

TNR Appendix J: Snohomish County's Impact Fee Program Policy Overview

Proportionate Share Mitigation

The County, through Snohomish County Code (SCC) Chapter 30.66B¹, imposes various mitigation requirements on new developments for their impacts on the road system. These requirements include “proportionate share” mitigation for impacts on the capacity of the road system. The term “proportionate share” is a broad term which includes SEPA-based voluntary payments and GMA-based impact fees. Snohomish County imposes GMA-based impact fees that are consistent with state statute.

The Revised Code of Washington (RCW), section 82.02.050 starts out as follows:

(1) It is the intent of the legislature:

(a) To ensure that adequate facilities are available to serve new growth and development;

*(b) To promote orderly growth and development by establishing standards by which counties, cities, and towns may require, by ordinance, that new growth and development pay a **proportionate share** of the cost of new facilities needed to serve new growth and development; and*

(c) To ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicative fees for the same impact.

RCW 82.02.050(3) states that impact fees shall not exceed a proportionate share of the costs of the system improvements reasonably related to new development. The County determines proportionate shares through its GMA planning process and Chapter 30.66B SCC of the Snohomish County Code. By following the requirements of RCW 36.70A for comprehensive planning and all of the specific requirements of RCW 82.020, the County meets the requirements for properly determining proportionate shares.

GMA-Based Impact Fees

Legislation enacted in conjunction with the Growth Management Act (codified as RCW 82.02(050-100) enables any jurisdiction to impose mandatory impact fees on developments for impacts on the capacity of transportation facilities. This legislation was designed to not only provide revenues from new development to maintain the level of service on roads, but also to improve the development review process for jurisdictions and developers.

Main Requirements and Documents

The County determines proportionate share mitigation consistent with the requirements of RCW 36.70A for GMA planning and RCW 82.02 for impact fees. The following pages lay out the important documents and policies related to those requirements. The County's GMA Comprehensive Plan -- including the *Transportation Element* -- has been adopted by the County Council and accepted by the Growth Management Hearing's Board. The *Transportation Element* has been certified by the Puget Sound Regional Council.

¹ Previous to February 1, 2003, the County's Traffic Mitigation Ordinances were codified under Title 26B. They were recodified under Chapter 30.66B as part of the Unified Development Code.

Snohomish County GMA Comprehensive Plan, General Policy Plan

The County's GMA Comprehensive Plan, General Policy Plan, and Future Land Use Map (FLUM) was originally adopted by the Snohomish County Council (June 1995). There have been various amendments since including the 2005 'ten-year update' which rolled the planning horizon forward to the year 2025. References to the "GMA Comprehensive Plan" include the original and all subsequent amendments. This document includes the future land-use map and growth targets upon which future forecasts of residential and commercial growth are based. These forecasts are the basis for the traffic forecasts which estimate the future demands on County roads caused by new development.

Snohomish County GMA Comprehensive Plan, Transportation Element

Adopted with the General Policy Plan by the County Council the Transportation Element identifies the road improvements needed to support the forecast residential and commercial growth associated with the future land use map. The *Transportation Element* estimates the total costs of these needed improvements and estimates the total expected revenues available to pay for them. Consistent with the requirements of GMA, the *Transportation Element* documents an approximate balance between forecast growth, the demands of that growth on transportation infrastructure, and the revenues needed to pay for that infrastructure. The Transportation Element has also been amended several times including sub-area plans for the Lake Stevens UGA and the Mill Creek East UGA and the 2005 ten year update. Reference to the Transportation Element include all amendments.

Chapter 30.66B SCC Snohomish County Code

The COUNTY enacted Amended Ordinance No. 95-039 on June 28, 1995, Emergency Ordinance No. 95-065 on July 24, 1995, and Amended Ordinance No. 95-070 on August 23, 1995, amending Chapter 30.66B SCC¹ of the Snohomish County Code (SCC) to require mitigation of transportation impacts of County, City, and State transportation facilities by development proposals within Snohomish County consistent with RCW 36.70A and RCW 82.020. Among other things, Chapter 30.66B SCC requires development to pay a mitigation fee for impacts on the County road system.

30.66B.310 Road system impact fee.

(1) A development shall mitigate its impact upon the future capacity of the road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development. A development's road system impact fee will be equal to the development's new average daily traffic (ADT), based on the latest edition of the ITE Trip Generation report published by the Institute of Transportation Engineers, times the per trip amount for the specific transportation service area identified in SCC 30.66B.330, except that the following adjustments may be made:

(a) In accordance with RCW 82.02.060(4), the director of public works shall have the authority to adjust the amount of the impact fee to consider unusual circumstances in specific cases to ensure that impact fees are fairly imposed;

(b) In accordance with RCW 82.02.060(5), the director of public works shall have the authority to adjust the amount of the impact fee to be imposed on a particular development to reflect local information when available, including studies and data submitted by the developer; and

(c) Adjustments will be made for trip reduction credits approved under SCC 30.66B.640 - .650.

(2) As required by RCW 82.02.060(3), credit against a development's road system impact fee

¹ Codified as Title 26B at the time of these ordinances.

shall be provided for dedication of land for, improvement to, or construction of any capacity improvements that are identified in the transportation needs report as part of the road system impact fee cost basis and are imposed by the county as a condition of approval.

(3) As provided for by RCW 82.02.060(2), exemption from road system impact fees may be provided for low income housing and other development with a broad public purpose, provided that the road system impact fee for such development is paid from public funds other than impact fee accounts. The developer requesting the exemption shall be responsible for identifying the source of and securing the availability of such public funds.

(4) Developments which are determined to cause a greater reduction in ADT on the road system than the number of new ADT generated by the development, by promoting the use of transit or other means, will be determined to generate no new ADT for the purpose of determining the developments road system impact fee.

Snohomish County Transportation Needs Report (TNR)

The TNR is referenced in Chapter 30.66B SCC as follows:

30.66B.085 Transportation needs report.

The director is authorized to adopt and update a transportation needs report based on and consistent with the transportation element and capital facilities element of the comprehensive plan. The purpose of the transportation needs report is to quantify the continuing need for road improvements on the road system anticipated by projected growth. The transportation needs report shall be used in evaluating the traffic impact of developments and determining the road system impact fee cost basis.

30.91T.100 "Transportation needs report" means the latest publication of the 1990 Road Needs Report or subsequent updates titled the Transportation Needs Report, as published by the department of public works.

Impact Fee Cost Basis

The TNR establishes the cost basis for the County's GMA-based impact fees (See Appendix D). The TNR identifies a subset of the projects in the *Transportation Element* most needed to support new development. It estimates the costs for those projects and makes certain adjustments to those costs.

Transportation Service Areas (TSAs)

The TNR also defines a set of six Transportation Service Areas (TSAs) which define major County traffic service areas consistent with the RCW.

82.02.090 (8) "Service area" means a geographic area defined by a county, city, town, or intergovernmental agreement in which a defined set of public facilities provide service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles.

82.02.060 (6) Shall establish one or more reasonable service areas within which it shall calculate and impose impact fees for various land use categories per unit of development;

30.91T.110 "Transportation service area" means a geographic area of the county, as defined in the transportation needs report, identified for the purpose of evaluating the transportation impacts of development, determining proportionate shares of needed transportation improvements and allocating revenue to transportation improvement projects.

"Maximum Possible Impact Fees"

For each TSA, the TNR aggregates the costs of improvements needed to support new development

and divides this sum by the number of new trips in each TSA that are forecast to be generated by new developments. These costs per new trips are the maximum fee amounts that could be assessed for each TSA.

Fee Levels

The current fee levels for each TSA were originally adopted by County Council ordinance in August of 1995 and amended in March of 2002 and December 2005. The impact fee rates were set at a rate less than the maximum possible rates that could have been charged based on the calculations in Appendix D of the TNR. This provides a balance between new developments and existing residents. The rationale is that not all of the costs of capacity improvements necessitated by new development should necessarily be borne by new developments, nor should all of the costs be borne by existing residents. Setting the rates lower than the maximum possible also provides “a cushion” so that the Council does not have to set new fee levels every time projects are finished or modified or cost estimates change.

Other Requirements and Policies

Nexus: What is Reasonably Related?

The term “reasonably related” is used in both Chapter 30.66B SCC and RCW 82.020.

30.66B.310 Road system impact fee.

*(1) A development shall mitigate its impact upon the future capacity of the road system by paying a road system impact fee **reasonably related** to the impacts of the development on arterial roads located in the same transportation service area as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development*

*82.02.050(9) "Proportionate share" means that portion of the cost of public facility improvements that are **reasonably related** to the service demands and needs of new development.*

*82.02.050 (3) The impact fees: (a) Shall only be imposed for system improvements that are **reasonably related** to the new development;*

*82.02.050 (3)(b) Shall not exceed a proportionate share of the costs of system improvements that are **reasonably related** to the new development*

The term “reasonably related,” as used in the context of GMA planning, refers to the standard for defining the nexus between development and associated mitigation. “*Reasonably related*” contrasts with nexus standards for SEPA-based mitigation systems which emphasize case-by-case analysis to determine mitigation that is *reasonably necessary as a direct result* of proposed developments. The County meets the nexus standard “reasonably related” for its GMA-based fees by fully meeting the requirements for GMA planning in RCW 36.070A and the other requirements of RCW 82.020.

Criteria for Impact Fee Projects

The projects included in the impact fee cost basis, commonly referred to as “impact fee projects,” must meet two criteria: First, are the improvements needed to accommodate growth forecast in the County’s GMA comprehensive plan? To meet this criteria there are two possibilities. Either, the planned growth is expected to cause level-of-service problems on the arterial unit and capacity improvements are needed to maintain the adopted level of service standard. Or, in the case of an ultimate-capacity arterial unit, the planned growth is expected to cause level-of-service problems, and operational and/or standards improvements are needed to help improve traffic flow within the

existing travel lanes. Second, do the improvements increase the vehicle and/or people-moving capacity of the arterial? Obviously, the addition of new travel lanes will meet this criteria, but operational and standards improvements will also increase capacity.

System Improvements that Reasonably Benefit Development

The RCW uses the term “system” improvements as contrasted with “project” improvements. The projects identified in the *Transportation Element* as needed to support new development are system improvements consistent with the RCW sections below.

82.02.050 (3) (c) Shall be used for system improvements that will reasonably benefit the new development.

82.02.090 (9) "System improvements" mean public facilities that are included in the capital facilities plan and are designed to provide service to service areas within the community at large, in contrast to project improvements.

82.02.090 (6) "Project improvements" mean site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. No improvement or facility included in a capital facilities plan approved by the governing body of the county, city, or town shall be considered a project improvement.

There are two main ways that the County makes sure that fees from particular developments will reasonably benefit those developments. First, revenues from fees are only spent on projects needed to support new development (i.e., identified as part of the cost basis). Second, the County makes sure that fees collected from a development are spent only on projects in the same TSA as the development.

Capital Facilities Plan Element

GMA-based fees must meet requirements dealing with GMA Capital Facilities Plans. For Snohomish County, the *Transportation Element* constitutes the capital facilities plan with respect to transportation. The *Transportation Element* meets all of the requirements for a CFP as defined in RCW 36.70A. The pertinent references are shown below.

82.02.050 (4) Impact fees may be collected and spent only for the public facilities defined in RCW 82.02.090 which are addressed by a capital facilities plan element of a comprehensive land use plan adopted pursuant to the provisions of RCW 36.70A.070 . . . , and on the capital facilities plan identifying:

RCW 36.70A.070(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.

Deficiencies

The specific projects included in the impact fee cost basis must meet one basic criteria: The identified road improvements must be needed to accommodate growth forecast in the County’s GMA comprehensive plan. More specifically, traffic forecasts based on the assumed growth must show level-of-service (LOS) problems on particular arterials, requiring capacity improvements to maintain the adopted level of service standards.

At the time of the adoption of the *Transportation Element* there were no arterials operating below the County's adopted LOS standards. Thus, there were no deficiencies that could be identified. All of the projects in the cost basis are on roads which were operating within the County's LOS standard in 1995 but were forecast to violate those standards if growth occurred as forecast. In 2005, when the County adopted its ten year update to the Comprehensive Plan, there were several arterial units in arrears, and adjustments to the impact fee cost basis were made for impact fee projects on these arterials to account for the LOS deficiencies. This is consistent with the RCW which indicates that fees must be based on a CFP identifying:

82.02.050 (4) (a) Deficiencies in public facilities serving existing development and the means by which existing deficiencies will be eliminated within a reasonable period of time;

Additional Demands and Improvements Required

The "Additional Demands" on the road system and the improvements required are determined through the GMA planning process and identified in the *Transportation Element* as discussed above. This is consistent with the RCW which indicates that fees must be based on a CFP identifying:

82.02.050 (4)(b) Additional demands placed on existing public facilities by new development; and

82.02.050 (4) (c) Additional public facility improvements required to serve new development.

Schedule of Fees and Impact Fee Calculations

*82.02.060 The local ordinance by which impact fees are imposed: (1) Shall include a **schedule of impact fees** which shall be adopted for each type of development activity that is subject to impact fees, specifying the amount of the impact fee to be imposed for each type of system improvement. The schedule shall be based upon a formula or other method of calculating such impact fees.*

The County's schedule of impact fees is found in Chapter 30.66B.330 and shows various levels based on TSA, type of development, and location with respect to the urban growth boundary.

Estimated Costs

82.02.060 In determining proportionate share, the formula or other method of calculating impact fees shall incorporate, among other things, the following:

*82.02.060 (1) (a) The **cost** of public facilities necessitated by new development;*

Cost estimates are initially made in the CFP (i.e., *Transportation Element*) to document the broad estimate of total costs and total revenues. The cost estimates are based on the Cost Estimating Model of the TNR (Appendix B).

However, as time passes, some projects change in scope, some projects are finished, unit costs change, etc. In addition market forces, inflation, regulation changes and other factors change the average unit costs in the cost model. These ongoing changes occur more frequently than it is possible to update the *Transportation Element*. Therefore, the impact fee cost basis is established in the TNR which is typically updated annually or more frequently if necessary. The TNR provides more specific engineering information on the projects identified in the *Transportation Element*. As the County learns new information about specific projects, the cost estimates in the TNR are updated. The use of the TNR helps to ensure that fees are collected and spent on projects that are described and cost-estimated as accurately as possible.

Credit for Taxes

82.02.060 In determining proportionate share, the formula or other method of calculating impact fees shall incorporate, among other things, the following:

82.02.060 (1)(b) An adjustment to the cost of the public facilities for past or future payments made or reasonably anticipated to be made by new development to pay for particular system improvements in the form of user fees, debt service payments, taxes, or other payments earmarked for or proratable to the particular system improvement;

Consistent with the RCW section above, the County adjusts the costs of projects in the TNR to provide a credit for taxes that might be paid by new development towards the projects in the impact fee cost basis. The method for doing this is described in TNR Appendix H.

Availability of Other Means of Public Funding

82.02.060 In determining proportionate share, the formula or other method of calculating impact fees shall incorporate, among other things, the following:

82.02.060 (1)(c) The availability of other means of funding public facility improvements;

Consistent with the RCW section quoted above, the County considers the availability of other sources of public funding in establishing its fee levels. Significant increases in revenues from state and federal sources would be needed before the County would be collecting too much from impact fees.

The amounts and sources of revenues are monitored on an ongoing basis (See Appendix I). To account for the funding of each road improvement, the County documents the amounts and sources of revenues in its Annual Construction Program and Six-Year Transportation Improvement Program. With this information, the County is able to monitor the availability of other means of public funding consistent with the requirements of the RCW to make sure that impact fees are not set too high.

Improvements Already in Place

The County does, in some cases, continue to charge fees for improvements already in place. For these projects, the impact fee cost basis consists solely of the actual expenditures on the improvements that were paid from local county road funds and do not include grant revenues or other impact fees. In addition, the improvements remain part of the impact fee cost basis only as long as capacity remains on the road. This is consistent with the following provisions of the RCW do not apply.

82.02.060 (7) May provide for the imposition of an impact fee for system improvement costs previously incurred by a county, city, or town to the extent that new growth and development will be served by the previously constructed improvements provided such fee shall not be imposed to make up for any system improvement deficiencies.

Exemptions for Development with a Broad Public Purpose

SCC Chapter 30.66B.310(3) does provide for exemptions for development with a broad public purpose consistent with the RCW.

(3) As provided for by RCW 82.02.060(2), exemption from road system impact fees may be provided for low income housing and other development with a broad public purpose, provided that the road system impact fee for such development is paid from public funds other than impact fee accounts. The developer requesting the exemption shall be responsible for identifying the source of and securing the availability of such public funds.

Credits or Offsets

Chapter 30.66B.310 SCC and DPW Rule 4226 establish policies for credits (offsets) consistent with the RCW as shown below.

(2) As required by RCW 82.02.060(3), credit against a development's road system impact fee shall be provided for dedication of land for, improvement to, or construction of any capacity improvements that are identified in the transportation needs report as part of the road system impact fee cost basis and are imposed by the county as a condition of approval.

*82.02.060 (3) Shall provide a **credit** for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities that are identified in the capital facilities plan and that are required by the county, city, or town as a condition of approving the development activity;*

Adjustments, Developer Studies and Case-by-Case Analysis

Provisions for special adjustments, consideration of developer studies or data, and consideration of case-by-case analysis are established in several places in Chapter 30.66B.

30.66B.310(1) (a) In accordance with RCW 82.02.060(4), the director of public works shall have the authority to adjust the amount of the impact fee to consider unusual circumstances in specific cases to ensure that impact fees are fairly imposed;

30.66B.370 Review of impact fees.

(1) Any person aggrieved by a decision applying an impact fee under this chapter to a development application and who has filed a written protest in accordance with SCC 30.66B.350 may appeal the decision to the hearing examiner using the procedures established in SCC 30.71.050. Where there is an administrative review or appeal process before the hearing examiner for the underlying application, an appeal of an impact fee imposed pursuant to this chapter must be combined with administrative review or appeal of the underlying application. Where there is no administrative review or appeal process before the hearing examiner for the underlying application, the appeal shall be limited to application of the impact fee. The department of planning and development services shall provide notice of the decision to impose impact fees pursuant to this chapter for a Type 1 or 2 project application and the procedure for administrative review or appeal. Notice shall be provided in accordance with chapter 30.71 or 30.72 SCC, as may be applicable.

(2) At the hearing, the appellant shall have the burden of proof, which burden shall be met by a preponderance of the evidence. The impact fee may be modified upon a determination that it is proper to do so based on the application of the criteria contained in SCC 30.66B.310. Appeals under this section shall be limited to application of the impact fee provisions to the specific development activity for which application is made, and the provisions of this chapter shall be presumed valid.

There are also the administrative deviation procedures in Chapter 30.66B.810. Prior to the issuance of any formal decision, any developer may appeal to the director for deviation from the requirements of Chapter 30.66B SCC where the mitigation and/or concurrency requirements may be disproportionate, or not reasonably related, to the impacts and/or timing of the proposed development. If the director determines that the purpose of Chapter 30.66B SCC would be best served by deviation from such requirements, the director shall include as part of the director's development recommendation the reason for such deviation and any alternative mitigation measures that are determined to be necessary.

30.66B.810 Application for deviation.

(1) Prior to the issuance of any decision applying requirements of this chapter, a developer may submit a written request to the director of public works for deviation from mitigation or concurrency requirements of this chapter that are considered to be disproportionate, or not reasonably related, to the impacts and/or timing of the proposed development. If the director determines that the purposes of this chapter would be best served by deviation from such

requirements, the director shall include as part of the director's recommendation under SCC 30.66B.050, the reason for such deviation and any alternative mitigation measures that are determined to be necessary.

(2) The approving authority, upon consideration of such a recommendation, shall determine whether the purposes of this chapter would be best served by deviation from the requirements of this chapter, and may permit such deviation and impose as a condition of approval any alternative mitigation measures that are determined to be necessary and are recommended by the director of public works.

(3) Nothing in this section shall be construed to allow a violation of the Growth Management Act.

Mitigation for Impacts on City Streets or State Highways

SCC Chapter 30.66B SCC requires that interlocal agreements (ILAs) are necessary to impose mitigation requirements on County developments for impacts on state highways or city streets. The County currently has traffic mitigation ILAs with the Washington State Department of Transportation and the cities of Mill Creek, Marysville, Arlington, Stanwood, Gold Bar, Bothell, Sultan and Granite Falls.