an existing lot of record without paying an impact fee. The impact fees would be collected prior to securing final subdivision approval for single-family lots, while collection of fees for multi-family and nonresidential developments would be deferred, with interest, and collected at the time of building permit. The fees for existing lots of record on the effective date of the impact fee ordinance would be collected at time of building permit, except for the first dwelling unit to be built on the lot, which would be exempt from the fee. Developments that were assessed and had paid fair share assessments would receive credit against the impact fees.

An alternative would be to give owners of existing lots of record a grace period during which they could build without having to pay the fees. Such a transitional provision would ensure that owners of lots in older subdivisions with imminent plans to develop would not have their opportunity to build a home impaired by a new fee. The amount of time given to owners of existing lots to build would be a policy issue for the County. When to collect the fee (e.g., at subdivision or building permit) could be the same as in the first alternative.

Assessment and Benefit 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. Benefit districts, on the other hand, 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 to help ensure that developments benefit from the improvements.

The assessment district is the geographic level at which you calculate the fee. Calculating the fees at the county-wide level, based on the county-wide existing level of service, vastly simplifies the process. This was the approach used in the 1990 study used as the basis of the County's current fair share assessments. The consultants recommend calculating all of the proposed impact fees county-wide.

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, road impact fees need to be used to expand capacity, and should not be used to pave internal subdivision roads. Many of the capacity needs in the county are on State roads and major County roads, in which case they could reasonably be county-wide. However, 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. The only type of facility that it would appear to make sense to have more benefit districts is parks. Park fair share assessments are already restricted to the judicial district in which they were collected. It would not be practical to make every subdivision its own benefit district, as some of them will have little development.

In summary, regardless of how the fee is calculated, the island should be divided into a minimum of two benefit districts (east and west) for the purpose of collecting and spending the money. More benefit districts might be appropriate for some facilities, such as parks (e.g., quadrants or judicial districts).

The final decision about the number of benefit districts can be made later. The decision about assessment districts needs to be made in this phase, since it will directly affect the cost of preparing the detailed impact fee analyses in Phase II. As noted above, the consultants recommend that all impact fees be calculated based on county-wide costs and levels of service.

Methodology

The recommended methodology is to base the impact fees on the existing level of service for all facilities. As discussed earlier, basing the impact fees on a higher-than-existing level of service creates existing deficiencies that must be funded and requires credit against the impact fees for the revenue generated by new development and used to remedy the deficiencies. To avoid these complications, the recommended approach is to base all impact fees on the existing level of service.

The level of service used in the impact fee analysis does not have to correspond with the desired level of service reflected in the County's planning documents. The County may very well feel that the existing level of service is inadequate, and may be hesitant to base the impact fees on such a standard. While

this is understandable, it is important to understand that impact fees are not the solution to existing service inadequacies. Other funding sources must be found to increase the level of service.

The principle to keep in mind is that you can't charge new development for a higher level of service than you provide to existing development. For example, that assume a community has five acres of park land per 1,000 residents, but it wants to have ten acres/1,000. If the community charges new development for ten acres/1000, and does not spend any other money on parks, then the level of service gradually increases over time, but it never gets to ten acres/1,000. So new development does not get the level of service it is paying for, and existing development gets a windfall. If on the other hand, the community passes a bond issue that will pay for the extra acres needed to serve existing development at the desired standard of ten acres/1,000, new development is helping to pay off that bond issue, so it is paying for a part of existing development's facilities as well as its own level of service. Consequently, the fees would need to be reduced to prevent double-charging.

The bottom line is that it is much simpler and more defensible to base the fees on the existing level of service than on a higher, desired level of service. Other money that the County gets from grants, the general fund, or other revenue sources can be used to increase the level of service, so the next time the fees are updated the existing level of service is higher and the fees can be raised accordingly.

Administrative Costs

An impact fee system should not be significantly more costly to administer than the current fair share assessments. Credits would need to be provided against the impact fees for certain developer contributions, but this is also true of the fair share assessments. Collection of the fees could occur at the same points in the development process as the fair share fees. The major additional expense may be more frequent updates.

Agency and Stakeholder Involvement

In order to provide the consultants with the necessary information to develop the Needs Assessment, an Agency Liaison Team, consisting of representatives from County and State agencies, was formed to provide data on the following type of infrastructure and public facilities: transportation, police, fire, solid waste and wastewater.

Stakeholder involvement and participation in the study process will help to determine the need for and the development of an impact fee ordinance. To date, two initial focus group meetings were held with representatives from key stakeholder organizations in Hilo and Kona. Future meetings will be held to assist in developing the methodology and the impact fee ordinance. The consultants have also held an initial workshop with the County Council on impact fees.

The following is a summary of comments that have been made thus far. Additional information on the focus group meetings can be found in Appendix B.

1. Create of a fair system (exemption of existing lots does not seem fair nor appropriate).
2. Expand scope to discuss other infrastructure financing options to supplement impact fees.
3. Government should identify their role and infrastructure financing options.
4. Create an inclusive impact fee program – include state highways and schools.
5. Look at the strategic issues/questions – how much money do we really need.

6. Address how impact fees will affect affordable housing.
7. Larger assessment/benefit districts are advantageous to County agencies.
8. County's position on concurrency and implementation of impact fees are contradictory.
9. Recognize previous fair share assessments and contributions paid by credits.

Key Issues/Questions

Should the Infrastructure and Public Facilities Needs Assessment Study justify the establishment of an impact fee system and ordinance for the County of Hawaii, the following are some of the questions will need to be answered:

1. At what point(s) in the development approval process should the impact fee be assessed?
2. When should the impact fee be collected?
3. How should the assessment and benefit districts be established?
4. Should certain types of development be exempt or pay a reduced fee?
5. Should impact fees supercede fair share assessments that have not yet been paid?
6. Should developments that have paid fair share assessments be exempted from impact fees or have their fees reduced by the amount of assessments paid?
7. What types of future developer improvements should be credited against the impact fees?

ANALYSIS OF FEE TYPES

This section analyzes the types of facilities for which impact fees should be developed in Phase II. There do not appear to be any technical obstacles to preparing impact fee studies for the facilities of interest to the County, namely roads, parks, fire, police, solid waste and wastewater facilities.

Roads

The 1998 *Hawai'i Long Range Land Transportation Plan*, prepared by the State in association with the County, identifies the island's major transportation improvement needs to support anticipated growth to the year 2020. The major highways on the island are the Hawai'i Belt Highway and the Mamalahoa Highway, which together link the major towns of all of the districts except North Kohala. Major improvement needs identified by the *Transportation Plan* include the reconstruction of the Saddle Road (Highway 200) and the widening of Queen Kaahumanu Highway (Highway 19) to four lanes between Waikoloa Road and Kona International Airport at Keāhole.

Figure 3
MAJOR ROADWAY SYSTEM



Many of the island's road capacity improvement needs are on the State road system. County Corporation Counsel believes that the County will need authorizing legislation in order to participate in the funding of State road improvements. Such enabling legislation should be sought if the County is to pursue a road impact fee. However, there are significant improvement needs on the County road system, including \$174 million in unfunded needs, as summarized in Table 6.

Table 6
ROAD IMPROVEMENT NEEDS

Priority	County Roads	State Roads	Total
Tier 1 (1998-2005)	\$112,400,000	\$291,000,000	\$403,400,000
Tier 2 (2006-2010)	\$49,300,000	\$155,100,000	\$204,400,000
Tier 3 (2011-2020)	\$103,100,000	\$307,800,000	\$410,900,000
Tier 4 (Unfunded)	\$173,900,000	\$124,200,000	\$298,100,000
Total	\$438,700,000	\$878,100,000	\$1,316,800,000

Source: Frederick R. Harris, Inc., Hawai'i Long Range Land Transportation Plan, May 1998

Parks and Recreation

Recreational facilities can be generally classified as resource-based or facility-based. Most resource-based parks on the island are provided by the Federal and State governments (231,400 and 800 acres respectively), with the County's role confined primarily to beach parks (260 acres).

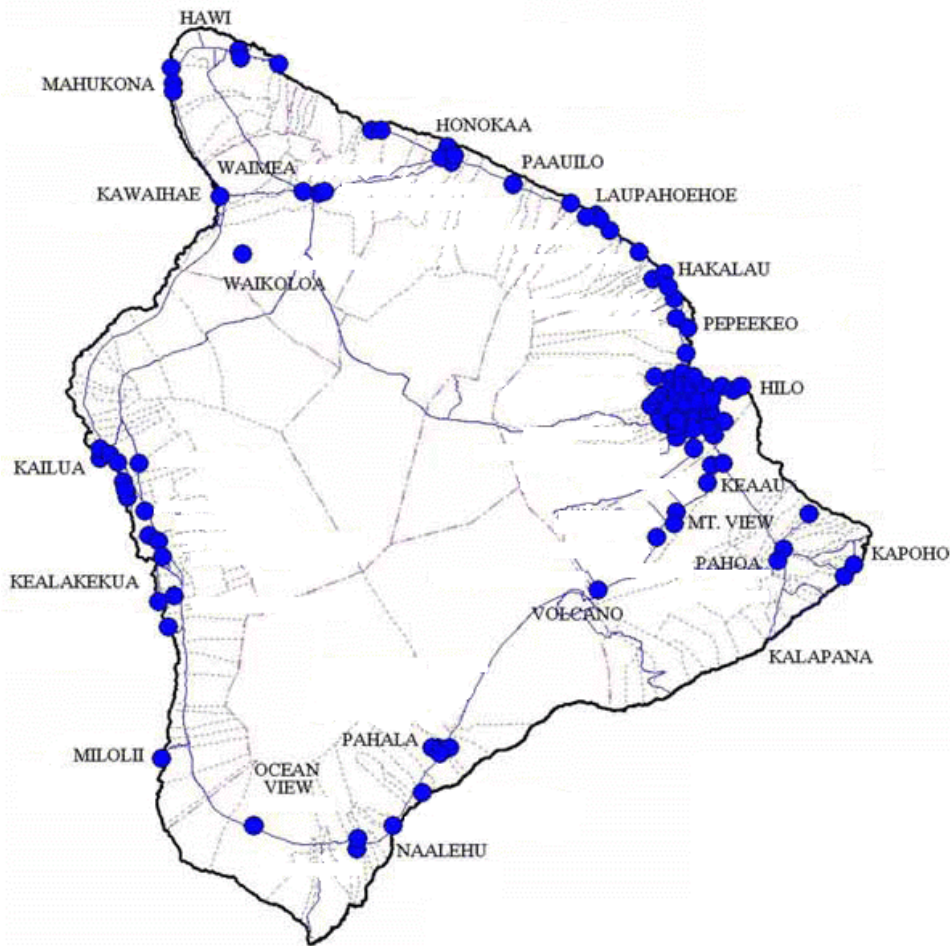
The County provides a variety of facility-based parks, ranging from small neighborhood parks to larger playfields to parks of county-wide scope. The County also provides nine swimming pools, 19 community/senior centers, 15 gymnasiums and 15 miscellaneous facilities. The location of existing parks and recreation facilities is shown in Figure 4.

The *County of Hawai'i Recreation Plan* has not been updated since it was prepared in 1974. The General Plan sets out general guidelines for the size and minimum facilities to be provided in various types of parks, but does not include quantifiable level of service standards.

The County's Park Dedication Code (Chapter 8, Hawai'i County Code) imposes a requirement for the dedication of five acres of park land for every 1,000 persons or payment of fees in-lieu of dedication. These requirements apply to the subdivision of land for residential purposes or the development of multi-family units. If this dedication requirement is maintained and the park impact fees include land costs, credit against the park impact fees will need to be provided for the value of land required to be dedicated.

It would not be practical to make every subdivision its own benefit district, as some of them will have little development. Park fair share assessments are currently restricted to the judicial district in which they were collected. Judicial districts might be the logical choice for impact fee benefit districts as well. However, the County might want to consider reducing the number of benefit districts somewhat, in order to provide greater flexibility in the expenditure of fees collected.

Figure 4
EXISTING COUNTY PARKS



Fire/EMS

The County's Fire Administration is located in the County Building in Hilo. There are 14 regular fire stations, 18 volunteer fire stations and 2 Federal fire stations on the Big Island. The Kilauea Military Camp and Pohakuloa fire stations are Federal facilities. Kilauea Military Camp provides emergency medical services under an agreement with the County. The regular fire stations and three of the volunteer fire stations (Laupāhoehoe, Pāhala and Na'ālehu) provide 24-hour fire fighting and emergency medical services. The Waiakea and Kailua-Kona stations provide rescue services, the Kaūmana and South Kohala stations provide hazardous waste response and the South Kohala station provides air medical services. The *General Plan* establishes a standard of fire stations within five miles of concentrated settlement areas and first response emergency medical service within eight minutes of concentrated settlement areas.

**Figure 5
FIRE STATION LOCATIONS**



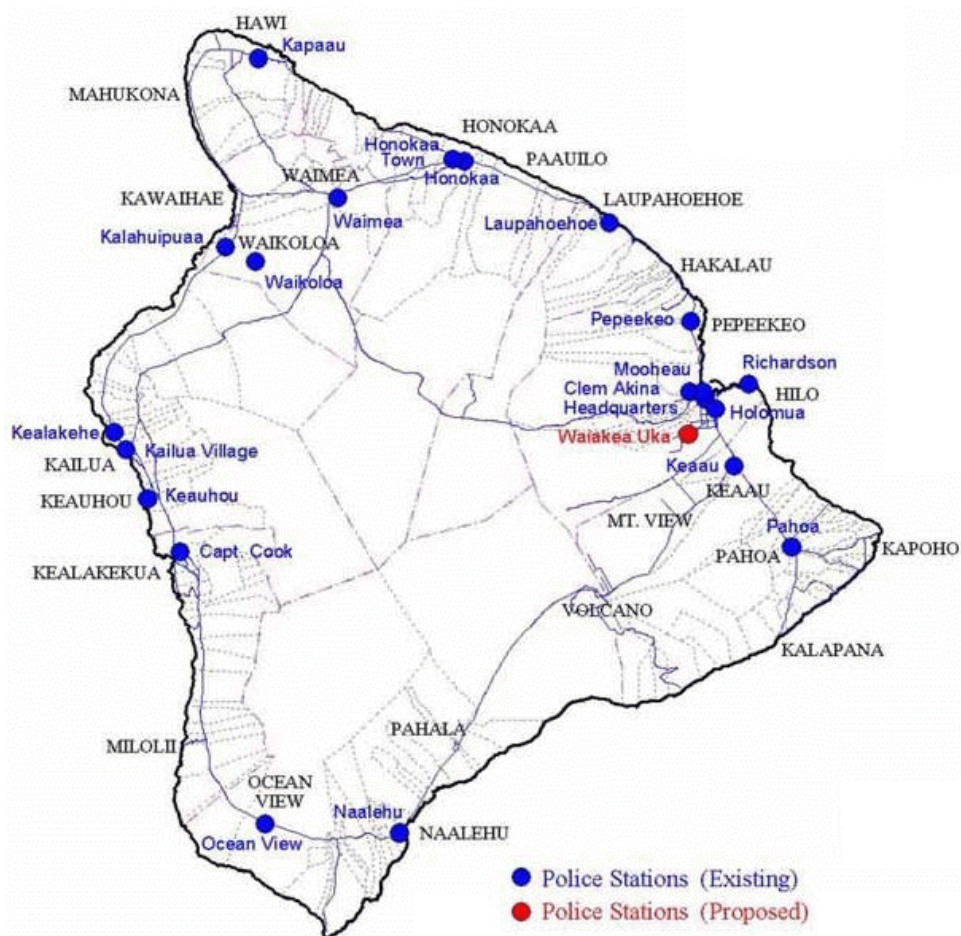
The County does not maintain data on fire/rescue incidents by land use. A reasonable alternative is to use “functional population” as the indicator of demand for fire protection service by land use type. The functional population methodology makes the reasonable assumption that the demand for public safety services is roughly proportional to the presence of people at the site of a land use. The methodology assumes that people spend about half of their time at their place of residence, and the other half at nonresidential land uses.

While fire-fighting apparatus and ambulances may be dispatched from a station primarily to calls within that station’s primary response area, these units may also respond to calls in neighboring response areas if needed. In addition, the headquarters and training facilities are centralized. Consequently, fire/EMS facilities constitute an interrelated system that provides service throughout the jurisdiction. For these reasons, most fire impact fees use a single jurisdiction-wide benefit district. However, given the size of the county, it should be divided into a minimum of two (east and west) benefit districts.

Police

Each of the eight districts is served by a main police station. There are also four substations. The combined police headquarters for Hilo and the County is located in the Hilo Public Safety Building on Kaiolani Street. The *General Plan* establishes a standard of 2.5 police officers per 1,000 resident population. As with fire/EMS fees, most police impact fees are assessed at the jurisdiction level and earmarked for expenditure within a single jurisdiction-wide benefit district. However, given the size of the county, it should be divided into a minimum of two (east and west) benefit districts.

Figure 6
POLICE STATION LOCATIONS

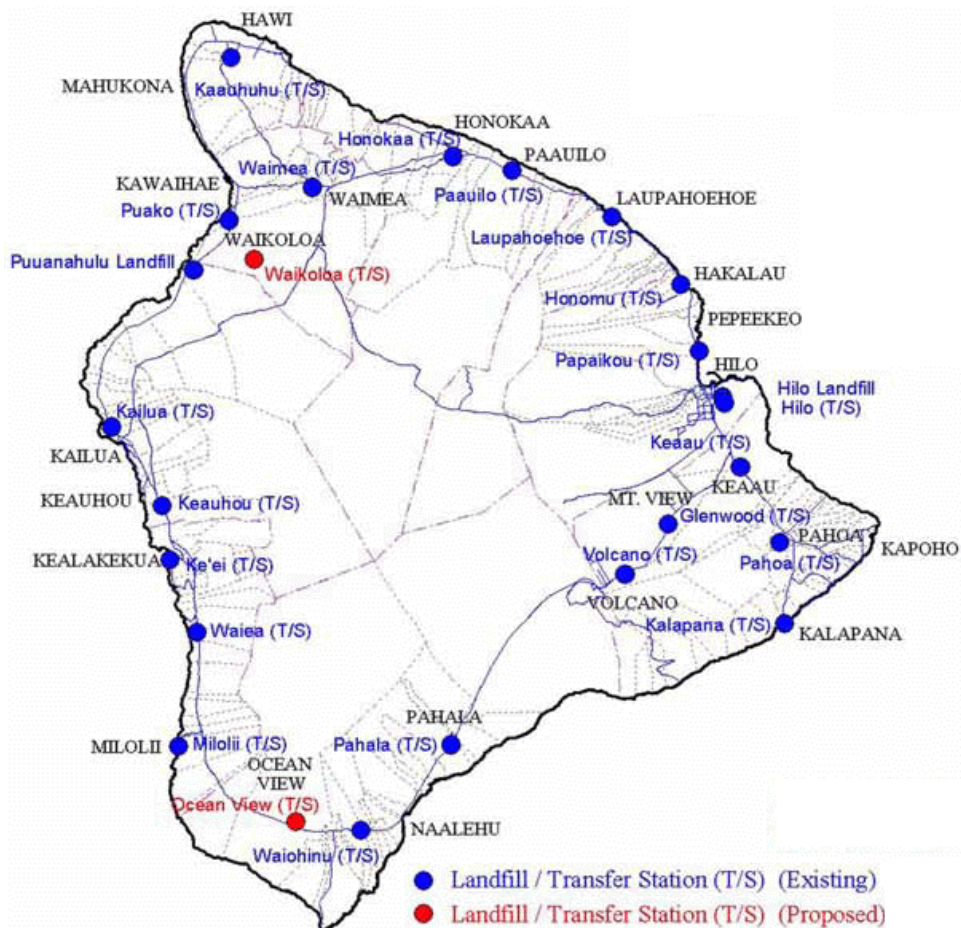


Solid Waste

The County currently has two landfill sites. The sanitary landfill at Pu'uana'hulu on the west side of the island is active, while the unlined landfill in Hilo on the east side of the island will be closed in the near future. There are 21 solid waste transfer sites, like the one pictured at right, situated throughout the island. Residents can drop off their household solid waste for free at the transfer stations. Some residents pay private haulers to pick up their garbage. Commercial businesses and private haulers are required to take their solid waste to the landfill, where they are charged a tipping fee. Commercial tipping fees account for 35 percent of revenue for the operation of the Solid Waste Division, while the remainder of the Division's budget comes from the general fund.



**Figure 7
LANDFILL/TRANSFER STATION LOCATIONS**

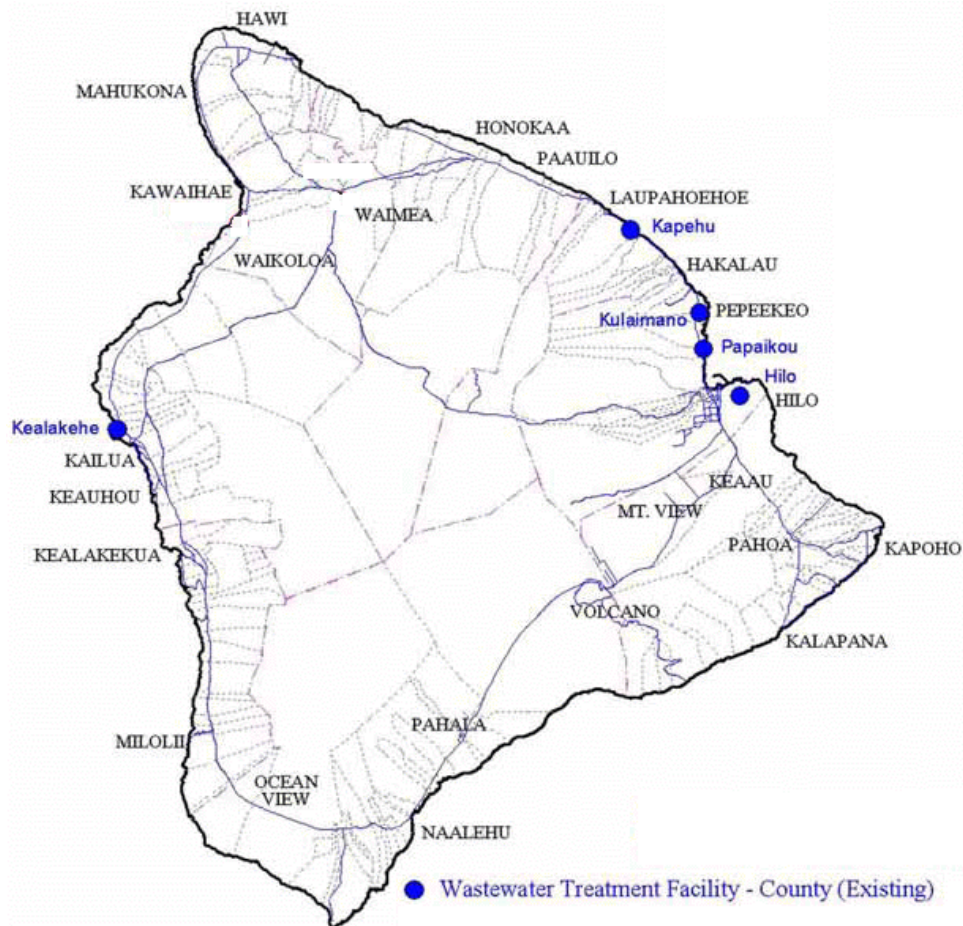


A solid waste impact fee could include the cost of constructing new cells in the landfill to accommodate anticipated waste to be generated, and could include upgrades for recycling services when available to commercial entities. The costs of transfer stations and collection vehicles should only be included in the impact fees for residential development, since this service is not provided for nonresidential development.

Wastewater

Hawai'i County presently operates municipal wastewater systems in Hilo, Pāpa'ikou, Kapehu, Pepeekeo and Kealakehe. The rest of the island is served by private wastewater treatment facilities, or individual facilities such as cesspools or septic tanks. About 77 percent of the Hawai'i County population is served by cesspools. The State Department of Health intends to promulgate rules that will prohibit cesspools in Hawai'i County.

Figure 8
WASTEWATER TREATMENT FACILITIES



The County currently charges a water “facilities charge” to cover the capital costs of water infrastructure, but does not have a comparable fee for wastewater. The water facilities fee is \$1,190 for the first dwelling unit (or water demand equivalent), and \$5,500 for each additional unit.

Residents and businesses that are connected to a County sewer system pay user fees which fund all operations and maintenance. The County could charge new wastewater customers an impact fee to cover a pro rata share of the capital costs of the treatment plants, interceptors, force mains and pumping facilities. The County recently completed a study that could be used to provide the basis for such an analysis.⁸

⁸ R.W. Beck, *Needs Assessment Study and Capacity Assessment Fee Study*, prepared for the County of Hawai'i, Department of Environmental Management, Wastewater Division, January 2004 Draft Report

PROGRESSIVE RATES FOR RESIDENTIAL UNITS

Typical impact fees charge a flat rate per dwelling unit, regardless of size. A wide range of housing sizes are being produced in today's housing market. Because smaller units tend to cost less and house families with lower incomes, the one-size-fits-all approach taken by most impact fee systems imposes a much larger burden, proportionately, on smaller units, which incidently tend to house residents less likely to be able to afford it.

The regressive nature of one-size-fits-all impact fees was clearly demonstrated in a seminal 1992 article by Dr. James C. Nicholas of the University of Florida.⁹ The 1985 data he presented in that article have been updated with 2001 data in Table 7 below. These national data reveal the strong correlation between the size of the dwelling unit, whether measured by the number of bedrooms or square footage, the number of persons living in the unit, which is a measure of the demand on facilities, and the value of the unit and the income of the household, which are measures of the ability to pay.

Table 7
DWELLING CHARACTERISTICS BY NUMBER OF BEDROOMS

Bedrooms	Median Sq. Ft.	Mean Persons	Median Unit Value	Median Family Income	\$2,000 fee as percent of income
0	500	1.2	n/a	\$14,956	13%
1	828	1.5	\$73,740	\$21,716	9%
2	1,248	2.2	\$83,655	\$28,343	7%
3	1,692	2.8	\$119,539	\$44,649	4%
4+	2,406	3.5	\$188,052	\$68,834	3%

Source: U.S. Bureau of the Census, 2001 American Housing Survey (median square feet, mean persons and median family income based on all dwelling units; median unit value based on owner-occupied units only).

A flat \$2,000 impact fee per dwelling unit, regardless of size or type, would constitute 13 percent of the annual income of the median household living in an efficiency apartment, but only 3 percent of the median income of a dwelling unit with four or more bedrooms (see Table 7 above). Also, since the demand on public facilities is often a function of the number of people living in a community, a large house tends to have about three times the demand for services as an efficiency apartment. Consequently, not only is a one-size-fits-all fee regressive, it tends to overcharge smaller units and undercharge larger units.

While most impact fees do acknowledge the difference between housing types, such as single-family and multi-family units, few of them vary by unit size. This is changing, however. For example, 30 percent of the 20 Florida counties that assess school impact fees currently base the fees on some measure of dwelling unit size. Three of the counties base fees on the number of bedrooms in combination with housing type, two have translated bedrooms into four or five size categories (e.g., a one-bedroom unit is on average less than 800 square feet, etc.) and one county charges school fees on a per square foot basis.

⁹ Nicholas, James C., "On the Progression of Impact Fees," *Journal of the American Planning Association*, Vol. 58, No. 4, Autumn 1992, p. 517-525

There are several reasons for the continuing predominance of impact fees that do not vary by unit size. One obvious reason is that a flat fee per dwelling unit is easier to calculate and has fewer data requirements. While this is still the case, the data requirements are not insurmountable, and greater resources are now available. The other principal reason for the predominance of one-size-fits-all residential impact fees was legal in nature. In the early days of the development of impact fees in the late 1970s and early 1980s, there were no state impact fee enabling acts, and impact fees were based on the “police power” of local governments to regulate development in order to advance the health and welfare of the community. Great care had to be taken to ensure that impact fees would not be struck down by the courts as an illegal tax. Even today, there is a residual feeling by some attorneys that a fee per square foot for residential development may appear more like a tax than a regulatory fee. However, this should no longer be a major concern, as the authority to enact impact fee ordinances is now well-established in most states.

We recommend that the County’s impact fees incorporate progressive fees for single-family homes that vary by the size of the dwelling unit.

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.

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'u Districts.

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.

APPENDIX B: STAKEHOLDER COMMENTS

Stakeholder Focus Groups Meetings November 18 (Kona) and 21 (Hilo), 2005

A. List of Participants

Frederic Berg, Brookfield Homes
Will Espero, DR Horton
Sid Fuke, Planning Consultant
Jacqui Hoover, Hawaii Leeward Planning Conference (HLPC)
Keith Kato, Hawaii Island Community Development Corp. (HICDC)
Kimo Lee, W.H. Shipman, Ltd.
Ken Melrose, Hawaii Leeward Planning Conference (HLPC)
Glenn Miyao, Wilson Okamoto Corp
Bill Moore, Kohala Ranch Development Corp.
Harold Murata, Self
John Ray, Parker Ranch
Skylark Rossetti, Hawaii Island Economic Development Board (HIEDB)
Marianna Scheffer, League of Women Voters
Amy Self, Corporation Counsel
Bob Stuit, Hokulia
Dean Uchida, Land Use Research Foundation (LURF)
Bill Walter, W.H. Shipman, Ltd.
Marian Wilkins, League of Women Voters

B. Written Comments Submitted by Stakeholders:

1. Impact Fees level the playing field for new projects but do little to address the increased stresses on infrastructure based on infill on existing lots. Need parallel source of funds to fulfill government portion of costs.
2. I learned a lot – very interesting. I hope we can follow the suggestions of Duncan Associates. We must get our act together. I hope there will be more presentations open to the general public.
3. Positive: Good Questions and Answers. Handout/powerpoint informative. Negative: Started Late
4. Why is impact fee good for the County of Hawaii? What problem does it solve?
5. Good Presentation. Endeavor to educate the County on a variety of funding mechanisms. Make sure ordinance recognizes previous contributions exacted – credits. Examine county-wide fee calculation.

6. There is a need for a broader look at infrastructure needs and financing to show what is the best or fairest portion of cost should be paid by impact fees.
7. After listening to the presentation yesterday my principle concerns are the impacts on our housing programs for both low and moderate income households. Previously, the County had exempted units from impact fees if the units were part of our program, this appeared in rezoning approvals and in the pre-emption resolutions.

If an impact fee ordinance is to be adopted I would hope that it would similarly exempt affordable housing otherwise it will make the homes more expensive to develop and that in turn will cause less units to be constructed. While funding infrastructure is necessary for the continued development of affordable housing I hope that it doesn't become a burden on such housing while other less regressive alternatives are under-utilized.

8. Hawaii Leeward Planning Conference (HLPC) had a study done that shows tremendous growth/contribution in property taxes by the Kohala Coast resort homes - why can't these funds be used? At very least, need to integrate those revenues into the impact fees/needs assessment. The impact fees are being considered to give the County another funding source but it does not appear that the Administration has really considered other funding sources.

Will County acknowledge that their position on concurrency is contradictory to implementing impact fees?

Substandard lots are purchased at lower rates just by virtue of being substandard, therefore the exemption does not seem appropriate.

8. Thank you for inviting me to this presentation.
9. Need for an overall perspective. Impact fees are one of the many "tools" that government has available. Impact fees need to be fair and predictable. Leveling the playing field and affordable housing.

B. Summary of Key Points Made by Stakeholders (written/verbal)

1. Create of a fair and predictable system
2. Exemption of existing substandard lots does not seem fair nor appropriate.
3. Take a comprehensive approach and expand scope to discuss other infrastructure financing options to supplement impact fees.
4. Government should identify their role and infrastructure financing options
5. Create an inclusive impact fee program - include state highways and schools.
6. Look at the strategic issues/questions - including, how much money we really need.

7. Address how impact fees will affect affordable housing.
8. Larger assessment/benefit districts are advantageous to county agencies.
9. County's position on concurrency and implementation of impact fees are contradictory.
10. Recognize previous fair share assessments and contributions paid by credits.