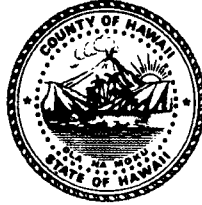


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TO: Dominic Yagong, Chair  
and Members of the Hawai'i County Council

FROM: Pete Hoffmann, Vice Chair 

Date: April 6, 2011

Subject: Planning Department Comments regarding Bill No. 304, Draft 2; Relating to Impact Fees

2011 APR 6 PM 3:11  
COUNTY OF HAWAII  
COMMUNICATIONS SECTION

Attached are comments received from Planning Director Bobby Jean Leithead Todd regarding Bill 304, Draft 2, relating to Impact Fees, which were received at the Planning Committee meeting held April 5, 2011.

Please have this document placed on the record for referral to the Planning Committee.

Thank you.

PH/dh  
att

## Comments on Bill 304: DRAFT Chapter 36 - Impact Fees

The Council proposes to replace the Fair Share system with an impact fee system with authority in HRS and clear implementation roles and responsibilities. The Planning Department appreciates the Council's invitation for constructive deliberation about how to develop a workable and effective impact fee program. In that light, because Bill 304 is very complicated legislation requiring considerable clarification and modification, we share this summary of comments and questions. They are organized by section (plus a section at the end specific to implementation) and fall into three categories:

1. Non-substantive edits (in plain text)
2. **Recommendations for substantive changes (bold, italicized)**
3. **Questions/comments that require more clarification and/or deliberation (bold).**

### Findings & Purpose (36-1)

- The term "development" is considered plural. Remove "s" from development where appropriate throughout.
- "Facilities": the description/definition is different throughout the document. Follow consistent wording for the list of facilities, such as "roads, parks and recreation, fire/emergency medical service (EMS), police, solid waste, and wastewater."

### Definitions (36-2)

- Definitions do not match HRS 46-141. **Check all definitions for consistency.**
  - Most importantly, the "needs assessment study" defined in Bill 304 is inconsistent with the definition in HRS.
- **The "affordable housing trust fund" should be defined.**
- **Fair Share: add wording as follows:** "...which requires payment of fees to mitigate the potential regional impacts of the development, based on the extent of the development allowed...."
- Impact Fee Administrator: Since the Planning Department's role in impact fee administration should be limited to CIP recommendations (see various sections below), **a different County department should be the Administrator.**
- **Small Lot Subdivision: confirm consistency of the definition with the Subdivision Code** (HCC Chapter 23).
- **Add definition of Owner-builder** and confirm that it's consistent with DPW's definition.

### Appeals (36-3)

- **Check with Corp Counsel.** BOA hears appeals on Directors' decisions. These are fees/assessments that will be mandated by ordinance, so appeals should be heard by Council.

### Program Review (36-6)

- **Who would conduct the review?**

#### Fee Assessments (36-8)

- Different points of collection complicate management of the impact fee system. **If possible, all fees should be collected at building permit stage to simplify the process.**
- For some, impact fees will be an incentive to build without obtaining building permits. **How will enforcement be handled?**
- (c) In small lot subdivisions: If the intention is to assess a fee for each dwelling, **the bill should specify whether additional dwellings (e.g., 'ohana units, farm dwellings) will also be assessed.**

#### Exemptions (36-9)

- Given the nature of the exemptions, the Planning Department believes that **DPW's Building Division is better suited than Planning to determine the validity of exemption claims.**

#### Affordable Housing (36-10)

- **What will be the source of the County funding for the "affordable housing trust fund"?**
  - **How will the County determine the size of the fund needed to provide the loans?**
- **The Finance Department (rather than OHCD) may be better suited to oversee the trust fund.**
- **How will the County ensure that fees are paid if an owner obtains a permit to expand the size of their dwelling beyond the maximum criteria as stated in this section?**
- **Confirm that OHCD supports Section 36-10, particularly exemptions and the qualifying process for zero-interest loans. This is an intensive and complex process that requires cross-agency collaboration. (It is presumed that additional staffing will be required.)**

#### Fee Calculations, Adjustments, and Credits (36-12, 14, and 17)

- **Is the fee adjusted annually for both inflation and per an adjustment factor, or is the adjustment factor used to calculate the inflation rate?**
- The Honolulu Consumer Price Index (HCPI) is typically available at the end of February or in early March, so **July 1<sup>st</sup> would be a more appropriate date** for the adjusted fee schedule to go into effect.
- **The Departments that are familiar with costs and improvements (i.e., DPW, Parks, Fire, Police, DEM) are better suited than Planning to determine the adjustment factor (36-12), to prepare independent fee calculations (36-14), and to approve credits (36-17).**

- How do the proposed indices compare to current methods of estimating CIP costs?
- If the specified cost indices are not available, what “reasonable alternative indices” will be used?
- How would impact fees for Special Use permits or Home Occupations be determined?
- 36-12 (f): Consider a reduced fee as an incentive for high density mixed use development in core already urban developed areas.
- 36-17 (b): Currently states that in-lieu credits need to be approved by Council. ***This extra step could be eliminated and addressed as an administrative function under the Director or Administrator.***

#### Refunds (36-16 & 36-24(d))

- (a) Within how much time will this refund take place (e.g., 1 year)? What if fees have been spent for infrastructure improvements and then a refund is requested and granted?
- (b) Though specified in HRS, the six year “expiration date” is too short considering 1) slow rates in fund growth (i.e., when sufficient funds will be available to finance projects), 2) costs of likely improvements (which may exceed fund balances), and 3) typical project lifespan from concept to completion (usually greater than 6 years).
- ***If all impact fees are collected at issuance of building permit, it is less likely that refunds will be requested.***
- ***The Impact Fee Fund Administrator (i.e., Finance) is better suited than Planning to process refund applications.***

#### Fund Interest Rate (36-16(b) and 36-19)

- Who determines the interest rate, and how? If so, what determines which projects get refunds (at what stage)?

#### Fair Share (36-18)

- Will developers be issued a refund if they have paid more Fair Share than the impact fee requires?

#### Impact Fee Fund Administrator (36-22)

- (a) (1) It is not stated anywhere that Planning collects fees from small subdivisions and DPW collects all other fees. ***A single agency with financial management capacity should collect fees, and it should be consistent throughout the Bill.***
- ***The Department of Finance is best suited to be the Impact Fee Fund Administrator.***

Funding (36-23) and Benefit Zones (36-24)

- **Reorganize 36-23 per changes to 36-24.**
- **Consider tailoring assessments to unique conditions in each benefit zone.** For example, in Puna and Ka'ū, where most of the facilities are on private land and the roads are either private or state, maybe roads should be excluded.
- **Add new wording to clarify the need for sub accounts and a county wide benefit zone:** 36-23 (d) "Within each account, with the exception of the wastewater impact fee account, there are hereby created 6 sub-accounts, corresponding to the five (5) sub-area benefit zones and one county-wide benefit zone. The sub-area benefit zones are hereby created."

Benefit Zones (36-24(e))

- **More appropriate zones would be to follow the CDP planning areas:** Puna, S. Hilo, N. Hilo/Hāmākua, N. Kohala, S. Kohala, Kona, and Ka'ū.

Capital Improvement Program (36-24)

- **References to the process for developing the CIP budget (and using impact fee moneys) should be consistent with the Charter.**
  - The head of each county agency shall furnish the mayor estimates of any capital improvements pending or proposed to be undertaken within the ensuing fiscal year and within the five fiscal years thereafter. (Section 10-2(b)(2))
  - The Planning Director reviews the lists of proposed capital improvements contemplated by agencies of the county and recommends the order of their priority. (Section 6 - 7.2(b)(4))
  - The Managing Director recommends to the mayor the annual operating and capital improvement budget. (Section 6-1.3(c))
  - The Finance Department assists the mayor in the preparation of the capital budget. (Section 6-6.3(a))
  - The Mayor submits an annual capital budget, six-year capital program, and budget message to the Council. (Section 10-2(a)).
- **36-22(b) and 36-24(c) should be consistent, per the Charter.** 22 indicates that the fund administrator (i.e., Finance) presents the CIP, and 24 indicates that Planning establishes the CIP. The Charter specifies that the Mayor/Managing Director/Finance prepare the CIP budget.
- **Are impact fee funds appropriated by Council?**
- **Does HRS allow fees to be used to pay debt service?**

SECTION 3:

- Change "approval" to "adoption."
- **At least 2 years will be needed to establish the new impact fee system,** given all the cross-agency responsibilities, the transition from Fair Share, and challenges of implementation (see below).

### Implementation

- **Dedicated staff will be needed to manage the program**, possibly in multiple departments (DPW, Finance, OHCD, Data Systems) depending on how the system is managed.
  - Additional building permit enforcement staff may also be needed.
- **Appropriate software will be needed** to manage assessments (i.e., building permits, water meters), payments, expenditures, refunds, etc., including the complicated system for tracking fund expiration.
  - Example: <http://www.revenuecost.com/software/gss-dif.php>
- **New rules will be needed** to describe the process and procedures for implementing this ordinance. Cross agency collaboration will be required, which is good but very complex.

Below comments provided by Dave Freudenberger of Goodwin Consulting Group author of Kona CDP Financing Plan for Public Facilities and Backbone Infrastructure (Jan 2011):

April 4, 2011

Margaret –

I really need more time to do a complete review, but I'll pass along the comments I do have at this point. As I have mentioned to you, I believe without hesitation that the County needs an impact fee program, but I am troubled by some of the aspects of this bill. On the other hand, I've never spoken with anyone about the details of the bill, so maybe if I had that opportunity it would clear up some or all of my concerns.

1. Sections 36-13 and 36-14 should probably be removed. The formulas are too open to variables and interpretation, and include provisions that may not make sense. These sections also throw the whole impact fee program into a state of uncertainty because the impact fee administrator can decide that any application needs to be reviewed; to make matters worse, the review must be conducted at the applicant's expense. The land use types in the bill cover every possible land use scenario; in fact, the impact fee program would be easier to apply and administer if some of the more detailed land use types were removed from the bill.
2. With respect to the residential land use types and the possibility of more granularity (i.e., expanding single family and multi-family into categories based on home size), I am generally not in favor of it. First, how were the new amounts determined; is there a direct connection, or nexus, between the home size categories and proposed fees? It doesn't appear that there is. The nexus gets much more vague when you move into this level of detail. This granularity is more common for school fees (and sometimes fire fees), but much less common for other fees. Using this approach for school fees (impacts relate directly to kids, which correlate strongly to home size) and fire fees (fires involving bigger structures are more difficult to fight) is more clear. Also, this level of detail just becomes more challenging to administer.
3. My understanding is that the proposed fees represent 50% of the actual impacts calculated in 2006 as part of the Needs Assessment Study. I don't know why something less than 100% of the impacts are being integrated into the fee program. Some fairly detailed calculations we did as part of the Kona CDP Financing Plan suggest that, for residential (single family and multi-family) and resort/hotel land uses, levying fees based on 100% of the impacts would be comparable to the assessments currently required under the Fair Share approach.
4. The proposed fees are now at least five years out of date, if not more, given that the Needs Assessment Study was completed in 2006 and probably based on data that

precedes its publication. Given that the County's CIP has changed since then, and other changes have occurred (including the preparation of several CDPs), that Study needs to be updated and the fees need to reflect that update. Further, again due to the time lapse, it may be difficult to determine fee credits or reconcile credits against infrastructure privately installed.

5. The impact fee program has implementation issues that will require staff time, software, agency coordination, etc. The Kona CDP Financing Plan proposed a separate impact fee to cover the cost of infrastructure financing administration, which would include in large measure the cost of the Kona CDP impact fee program. A separate fee for impact fee program administration should probably be added to the bill.
6. It is not clear to me whether money in impact fee funds and accounts can be co-mingled to maximize flexibility in the use of the fee revenue. This could accelerate construction of needed infrastructure and reduce costs of interest and borrowing. Stipulations about inter-fund/account borrowing would have to be made, including that borrowed funds must be repaid with interest.

Keep me posted how things go, and don't hesitate to ask any follow-up questions about this.

– Dave