

**MTI REPORT 05-XX**

**Traffic Impact Mitigation Fees: Should California's Department of  
Transportation (Caltrans) have legal authority to impose?**

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## EXECUTIVE SUMMARY

Development impact fees in California continue to evolve, and impact fees are becoming a more popular tool for local governments. Cash strapped local governments are increasingly using impact fees to bridge the funding gap that used to be filled from other sources. Cumulative and regional traffic impacts are gaining more attention, forcing local jurisdictions to develop successful impact fee programs.

Regional and state agencies are getting more involved in the development process, and nexus studies are helping local and regional agencies address cumulative and regional traffic impacts from development. Impact fees are necessary to accommodate growth and pay the cost of infrastructure improvements. Within California, Caltrans has the authority to construct, improve, and maintain state highways, but must work closely with local governments, through the IGR process, for mitigating impacts to the state highway from development.

The purpose of this paper is to research other State Departments of Transportation to see what their role is in their state's development process, and to see if they are successfully mitigating impacts to their state highway system. To help answer these questions, other State's Departments of Transportation were contacted and asked what their role is (if any) in the local development process. More specifically, are local development impact fees being used for state highway improvements? Is the current State process working (is development paying their fair share to mitigate state highway impacts)? And are there any ideas or suggestions to improve the current process?

On the basis of the responses from other State Departments of Transportation, most states have similar issues to California. Most State DOTs work in partnership with their local governments, but have no authority for imposing or collecting impact fees from development. Some states feel more DOT authority for imposing impact fees is necessary, but that option is not a political reality at this time. None-the-less, several states are pursuing legislation that would provide their DOTs more authority for mitigating impacts to the state highway.



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## CHAPTER ONE: INTRODUCTION

### Introduction

The State of California is in a budget crisis. Since June 2003 Caltrans has not been able to start any new projects, and hundreds of repairs have been postponed. The State has diverted highway funds to help balance the budget, circumventing Proposition 42, which requires gasoline sales tax revenue to be spent on transportation. Federal transportation funding is also lagging (TEA-21 expired in 2003). Congress and President Bush are still deadlocked over new spending, and old funding is being extended as a stopgap measure.<sup>1</sup>

However, despite the lack of transportation funding, new developments continue to increase throughout the state. These developments are local land use decisions, which create regional traffic impacts. As a result, local governments need to make developments pay their fair share of traffic mitigation for state highway impacts. This leads to several issues.

Local governments argue that the highway is the State's responsibility and developers are already being charged enough fees. The State contends that the need for more highway capacity is triggered by local, rather than interregional growth. Additionally, vehicle traffic from development utilizes the highway because parallel local roads either do not exist, or do not have enough capacity.

The State has no legal authority to impose local taxes or fees, so it must rely on local governments to mitigate impacts (AB 1600 – Government Code 66000). Furthermore, Senate Bill (SB) 45 ties the State's hands because it provides local governments 75% control of the State Transportation Improvement Program (STIP).

These issues lead to the following question: *Should California's State Department of Transportation (Caltrans) have legal authority to impose traffic mitigation fees?*

There is basically no research on the topic of providing State Departments of Transportation legal authority to impose traffic impact fees. So, to help answer this question, other State's Departments of Transportation were contacted to see what their role is (if any) in the local development process. More specifically, are local development impact fees being used for state highway improvements? Is the current State process working (is development paying their fair share to mitigate state highway impacts)? And are there any ideas or suggestions to improve the current process?

### Potential Application to the Transportation Community

Providing the California Department of Transportation (Caltrans) the authority to impose and collect traffic mitigation fees would require a major policy change. Currently twenty-five states have adopted impact fee enabling legislation, and only Delaware authorizes their Department of Transportation to collect impact fees.<sup>2</sup> The transportation community could benefit with such a policy change because development would have to pay their fair-share of highway impacts, which would provide additional funds for State highway improvements. A recent study shows

that only 27 percent of California local governments collect regional traffic mitigation fees as a pass-through to regional and State agencies<sup>3</sup>. Because mitigation impacts are applied by local jurisdictions, cumulative and regional traffic impacts are often times not mitigated.

The premise for allowing Caltrans to impose TIFs would be for new development to pay the cost of providing the State facilities necessary to accommodate growth. Any fees collected would not be used for maintenance, operational expenses, or existing deficiencies.

A policy change could be necessary because the consequences of not utilizing impact fees to offset the cost of providing adequate public facilities for new growth are far reaching.<sup>4</sup> The full effects of growth often are not felt until it is too late; however, recently there has been a shift in public policy for who is responsible for accommodating new growth from the community at large to those benefiting from the new growth.<sup>5</sup>

Any policy change proposal would follow the format in place for local governments. The argument for providing Caltrans legal authority for imposing traffic impact fees also follows the local government argument--that there is not enough money to pay for new development impacts; therefore, new development should pay their fair share for state highway impacts.

### **Organization of this Report**

This report is divided into five chapters including the Introduction. Chapter Two describes the history of how impact fees came into play in California. Chapter Three defines impact fees, discusses the pros and cons for impact fees, and provides some examples for dealing with regional traffic impacts. Chapter Four explains Caltrans' authority and role in the current local development review process. Chapter Five is the summary of research on how other State Departments of Transportation are involved in their local development review process. Finally, Chapter Six provides a conclusion and recommendation. In addition, the following Appendices are provided:

- Appendix A: Executive Order D-24-83
- Appendix B: Caltrans Deputy Directive 25
- Appendix C: Traffic Mitigation Flow Chart
- Appendix D: Delaware State Code
- Appendix E: Draft Washington Legislation SB 5164
- Appendix F: Hawaii Impact Fee History

## CHAPTER TWO: HISTORY OF IMPACT FEES IN CALIFORNIA

### History

Today, cities and counties are unable to afford all of the improvements new developments need, so they are turning to developers to carry the burden of these costs. Currently, of all the various infrastructure-funding methods, impact fees are the most creative and popular.<sup>6</sup> Generally, if local governments have the power to deny projects, then they also have “the power to approve projects subject to conditions that mitigate the reason for denial.”<sup>7</sup> Local governments derive their impact fee authority from two sources: the “police power” granted to them by the State Constitution; and specific state enabling statutes.<sup>8</sup>

Under Article XI, Section 11 of the California Constitution, cities and counties are allowed to assess and collect fees on their own behalf to fund capital facilities, or on the behalf of other public agencies, including regional and State agencies.<sup>9</sup>

The evolution of impact fees has occurred due to changes in economic and political climate, limitations on local government revenue, and the need for alternative capital funding mechanisms.<sup>10</sup> In the past, “new development has been supported by increased taxes for the community as a whole.”<sup>11</sup>

Impact fees are a reflection of current property owners who do not want to pay higher taxes to construct additional infrastructure that will mainly benefit newcomers<sup>12</sup>, and they have also evolved as “federal revenues for local public facilities have declined.”<sup>13</sup> However, the history of impact fees in California is “steeped in fiscal and political pragmatism rather than careful financial analysis.”<sup>14</sup>

There are three main items that provide the history of impact fees in California. The first is Proposition 13 (1978); second is the *Nollan* and *Dolan* court decisions; and the third is the Mitigation Fee Act (1989). Understanding these three items will help paint the picture for the current impact fee culture in California.

### Proposition 13

The increased popularity in impact fees can be traced to several factors: the federal government giving more power, but less money to local governments for public infrastructure construction; more federal (and state) mandates that have increased the costs of public infrastructure; and stagnating incomes during the 1970s and 1980s that fueled resentment against new taxes.<sup>15</sup>

The increase in fees charged by public agencies has been credited to Proposition 13 and the decline of property taxes.<sup>16</sup> Proposition 13 reduced local government revenues, forcing local government to rely more on impact fees to mitigate impacts from new development.<sup>17</sup>

Before 1978 California cities and counties charged development impact fees “to cover the direct costs of development and building permit reviews, and on-site utility hookups.”<sup>18</sup> The enactment of Proposition 13 limited the property tax rate to one percent of assessed valuation, the annual

rate of assessment growth to two percent, and property could only be reassessed to current market value when sold.<sup>19</sup>

During this period highway construction was lagging far behind population growth, and Californians found themselves paying higher housing prices for what they perceived to be reduced public service quality, which led to the argument that growth “pay its own way.”<sup>20</sup>

Today, many municipalities are now trying to shift the burden of paying for public improvements to developers.<sup>21</sup> As a result, more public agencies are looking for alternative sources of revenue.

This is similar to the State's position today. Transportation dollars are being siphoned away to cover the General Fund deficit, so the State has to find alternative ways to fund the state highway improvements. Impact fees bridge the gap between new infrastructure costs and available funds, and they provide politicians some cover to finance new development costs.<sup>22</sup>

### ***Nollan and Dolan***

Several court cases helped formulate the California's Mitigation Fee Act (AB 1600). The two most often cited are the *Nollan* and *Dolan* court decisions.

Property rights lawyers considered California's style of exactions a “taking” of private property without compensation and were hoping to get support from the California courts. This did not happen in the California courts, but did in the United States Supreme Court. In *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), there was a dispute between a beachfront property owner and the Coastal Commission. The Nollans wanted to tear down their house and build a larger one, which the Coastal Commission agreed to as long as the Nollans granted an easement allowing for public access to the beach in front of their house. The Nollans sued arguing that there wasn't a reasonable relationship or “nexus” between building their house and the beachfront access. The US Supreme Court agreed and ruled that there must be a direct nexus between the project proposed and the exaction required.

Where *Nollan* requires a nexus between the exaction and the state interest being advanced, *Dolan* added a second step that there must be a ‘rough proportionality’ between the exaction and the project impacts.<sup>23</sup>

The question of exactions was revisited by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 319 (1994). In this case, Dolan wanted to expand her downtown hardware store and parking lot, which was partially in a floodplain. The city, as a condition of approval for her project, required Dolan to dedicate to the city property for a bike path and public greenway. The city's rationale was a larger parking lot would create more downtown traffic, and by requiring the bike path, it would promote bicycle use and reduce traffic downtown.<sup>24</sup> The U.S. Supreme Court ruled against the city finding that, while the city had demonstrated the required nexus, the exactions involved were not roughly proportional to the project's impacts.<sup>25</sup>

After *Nollan* and *Dolan*, the government now bears the burden of proof to show that the impact fee has a reasonable relationship to the proposed development impacts.<sup>26</sup>

**AB 1600 – “Mitigation Fee Act”**

In 1987, as concerns over increases in local development fees and a general lack of accountability in fee setting, the California legislature enacted AB 1600, also known as the Mitigation Fee Act.<sup>27</sup>

Assembly Bill 1600, the 1987 “nexus legislation”, added Government Code Sections 66000-66011 and became effective on January 1, 1989. AB 1600 regulates the way impact fees are imposed on development projects. The local government imposing the fee must do the following:

1. Identify the purpose of the fee
2. Identify the use to which the fee is to be put, including identifying the public facilities to be financed
3. Show a reasonable relationship (nexus) between the fee’s use and the type of development project
4. Show the reasonable relationship between the public facility to be constructed and the type of development
5. Account for and spend the fees collected only for the purposes and projects specifically used in calculating the fee

If there is a nexus, Government Code Section 66001 requires that the city or county determine whether there is a “reasonable relationship” between the amount of the fee imposed as a condition of approval on a particular development project, and the cost of the public facility attributable to that project.<sup>28</sup>

Other provisions of AB 1600 include requiring the city or county to deposit, invest, account for, and expend such fees (Government Code Section 66006); to make findings once each fiscal year regarding any portion of the fee remaining unexpended or uncommitted (Government Code Section 66001(d)); to refund fees unexpended or uncommitted after five years of receipt (Government Code Section 66001(e)); and to adopt capital improvement plans (Government Code Section 66002).

Within 60 days of the close of each fiscal year, the city must make available to the public the beginning and ending balance for the fiscal year, fees, interest, and other income, the amount of expenditure by the city, and the amount of refunds made pursuant to Section 66001 during the fiscal year.<sup>29</sup> The city council shall review this information not less than 15 days after it becomes available, at its next regularly scheduled meeting (Government Code Section 66006 (b)).

After AB 1600, cities and counties could no longer charge outrageous development impact fees. Local governments are now held more accountable for any development fees they charge. As a result, many local governments implemented a development impact fee program.

## CHAPTER THREE: IMPACT FEES

### Impact Fees Defined

A phrase common throughout impact fee research is “you pay, you play”. Simply put development can occur once impact fees are paid. Common examples of development impact fees include traffic mitigation fees, infrastructure improvement fees, and fees for improving water and sewer systems.<sup>30</sup>

Impact fees differ from taxes in that they are voluntary (development is a voluntary act) rather than compulsory because they are only imposed upon those developing land, not upon all landowners or taxpayers uniformly.<sup>31</sup> Impact fees also differ from traditional exactions because they can be used to mitigate for both on and off-site facility improvements.<sup>32</sup> Communities have more recently levied impact fees on developers for off-site improvements, such as highway segment construction.<sup>33</sup>

**Table 1 Primary Differences Between Impact Fees and Exactions**

Exactions	Impact Fees
1. Paid at subdivision plat approval.	1. Typically paid at issuance of building permit or certificate of occupancy allowing assessment against pre-platted lands.
2. Assessed only on subdivision projects for sub-division platting approval.	2. Assessed against new development generally, including condominiums, apartments, and commercial development.
3. Based on percentage of a development's acreage.	3. Based on units of development, square footage, or number of bedrooms, for example, allowing for more accurate correlation with impact of the development on existing community.
4. Fund principally the provision of streets, water mains, sewer lines, parks and schools.	4. Fund a greater variety of services and facilities.
5. Negotiated between jurisdiction and developer providing little assurance for equity among projects in a given area, that the dedication or fee-in-lieu will be used to benefit new development, and that political pressure will not influence the exaction.	5. Created by ordinance with a fixed formula that is applied equally to all properties in a given area and includes requirements for a nexus between new development and the fee.

Source: Impact Fees and the Role of the State: Guidance for Drafting Legislation

Before exploring whether or not Caltrans should have the legal authority to impose traffic mitigation fees, we need to know exactly what mitigation fees are. Landis et al. (2001) define mitigation fees as follows:

Mitigation Fees are similar to impact fees in that they mostly cover off-site improvements and impacts. But whereas impact fees are charged to cover the costs of providing capital facilities, mitigation fees are paid to compensate existing service users for declines in service quality associated with growth or development. Mitigation fees must be adopted by ordinance and are subject to the same nexus documentation requirements as impact and development fees. Although the Mitigation Fee Act does not distinguish between impact and mitigation fees, some local governments do. Mitigation fees are commonly charged to cover environmental impacts (such as habitat loss), school over-crowding, road congestion, and affordable housing. Technically, funds raised through payment of mitigation fees must be deposited in specific earmarked-fund accounts, and may not be co-mingled with other local funds. Mitigation fees are generally set on a per unit basis.

Impact fees are calculated under the assumption that the incremental need for infrastructure can be measured after development has been constructed, and that the current resident needs for infrastructure can be identified separate from the new resident's needs.<sup>34</sup> Impact fees have evolved through a slow process, been tested in courts, improved and modified along the way, and are now in the mainstream of local discussions as an alternative funding source.<sup>35</sup> Like most funding sources there are advantages and disadvantages for implementing impact fees.

### **Advantages**

Studies have shown that impact fees are necessary because property taxes cannot pay the full cost of new infrastructure needed to accommodate new development.<sup>36</sup> In fact, impact fees not only protect existing property owners from paying for new infrastructure, but also effectively give them a property tax cut because of the new larger tax base.<sup>37</sup> Essentially, impact fees make new residents buy their way into the community.<sup>38</sup>

Impact fees provide a means of accommodating growth and development.<sup>39</sup> Developers know that if they pay a fee, their development can move forward. Once an impact fee program is in place there are no surprises for developers, they know that if they pay, they play. Overall, impact fees are usually a small amount of the total development costs, and are more of “an irritant than a fatal blow to a development project”, and are an acceptable alternative to developers than no-growth policies and case-by-case negotiated exactions.<sup>40</sup>

Nelson et al. (2003) conclude “impact fees can directly fund vital infrastructure improvements, while increasing the supply of buildable land, improving predictability in the development process, and indirectly promoting local employment at the same time.”<sup>41</sup> Impact fees help communities synchronize development with infrastructure need, by linking the financial decisions to these infrastructure needs in a practical way.<sup>42</sup>

Another benefit of impact fees is that they provide politicians “some cover for financing the necessary costs of new development.”<sup>43</sup> This is particularly helpful for growing jurisdictions because impact fees provide another potential revenue source that can be utilized “at less political cost than other sources.”<sup>44</sup> An impact fee program planned correctly can generate sufficient funds to mitigate impacts from new development.<sup>45</sup> There are also disadvantages for imposing impact fees.

### **Disadvantages**

An impact fee program poses “several issues at once: legal, economic, technical, administrative, policy, and financing alternatives”.<sup>46</sup> Common arguments against the implementation of impact fees include: development may choose to locate in communities that do not have impact fees; impact fees require much more local government administrative and planning work, which require additional staff; and impact fee programs are expensive and complicated to implement.<sup>47</sup>

The most vocal argument against impact fees is that they make housing unaffordable for low and some middle-income earners, by pricing them out of the market if the developers build the cost of impact fees into the net cost of housing.<sup>48</sup> Yet, this argument is often contradicted in research. Many factors can influence housing prices; however, the “strength of the housing market is the single most important influence on housing prices, whether growth management programs are present or not.”<sup>49</sup>

Because impact fee programs are so complex and political, there is also an argument that they are not equitable. Depending on the negotiation abilities of developers and their lawyers, major difference or inequities could result in the implementation of impact fees.<sup>50</sup>

Another problem is that impact fees are often developed and implemented with little or no participation from developers, which means there is no standardization of impact fees between communities, and developers must operate under different rules and regulations for each community.<sup>51</sup> Impact fees are an unreliable revenue source because development patterns are irregular, and it is not uncommon for projects to take years longer to construct than originally planned.<sup>52</sup> However, for jurisdictions pursuing an impact fee program, there are some “rules of thumb” to follow in developing a successful program.

### **Developing an Impact Fee Program**

The exact formula for developing and calculating traffic impact fees for state highway mitigation is not the intent of this paper and will need to be addressed at a later date. There are not many comparative impact fee studies between states, because impact fees are so community-specific and data collection is difficult to compare with an “apples-to-apples” approach.<sup>53</sup> However, there are several key issues that must be applied for impact fee programs to be successful no matter where the application.



According to Ross and Thorpe (1992), the first phase is the "realization phase". The adoption of impact fees begins when the local agency (either elected officials or management staff) acknowledge that existing revenues cannot pay for the infrastructure needed to support development. The "education phase" is next. This phase requires clear communication for the need of impact fees. The message needs to be conveyed very clearly that capital projects cannot be built without new sources of revenue. The third phase requires a listing of "all current deficiencies and future needs". An inventory of the full range of projects needed now and in the future is necessary to show developers that they are only paying for future needs. Listing all of the needs allows the agency to demonstrate that the impact fees will only be used for growth-induced projects. A final consideration is to involve developers and special-interest groups early in the impact fee development process.<sup>54</sup>

Once developers realize that impact fees are a reality, "they want fees to be adopted, formulated, and administered fairly and reasonably".<sup>55</sup> Developers do not want to be surprised, to avoid surprise impact fees should be developed through a public-private discussion process with representation from all parties.<sup>56</sup>

Next, developers want to see their money well spent on the necessary facilities. This requires public agencies to prepare plans and programs detailing the need for the capital improvements.<sup>57</sup> These plans and programs should also show all of the funding sources available to fund the capital improvements to demonstrate that impact fees alone are not the only mechanism used to manage growth.<sup>58</sup>

Finally, the calculation of impact fees should use recognized methods for determining development impacts and "should employ reasonable standards for facility capacities".<sup>59</sup> When developers pay these impact fees they want to see their fees go quickly into specific capital improvements that directly benefit their customers. This requires an accounting system that tracks these funds in a separate earmark account.

For a successful impact fee program, Ross and Thorpe (1992) also suggest the following: impact fees should not be used as a method to control growth; they should be used to help finance the public facilities necessary to accommodate growth. To help show the development community that their monies are not fixing existing deficiencies, it is best to identify all capital improvement needs, including those not being financed by impact fees. Do not attempt to fund maintenance or operational projects with impact fees. A comprehensive impact fee report, including rationale and calculations, should be readily available to the public. Complete documentation serves as a powerful defense against challenges to the agency's ability to impose impact fees.<sup>60</sup>

There are many local examples documented that can be used as models for developing successful impact fee programs. For example, the City and County of San Francisco enacted an ordinance to collect a Transit Development Impact Fee to recover the operating and capital expansion costs of the San Francisco Municipal Railway. One lesson they learned was that an impact fee ordinance must be "airtight" because the ordinance will probably be challenged in court.<sup>61</sup> To set an impact fee program up right, the City of San Francisco' planning department suggests plenty of studies before adopting legislation, public hearings, and writing the legislation language to stand up in court.<sup>62</sup> If necessary, a mechanism needs to be in place to collect impact

fees forcibly. In San Francisco's case, the ordinance is enforced through the denial of permits and liens on the property.<sup>63</sup>

One thing public officials should keep in mind, is to refrain from only looking at the costs of development, and not overlook the benefits of long-term development like increases in sales tax, employment, and other secondary benefits.<sup>64</sup> Besides, if development impacts are not paid up front, then they are paid later in the development process as taxes<sup>65</sup>

In order to pursue any policy change, several factors must first be in place. First, there must be a need for innovation due to rapid employment and population growth, and a corresponding demand for additional public facilities. Second, an administrative capacity to innovate needs to be in place. Finally, because impact fees depend on a land-use and capital improvement programs there must be capital planning and land-use coordination.<sup>66</sup>

The U.S. Department of Housing and Urban Development (1993) had a report developed to guide states in drafting impact fee legislation. This report came up with thirteen technical provisions that must be incorporated for effective impact fee legislation:

1. Impact fee legislation should clearly state the types of jurisdictions that are authorized to impose impact fees.
2. Legislation should identify the specific types of residential, commercial, industrial, and other development and/or buildings eligible for impact fee assessment and clearly state the basis for that assessment.
3. Legislation should stipulate all types of facilities and other expenditures that are eligible for funding by the impact fees.
4. Legislation should require definition of the service area for facility improvement.
5. Legislation should require that a rational nexus or more stringent relationship exist among the new developments' need for the facility, the amount of fee charged to develop the needed facility (proportionality), and the benefits that accrue to new development from the facility.
6. Legislation should require that impact fees finance only those eligible facilities projected for development in an existing capital improvement plan (CIP).
7. Legislation should require that the level of service provided by infrastructure funded by impact fees not exceed the level of service provided by existing infrastructure to the community as a whole.
8. Legislation should include a system of credits for developer-donated in-kind contributions and revenue payments for capital improvements of the type authorized for funding by impact fees.
9. Legislation should allow jurisdictions to establish a system of fee exemptions for specified types of development consistent with community priorities. The foregone fees should be paid from the jurisdiction's general revenues.
10. Legislation should state the time of fee payment.
11. Legislation should require the establishment of separate interest-bearing accounts for the deposit of impact fees.
12. Legislation should require the adoption of a plan to refund fees not spent within a reasonable time period.

13. Legislation should specify criteria for consideration in the calculation or formula for determining impact fee assessments.<sup>67</sup>

Utilizing these criteria, along with the other recommendations cited, will help develop a successful local impact fee program. However, what falls through the cracks many times, are cumulative and regional traffic impacts.

### Regional Traffic Impacts

A recent study of 89 jurisdictions in California, showed that 80 percent imposed impact fees for local traffic mitigation, but only between 10 and 30 percent imposed impact fees for regional traffic.<sup>68</sup> Currently, regional and cumulative traffic impacts created by new development are difficult to mitigate. Piecemeal developments “have negligible individual impact but substantial cumulative impact.”<sup>69</sup> A survey of forty-eight states titled “Traffic Impact Analysis and Impact Fees in State Departments of Transportation” found that “none of the states have any standard methodology for assessing impact fees for piecemeal developments.”<sup>70</sup> More and more, cumulative and regional traffic impacts are being recognized as a major issue.

As part of its efforts to balance the delivery of services, the Caltrans Maintenance Division conducted an Internet-based survey of California residents during December 2004 and January 2005. The survey was designed to assess satisfaction with and priorities for highway maintenance work and activities.<sup>71</sup> Figure 1 clearly shows that the people who answered the survey feel that highway traffic congestion is due to the State not keeping up with growth (27%), poor regional planning (18%), and developers are not providing the necessary road improvements (14%).

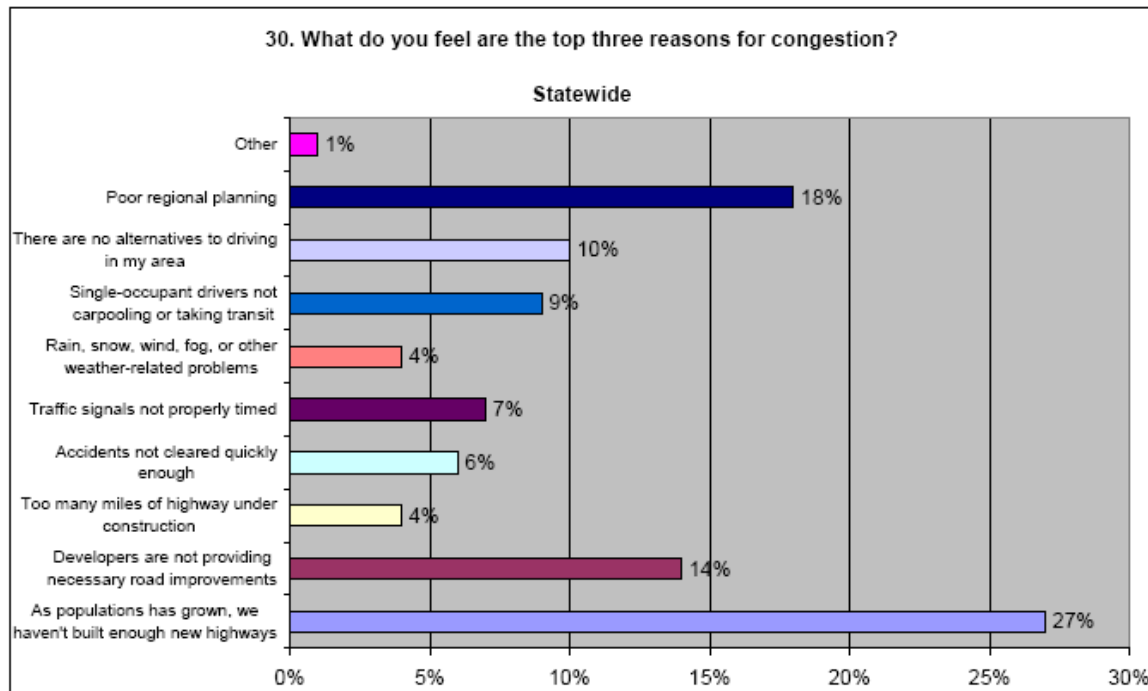


Figure 1 Caltrans Maintenance Customer Survey Results 2005

As the survey shows, the majority of people surveyed, feel traffic congestion is due to not enough new highways (additional capacity). One way to better understand the capacity loss issue with regard to state highways is to look at the urban wastewater model. Impact fees do not have to be limited to new infrastructure. Some municipalities use impact fees to “recoup excess capacity in existing facilities.”<sup>72</sup> For example, municipalities that constructed a sewer treatment plant with excess capacity to serve 10,000 more residents “can charge new residents a proportionate share of the excess capacity which is used by new development.”<sup>73</sup> A similar model could be created to charge development for the excess capacity they use up on state highways.

One-way jurisdictions are addressing regional traffic impacts are through nexus studies. These studies provide a quantified basis for imposing impact fees.<sup>74</sup> “While many jurisdictions recognize the usefulness of updating their nexus studies frequently, few have the resources to update; instead they increase impact fees through a city council finding, resolution, or ordinance that refers to a prior study.”<sup>75</sup> Three examples of local governments addressing regional traffic impacts are detailed below.

### **Maricopa Association of Governments**

The Maricopa Association of Governments (MAG) as part of a “Regional Growing Smarter Implementation Project” developed a series of “best practice” working papers. MAG’s third paper deals with development impact fees, but more importantly, it also discusses the issues associated with developments that have regional traffic impacts. MAG found that there was no mechanism in place for assessing fees for “locally approved development projects that have regional impacts”.<sup>76</sup> This can lead to the Arizona DOT shifting highway project priorities in the interest of safety, jeopardizing the planning and implementation of highway projects, which reduces highway capacity and increases congestion.<sup>77</sup>

State impact fee legislation in Arizona “does not specifically authorize regional fees”.<sup>78</sup> Charging regional fees would only be possible by changing existing legislation or entering into compacts with the local communities. Potential problems with compacts would be the timely construction of projects using the regional fees collected. Because the Arizona Department of Transportation partially funds regional construction projects, some legislative changes would be necessary to avoid funds lapses.

The crux of the problem is that high traffic generators also generate high revenues, which lets the approving jurisdiction receive the tax benefits, while a neighboring jurisdiction bears an unfair burden of costs.<sup>79</sup> This is similar to Caltrans’ situation, where the local jurisdiction approves a development that inevitably uses the state highway, but the development does not pay for any loss of capacity.

### **Kern Council of Governments**

The Kern Council of Governments recently completed a nexus study to identify the connection between new development and the “need for improved roadway facilities within the area of benefit”.<sup>80</sup> Once the nexus is established, the study calculates the traffic impact fees by land use

“in the area of benefit based upon the proportionate share of the total facility use for each land use”.<sup>81</sup>

The Kern COG nexus study came up with proposed transportation improvements totaling \$79 million, and the portion attributable to local new development within the area of benefit is \$74 million.<sup>82</sup> It is worth noting that three of the five projects on the transportation improvement list are on state routes.

### **Transportation Agency for Monterey County**

The Transportation Agency for Monterey County (TAMC) proposed a regional traffic impact fee to make sure that “growth pays for growth” in Monterey County.<sup>83</sup> Currently, there is no regional program in Monterey County; traffic impacts are addressed in a “piecemeal basis through the California Environmental Quality Act (CEQA) mitigation process.”<sup>84</sup> The goal of a regional traffic impact fee program is to streamline the mitigation process for regional traffic impacts.<sup>85</sup>

By paying regional traffic impact fees cumulative traffic impacts are addressed; development is not required to do any further analysis or mitigation other than necessary site-specific access and safety impacts on state facilities.<sup>86</sup> This type of a regional traffic impact fee program helps developers by make the required mitigation predictable and equitable throughout Monterey County regardless of the size of the development. The regional traffic impact fee program also helps local government by providing a regular source of funds for constructing projects needed to serve growth in a more consistent and less time consuming manner.<sup>87</sup> Some state agencies have limited programs in place for dealing with development impacts.

### **California Department of Fish and Game**

There is precedence for providing a California State agency authority to charge fees in relation to development. Assembly Bill (AB) 3158 requires that the Department of Fish and Game (DFG) collect filing fees to defray the cost of managing and protecting fish and wildlife trust resources. The purpose of these fees is to help fund the cost of consulting with other public agencies, reviewing environmental documents, recommending mitigation measures, developing monitoring requirements, and carrying out other activities to protect public trust resources under the California Environmental Quality Act (CEQA). The legislative intent is “to extend the current user-based funding system by allocating the transactional costs of wildlife protection and management to those who would consume those resources through urbanization and development...”<sup>88</sup>

The filing fees are collected at the end of the CEQA process, usually at the public notice of approval typically when a Notice of Determination (NOD) is filed with the appropriate county clerk, State Clearinghouse, or Resources Agency. Fees are paid to the county clerk who then remits the fee to the DFG.<sup>89</sup>

With the history of how impact fees came into play in California and the pros and cons of impact fee programs covered, the next item to cover is Caltrans’ role in the local development process in California.

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## CHAPTER FOUR: THE CALTRANS IGR PROCESS

### IGR Overview

As mentioned previously, developer impact fees can be a primary way to mitigate transportation impacts to both local and state facilities, and the Mitigation Fee Act gives lead agencies the authority to assess reasonable fees and allocate the fees toward corresponding improvements. The nexus between the proposed development and a demonstrated impact must exist. For cumulative impacts, each development is responsible for its proportionate share of mitigation fees based on its share of the impact. Via the environmental process and associated studies (i.e. Traffic Impact Study), the lead agency verifies the level of impact and determines fair share contributions as a condition of approval.<sup>90</sup> Caltrans' input into this local development projects is through the Intergovernmental Review program.

The Caltrans Headquarters Intergovernmental Review (IGR) website describes the IGR program as follows:

The Intergovernmental Review (IGR/) California Environmental Quality Act (CEQA) Program is essential to the Department's stewardship of the state transportation system. It allows the Department to review, comment and recommend mitigation measures on local plans, programs, and development proposals that have potential impacts on the state transportation system. IGR/CEQA is one of the basic transportation planning activities that works to include transportation considerations in land use decisions.

The Department is mandated by the Governor's Executive Order, D-24-83 (see Appendix A) to proceed as required under federal and state law to participate in IGR. The IGR/CEQA Program is responsible for helping to maintain the safety and operational integrity of the State Highway System (SHS).

The District IGR Program Coordinators are designated as the single-point-of-contact for the review of local and regional project development proposals and environmental planning documents. They are responsible for ensuring that transportation impacts resulting from land use development are either eliminated or reduced to a level of insignificance. Early consultation with local lead agencies during the IGR of proposed development activity results in less costly and often more environmentally sensitive traffic impact mitigation measures.<sup>91</sup>

Besides Executive Order D-24-83 there are several other laws and regulations that establish Caltrans' departmental jurisdiction.

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## Government Code Sections

The structure, powers, and duties of Caltrans are set forth in Sections 14000 through 14456 of the California Government Code. This Government Code, in conjunction with the Streets and Highway Code, form the foundation for Caltrans' authority in the IGR process. Key sections of the Government Code include the following:

- Implement and maintain a state highway system which supports the goals and priorities determined through the transportation planning process, which is in conformity with comprehensive statewide and regional transportation plans, and which is compatible with statewide and regional socioeconomic and environmental goals, priorities and available resources (Section 14000.5 (b))
- Supporting the commission in coordinating and developing, in cooperation with local and regional entities, comprehensive balanced transportation planning and policy for the movement of people and goods within the state (Section 14030 (a))
- Exercising such other functions, powers, and duties as are or may be provided for by law (Section 14030 (f))

The Streets and Highway Code are the set of laws that provide Caltrans with the overall authority to construct, improve, and maintain all of California's state highways and freeways. Key sections of the Streets and Highway Code related to the IGR program include the following:

- The department shall have full possession and control of all state highways and all property and rights in property acquired for state highway purposes. The department is authorized and directed to lay out and construct all state highways between the termini designated by law and on the locations as determined by the commission (Chapter 1, Article 3, Section 90)
- The department may do any act necessary, convenient or proper for the construction, improvement, maintenance or use of all highways which are under its jurisdiction, possession or control (Chapter 1, Article 3, Section 90)
- When the commission or other public entity has allocated any funds for the construction, improvement, or maintenance of any portion of a state highway within a city or a county, the department may enter into a cooperative agreement with the city or the county or other public entity for the performance of the work by the department or by the city or the county or other public entity, or for the apportionment of the expense of the work between the department and the city or the county or other public entity (Chapter 1, Article 3, Section 114 (a))
- The department and any county, city, or joint highway district, or any of them, may enter into a contract in respect to the proportion of the expense of the acquisition, construction, improvement or maintenance of any state highway to be borne by the respective parties to such contract. Any such contract may provide for the advancement of funds, for the acquisition of rights of way and for the doing of the work, or any portion thereof, by any party to the contract, pursuant to the laws governing such party with reference to such type of acquisition or such character of work (Chapter 1, Article 3, Section 130)

- The department may issue a permit to the owner or developer of property adjacent to or near a state highway to construct, alter, repair, or improve any portion of the highway for the purpose of improving local traffic access, if the improvements to the highway are required as part of, or as a condition to, the development of property and the improvements are accepted by the department (Chapter 3, Article 2, Section 670)

### **Caltrans Deputy Directive 25**

Caltrans Deputy Directive (DD) 25 (see Appendix B) further describes Caltrans' policy regarding local development reviews as follows:

Caltrans protects State transportation services and facilities from significant degradation caused by local development while simultaneously promoting economic vitality. This is achieved through timely and consistent reviews of local development proposals in which the reviews are based upon current policies, procedures, standards and professional judgment. The results are improvements or actions, which help achieve compatibility between land use and the statewide transportation system. Caltrans coordinates its local land use and development review efforts with all appropriate entities, including cities, counties, Regional Transportation Planning Agencies, and Congestion Management Agencies. Caltrans seeks the support of these entities in the planning and recommendation of mitigation for local development impacts on the local and State transportation systems.

### **CEQA / NEPA**

The National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) are the two main environmental laws that established a system of environmental review for development projects in California.<sup>92</sup> CEQA's role is mainly informational, and is sometimes referred to as the "full disclosure law". According to Fulton (1999) CEQA has four main functions:

1. To inform decision-makers about significant environmental effects
2. To identify ways environmental damage can be avoided
3. To prevent avoidable environmental damage
4. To disclose to the public why a project is approved even if it leads to environmental damage<sup>93</sup>

The "Draft Traffic Mitigation Agreements with Local Development Project Proponents" best describes Caltrans' role within the CEQA process:

CEQA is the law that grants public agencies the authority to mitigate or avoid significant effects on the environment with respect to applicable projects within their jurisdictions. The



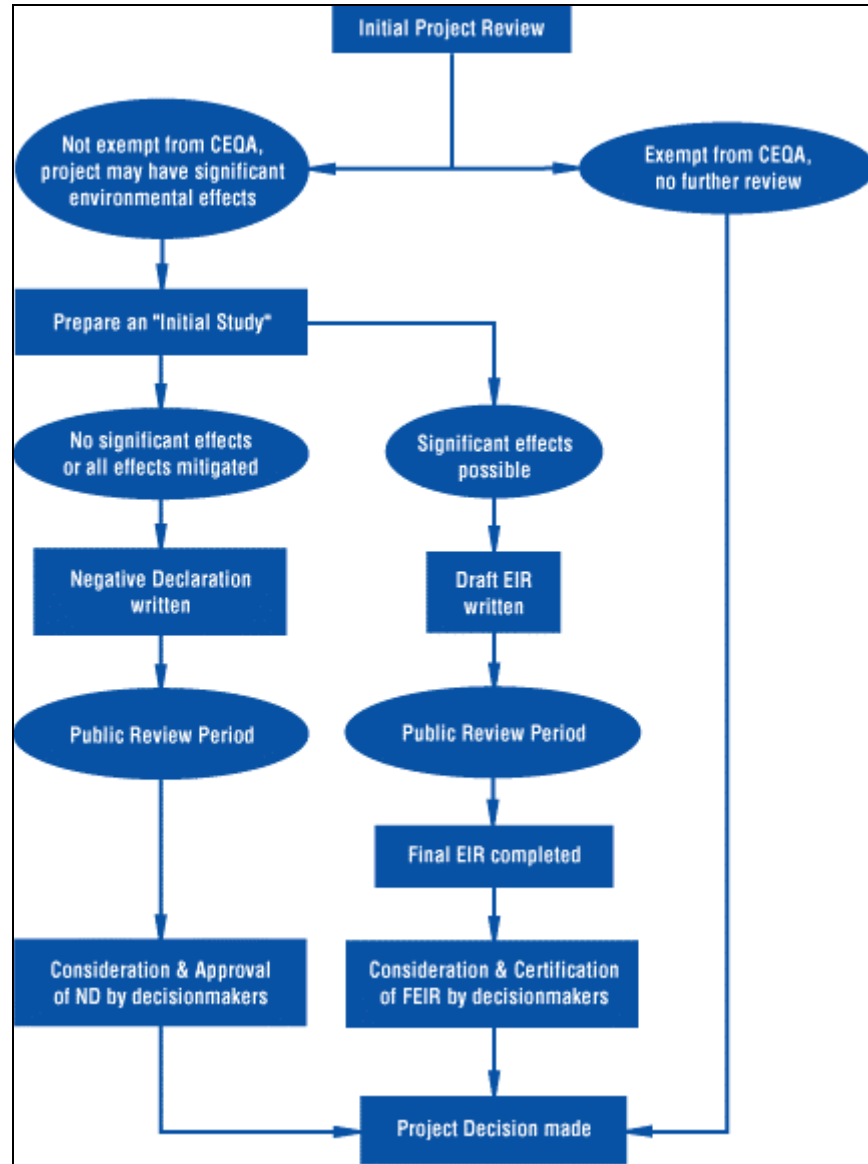
resulting environmental review process is central to Caltrans ability to obtain mitigation for development impacts to the SHS.

Under CEQA, Caltrans reviews proposed planning and development activity, which is subject to the approval of local public agencies, for the purpose of identifying potential significant impacts to the SHS. Depending upon the type and size of the proposed project, some degree of traffic analysis will be generated. The analysis may be in the form of a traffic impact study (TIS) conducted by a local public agency or proponent; it may be calculations from the Institute of Transportation Engineers (ITE) *Trip Generation Handbook*; modeling; prior traffic analysis that established per-trip cost; or, some other appropriate method.

Whatever the form of the analysis, if it is determined that a significant impact will result from a proposed project, it is Caltrans' responsibility to recommend improvements to the public agency responsible for approving the project (lead agency) that either eliminate the impact or reduce it to a level of insignificance (mitigation).

Caltrans' recommendation for mitigation must be based upon sound technical data that: (1) Establishes a nexus (connection) between the proposed project and the impact to the SHS; and (2) calculates that the mitigation is proportional to the impact (fair share).<sup>94</sup>

Figure 2 shows a simplified version of the CEQA process beginning with the initial project review.



Source: Yuba County Community Development and Public Works<sup>95</sup>

**Figure 2 Simplified CEQA Flow Chart**

Now that the basis for the IGR program is set with the Governor's Executive Order D-24-83, various Government Codes, DD-25, and Caltrans' role within the CEQA and NEPA process the IGR program can be summarized in an eight step process.

### **Eight Step IGR Process**

The Caltrans IGR process is where the district IGR coordinator reviews local development projects, establishes partnerships with state and local land use authorities, and negotiates transportation mitigation. For simplification, the Caltrans IGR process can be described in eight steps.

- Step 1 is when a project concept comes forward. The project concept can come from developers, private individuals, business interests, property owners, or public entities.
- Step 2 is when a lead agency accepts a project application. Lead agencies are typically city or county planning departments.
- Step 3 is when scoping meetings are held. These are early consultation meetings with the lead agency's public works and planning staff that also include project developers and Caltrans' functional unit staff.
- Step 4 is when plans are further developed and processed by the lead agency. This includes submittal of plot and site plans, and tentative parcel maps. Technical studies are completed and reviewed, and determination is made if general plan amendments, rezones, or permit actions are needed.
- Step 5 is when the Caltrans' IGR coordinators receive the project proposal and/or project's environmental documents from the lead agency. The IGR coordinator then determines if the information received is sufficient, makes an initial assessment of the project's impact to the state highway, and checks for consistency with existing local plans (i.e. general, specific, community, and regional transportation plans) and State plans (transportation concept reports, project study reports, and transit plans). Next, the IGR coordinator packages the necessary information, including prior permits and history, and distributes the package to the appropriate functional reviewers.
- Step 6 is when the functional reviewers identify impacts to the state highway, recommend mitigation, and identify potential permit requirements. Caltrans functional reviewers can include traffic operations, permits, environmental, hydraulics, transportation planning, right of way, project engineering, and maintenance.
- Step 7 is when the IGR coordinator takes the functional unit's comments and writes a formal comment letter to the lead agency that includes appropriate mitigation and conditions of approval. The letter is then submitted to the lead agency before the State Clearing House deadline. If necessary, follow up contact is made with the lead agency to get the final conditions of approval incorporated in the final approved document (prior to a Notice of Determination). The Notice of Determination (NOD) starts the thirty-day clock for any CEQA challenges.
- Step 8 is when the IGR coordinator does mitigation monitoring by tracking completion of commitments and encroachment permit activity. Mitigation may not occur until after the project starts construction, and is not complete until all of the promised measures are accomplished.

As described earlier, for state facilities, *Streets and Highways Code* sections 114 and 130 permit a city, county, or other public entity, which impose mitigation fees and desire to bank such fees for future transportation projects or services, to enter into a cooperative agreement with Caltrans or other transportation provider. Once the agreement is executed, funds can be accepted and set up in a depository accounts for specific local development mitigation fees.<sup>96</sup>

Caltrans prefers to work with the lead agency in this process. However, if the Agency does not wish to administer the funds for Caltrans specified use, Caltrans may enter into an agreement directly with the developer/project proponent to collect these mitigation fees.<sup>97</sup>

### **Traffic Mitigation Agreements**

Caltrans' Division of Transportation Planning is in the process of developing a Traffic Mitigation Agreement procedures guide. The purpose for developing these procedures is threefold: (1) provide agreement templates for use between Caltrans and local development proponents for direct receipt of mitigation measures funding, or a commitment for capital improvement; (2) describe the steps necessary to enter the direct receipt of funding into an accounting management system; and, (3) describe the steps necessary to account for the expenditure of the funds.<sup>98</sup>

These Traffic Mitigation Agreement procedures apply at the end of the IGR process, when applicable. That is, they apply only when Caltrans enters into an agreement directly with a proponent (developer) for mitigation of a proposed project that is subject to local public agency approval. (No Caltrans funding in the proposed project, nor discretion in how the funds are spent.) They are used for agreements between Caltrans and project proponents, both private and public.<sup>99</sup> A flow chart describing the Traffic Mitigation Agreement process is provided in Appendix C.

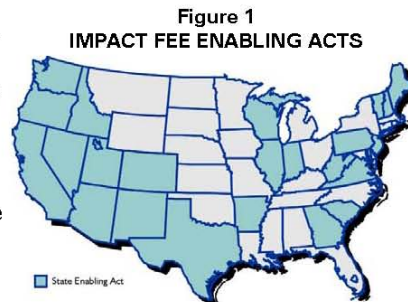
Now that Caltrans' authority and process for requesting mitigation from development impacts has been covered, we will now cover other State DOTs, to see what their process is for mitigating impacts to their state highway system.

## CHAPTER FIVE: CASE STUDIES

To better answer the question, “Should Caltrans have legal authority to impose traffic impact mitigation fees?” State Departments of Transportation that have state impact fee legislation were contacted. Figure 2 shows the most recent (2005) state impact fee research prepared by Clancy Mullen of Duncan Associates.<sup>100</sup>

### STATE IMPACT FEE ENABLING ACTS

Impact fees were pioneered by local governments in the absence of explicit state enabling legislation. Consequently, such fees were originally defended as an exercise of local government's broad "police power" to protect the health, safety and welfare of the community. The courts gradually 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. Texas adopted the first general impact fee enabling act in 1987. To date, 25 states have adopted impact fee enabling legislation (for other than water and wastewater fees). These acts have tended to embody the constitutional standards that have been developed by the courts.



**Table 1**  
**STATE IMPACT FEE ENABLING ACTS**

State	Year	Citation
Arizona	1988	Ariz. Rev. Stat. Ann., § 9-463.05 (cities), § 11-1102 et seq. (counties)
Arkansas	2003	Arkansas Code, § 14-56-103 (cities only)
California	1989	Cal. Gov't Code, § 66000 et seq. (mitigation fee act); § 66477 (Quimby Act for park dedication/fee-in-lieu); § 17620 et. seq. (school fees)
Colorado	2001	Colo. Rev. Stat., § 29-20-104.5; § 29-1-801804 (earmarking requirements); § 22-54-102 (school fee prohibition)
Georgia	1990	Ga. Code Ann., § 36-71-1 et seq.
Hawaii	1992	Haw. Rev. Stat., § 46-141 et seq.
Idaho	1992	Idaho Code, § 67-8201 et seq.
Illinois	1987	605 Ill. Comp. Stat. Ann., § 5/5-901 et seq.
Indiana	1991	Ind. Code Ann., § 36-7-4-1300 et seq.
Maine	1988	Me. Rev. State. Ann., Title 30-A, § 4354
Nevada	1989	Nev. Rev. Stat., § 278B
New Hampshire	1991	N.H. Rev. Stat. Ann., § 674:21
New Jersey	1989	N.J. Perm. Stat., § 27:1C-1 et seq.; § 40:55D-42
New Mexico	1993	New Mexico Stat. Ann., § 5-8-1 et seq.
Oregon	1991	Or. Rev. State, § 223.297 et seq.
Pennsylvania	1990	Pa. Stat. Ann., Title 53, § 10502-A et seq.
Rhode Island	2000	General Laws of Rhode Island, §45-22.4
South Carolina	1999	Code of Laws of S.C., § 6-1-910 et seq.
Texas	1987	Tex. Local Gov't Code Ann., Title 12, § 395.001 et seq.
Utah	1995	Utah Code, § 11-36-101 et. seq.
Vermont	1989	Vt. Stat. Ann., Title 24, § 5200 et seq.
Virginia	1990	Va. Code Ann., § 15.2-2317 et seq.
Washington	1991	Wash. Rev. Code Ann., § 82.02.050 et seq.
West Virginia	1990	W. Va. Code, § 7-20-1 et seq.
Wisconsin	1993	Wis. Stats., § 66.0617

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**Figure 3 State Impact Fee Enabling Acts**

This list of state impact fee enabling acts was used as the contact list for research. The research included both phone interviews and email questions to State Departments of Transportation to receive feedback on how they handled development impacts to their state highway system.

The main goal for interviewing other State DOTs was to determine their role (if any) regarding local development impact fees, and to see if there is a model out there that is really working for mitigating development impacts to state highways. The four primary questions asked were:

1. What is your DOT's process for mitigating local development impacts?
2. Have impact fees charged at the local level ever gone towards state highway mitigation?
3. Do you feel the current process is working (is local development paying their fair share towards highway impacts)?
4. Do you have any suggestions to improve the current process (i.e. more state authority)?

With these questions in mind, an Internet search was done to find contacts for each of the State DOTs that have state impact fee enabling legislation as listed above.

### **Case Studies Summary**

Fortunately, a contact for each state was identified and all twenty-six State DOTs responded in some fashion. States contacted include the twenty-five states listed above in Figure 2 and the State of Delaware. Delaware DOT was contacted because during the literature research Delaware was cited as having state authority to impose traffic impact fees (see Appendix D).

Not surprisingly, most states have very different methods for addressing development impacts to their state highway. No two state impact fee legislations are identical, which makes comparisons between the states difficult, and even identifying which states have enacted impact fee legislation is arguable.<sup>101</sup> It can be argued that impact fees exist in all 50 states under a variety of names.<sup>102</sup>

What was surprising was the myriad of departments within the various DOTs that responded to development impacts. The various departments include traffic engineering, maintenance engineering, transportation planning, design, environmental services, and research scientists.

Common items all of the DOTs have include some sort of access management system. Every respondent mentioned that they have an access permit program to manage access to their state highway. This led to some confusion in the earlier phone interviews. Most respondents are very familiar with access type issues, and were very helpful in discussing their access management programs. However, for this particular subject, I was looking for information on development impacts that did not require any access permit.

The most common response was that State DOTs had to work through local jurisdictions for state highway mitigation. The one exception, as mentioned earlier, is Delaware DOT. Delaware DOT is unique, in that it is a small state, and it owns 90% of all state road infrastructures. This allows Delaware DOT to require development get a transportation permit from them for any "change in ownership or change in use". Delaware's Code states, "The Department of

Transportation is responsible for reviewing and approving any public or private traffic mitigation plan or program.”<sup>103</sup> Ultimately, for development in Delaware to go forward, they must negotiate with Delaware DOT for a permit.

All the other State DOTs contacted work with their local jurisdictions for mitigating development impacts to the state highway. Some states are more successful than others. For instance, Oregon, Nevada, Vermont, New Hampshire, and Illinois DOTs state that their current process for mitigating local development impacts to their state highway is working and no changes are necessary. Other State DOTs such as, Wisconsin, Rhode Island, Hawaii, South Carolina, Utah, West Virginia and Virginia said the process is not working. The remaining State DOTs are somewhere in the middle where the process works OK, but can be improved, or did not respond to the question (see Table 2).

**Table 2 State DOT's Responses**

State DOT	<i>Is the process for mitigating local development impacts to the state highway working?</i>			
	Yes	OK	No Answer	No
Arizona		X		
Arkansas			X	
California		X		
Colorado		X		
Delaware		X		
Georgia			X	
Hawaii				X
Idaho			X	
Illinois	X			
Indiana			X	
Maine		X		
Nevada	X			
New Hampshire	X			
New Jersey		X		
New Mexico			X	
Oregon	X			
Pennsylvania				X
Rhode Island				X
South Carolina				X
Texas			X	
Utah				X
Vermont	X			
Virginia				X
Washington		X		
West Virginia				X
Wisconsin				X

Another common item that came out of the interviews, was the politics involved in pursuing any types of legislative changes. State DOTs that thought changing legislation might be one way to

better mitigate impacts to the state highway; also said that it was “politically infeasible” at this time. None-the-less, Washington and New Jersey mentioned they are pursuing legislation to provide more state authority in imposing impact fees. The State of Washington’s pending draft legislation (SB 5164) states:

The department of transportation may impose mitigation fees, or require mitigation, from development activity that creates additional significant demand and need for transportation improvements to highways of statewide significance or related facilities or state highways in urban growth areas as defined in RCW 36.70A.030, as determined by the department.<sup>104</sup>

Finally, a key for all State DOTs is partnering with the local jurisdictions to mitigate impacts to the state highway. Those states that had good communication with their local partners seemed to think the process was working OK, and those that had poor communication seemed to need an alternative method to mitigate impacts. This too varied between the states. Some states have a strong voice in local land-use decisions and thus a role for mitigating impacts, while others are at the whim of local decisions.

Below are the summaries of phone interviews and e-mail responses.

Note: Some questions differ between the phone interviews and email. The reason is because as the interviews progressed the questions evolved and became more focused.

### **Delaware Department of Transportation (Phone)**

Contact: Drew Boyce  
Title: Subdivision Engineer  
Date: April 27, 2005

*Question: What is Delaware DOT’s process for mitigating local development impacts?*

90% of road infrastructure is state owned. Larger municipalities own the other 10%. There is no formal impact fee. Trip generation determines if a traffic impact study (TIS) is necessary. Local land use agency does the zoning, but the DOT is responsible for transportation.

What ever comes out of the TIS the DOT “requires”. The DOT can require improvements because any change in ownership or a change in use requires a permit from DelDOT. The Delaware rules and regulations give full authority for access decisions to the DOT. The DOT works with the local land use agencies on making “notes” on proposed development plans, which hold the developer accountable for those improvements (notes).

Offsite improvements are part of doing business with DelDOT. The developers may not like it, and they can negotiate, but ultimately their project does not go forward without the DOT permit.



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The process is working OK. The tough part is determining equity. The developers first in line pay the “lion share” of costs and later development “cruises”. The TIS is used to determine the fair share costs. The developer pays the DOT before an improvement is built (i.e. signal).

Traffic mitigation agreements and implementation schedules are in place, and as development occurs those agreements and schedules can be adjusted to balance fair shares.

### **Indiana Department of Transportation (Email)**

Contact: Stephen C. Smith, AICP  
Title: Manager, Long-Range Transportation Planning Section  
Date: May 2, 2005

*Question: What is Indiana DOT’s process for mitigating local development impacts?*

We do not have specific impact fees at INDOT, we do have some communities which impose fees such as Fishers, IN and we do have state legislation (developed by the development community) which outlines the supporting planning studies required for communities to develop local ordinances for imposing fees. INDOT does have a traffic impact study requirement for developments of specific sizes when requesting a driveway permit on a state jurisdictional roadway. It provides a basis for identifying needed traffic improvements in order to deal with deficiencies created by the development's traffic. This is carried out through our INDOT districts permits and traffic engineers as opposed to central office.

### **Washington Department of Transportation (Phone)**

Contact: Jeff Barsness  
Title: Development Review Engineer, Southwest Region  
Date: May 3, 2005

*Question: What is Washington DOT’s process for mitigating local development impacts?*

Washington DOT’s role is similar to California. Any state highway mitigation must go through the cities and counties. The State has no authority to mitigate. The local agency can make mitigation a condition of approval for a project if they agree with our comments.

There is draft legislation to provide the DOT more authority (see Appendix B); however, it is not likely to pass. The locals are worried that the State would take their power to charge fees.

What it comes down to is having a good working relationship with the local governments. For example, the DOT has a great relationship with Clark County. In most instances, the County will speak with the DOT first before sitting down with developers. However, jurisdictions in a depressed economy will do anything for development, and simply do not want to ask developers for traffic impact mitigation fees.

The process works well, when it works. It would be nice to “require” development put in mitigation that is “reasonable” if the nexus is there. In some instances, where the project is relatively small, the cost of administering the mitigation fees would be more than what is paid.

### **Arizona Department of Transportation (E-mail)**

Contact: John Carr  
Title: Staff Engineer, State Engineer’s Office  
Date: May 5, 2005

*Question: What is Arizona DOT’s process for mitigating local development impacts?*

In response to your research question, I received the comments provided below. Hopefully they will provide the answers you are seeking. In general, Arizona DOT does not have the ability to impose impact fees. You should consider contacting Arizona Cities and Counties to see what abilities they have to impose such impact fees.

This is a good answer, to which I might only add that through the Red Letter Process and our relationships with the various local jurisdictions sometimes the locals can extract a dedication or reservation of right of way for our planned facility by granting something the developer wants (zoning change, higher density, or more site specific accommodations) in exchange. This isn't an impact fee, and is at best an indirect contribution to the state highway system, but it can be helpful in protecting a planned highway corridor.

State laws do not allow ADOT to collect or assess development impact fees, unless you consider gas tax an impact fee. Local governments/counties can collect/assess impact fees and usually do to newer developments for infrastructure improvements (streets, water, fire, police, parks, schools, etc.). To date, the local governments have not collected impact fees for improving the state highway system, only local streets.

ADOT's only "hook" on developers is the connection point to the state highway system. ADOT can require the developer to perform a Traffic Impact Analysis to determine if a new or proposed intersection requires signalization, widening for left and/or right turns, etc. ADOT would then require the developers to perform the needed improvements under a no cost permit before they could access the state highway system.

In recent years, we have several examples where developers have funded new interchanges, or totally reconstructed older interchanges, and added ramps to grade separations on controlled access freeways, that have cost up to \$15M each, so they can control their own fate. We have a few pending proposal from developers to add frontage roads to controlled access freeways to create new access points between interchanges.

### **Vermont Agency of Transportation (Phone)**

Contact: Barry Driscoll  
Title: Management Strategy Chief, Policy and Planning Division  
Date: May 10, 2005

*Question: What is Vermont DOT's process for mitigating local development impacts?*

Vermont has two statutes that provide language for development impacts. The first is the Access Management (section 19.1111) that requires access permits for any development. The second are Regional Development Boards. The Regional Development Boards are made up of volunteers that review proposed developments against ten criteria. The fifth criterion is traffic.

The Vermont Agency of Transportation has automatic party status at the Regional Development Boards to request mitigation from proposed development. However, if the Regional Development Board denies the request, or there is no access permit needed, the Agency is "stuck".

The current process is working "by-and-large", with 90% of the development going through with no problems. More legal authority would be nice, but is not currently politically acceptable. The State of Vermont is big on "home-rule" and "local control", even though that is more of an idea than a practice now days.

#### **Oregon Department of Transportation (Phone)**

Contact: Jerri Bohard  
Title: Planning Section Manager  
Date: May 10, 2005

*Question: What is Oregon DOT's process for mitigating local development impacts?*

In Oregon, local communities have the power to apply impact fees. The Oregon DOT currently works in a public/private partnership. When large developments are proposed the State, local jurisdiction, and development will sit down and negotiate for improvements. A current example of this is in Medford where development contributed \$15 million towards interchange improvements.

Oregon has a "Transportation Planning Rule", which states that if there is a general plan amendment that has a significant impact then all parties will negotiate improvements. It is a tool that is used to determine "now what do we do". Once a consensus is reached, then Oregon DOT will enter in to an agreement with the local government to collect mitigation.

The current process is successful without more authority. However, the state transportation plan has policy for dealing with development, and the transportation commissioners would like to "up the ante". Oregon DOT is going to continue to work in partnership with local governments. Besides, pursuing legislation change is not politically feasible at this time.

#### **Utah Department of Transportation (Phone)**

Contact: Ahmed Jaber  
Title: Systems Planning and Programming Director  
Date: May 12, 2005

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*Question: What is Utah DOT's process for mitigating local development impacts?*

Right now only the cities and counties have authority to require impact fees. Legislation just passed that requires the cities and counties to contact the Utah DOT on proposed development projects in the “vicinity” of the state highway. Utah DOT then has seven days to respond and comment on the proposed development. It is then the local agency’s prerogative to either include any state highway mitigation or not. For new access, the DOT has authority through their access management program.

This current process requiring notification to the DOT has improved the process. However, Utah DOT is behind where they “ought to be”, but it is a step in the right direction. The Legislature is now recognizing that the state highway system cannot keep up with growth and are looking at alternative ways to fund transportation. In the future, more DOT authority will be necessary to mitigate impacts to the state highway. However, it will take at least a couple more years to change the laws.

#### **Hawaii Department of Transportation (Phone)**

Contact: Douglas Meller  
Title: Highway Planning Branch  
Date: May 12, 2005

*Question: What is Hawaii DOT's process for mitigating local development impacts?*

Hawaii law currently only authorizes the City and County of Honolulu to adopt ordinances to assess impact fees to pay for State highway improvements. Hawaii's current Governor has rejected HDOT requests/proposals to amend Hawaii law to authorize either HDOT or the other counties to assess impact fees to pay for State highway improvements. The City and County of Honolulu have adopted one impact fee ordinance, which I have attached, and here's an unofficial "history" which I prepared for a presentation by our HDOT Highways Division Administrator (see Appendix E).

#### **Nevada Department of Transportation (Phone)**

Contact: Fred Droes  
Title: Chief Safety/Traffic Engineer  
Date: May 13, 2005

*Question: What is Nevada DOT's process for mitigating local development impacts?*

Nevada has a similar set-up as California, where the cities and counties have the authority to collect and impose impact fees. The Nevada DOT has “no ability to collect”, that is all done at the local’s level. The locals are mitigating for impacts to the state highway, and there has been “good” cooperation between the locals and Nevada DOT. There is good opportunity to review proposed local development projects and provide feedback.

The process is working “for the most part”. Even if the process were changed to allow state authorization, it would be tough to provide staff to monitor a state impact fee program. Nevada DOT is short-staffed, and they are better off than most state agencies in Nevada.

A bigger hammer is not really necessary right now. Passing on increased costs from the developers on to homebuyers is not the way to go. A change in policy would be politically feasible if it came from the locals on up, but not if it was proposed from state government.

### **Wisconsin Department of Transportation (Phone)**

Contact:      Kassandra Walbrun, AICP  
Title:         Bureau of Equity and Environmental Services  
Date:          May 16, 2005

*Question: What is Wisconsin DOT’s process for mitigating local development impacts?*

Wisconsin has two processes. The first process is a local statute that allows local governments to impose development impact fees. The locals can recoup transportation dollars for both the state highway and local roads. Wisconsin DOT cannot impose development impact fees, but does have access control. Developments that require new access to the state highway must complete a Traffic Impact Assessment (TIA), which requires a traffic study. If the impacts are substantial then the development pays for the needed improvements.

For developments that do not require new access the Wisconsin DOT works closely with the local governments. It is not uncommon in urbanized areas to work with the Metropolitan Planning Organizations (MPOs) on mitigating impacts to the state highway. It is a little more difficult in the smaller communities because new development pushes traffic onto the state highway due to lack of parallel roads.

The second process Wisconsin DOT can use is “redesign”. For example, if a project is already in the pipeline and new development is proposed after the original design the Wisconsin DOT can redesign the project to make sure the proposed development pays its fair share.

Wisconsin has talked about changing statutes, but it is politically infeasible right now. The current process is not working “for recovering costs” associated with impacts to the state highway. More State authority would be “ideal”, but change would be difficult and controversial. However, more State authority would create a better transportation system in the long-term.

### **Colorado Department of Transportation (Phone)**

Contact:      Christine Rees, MCRP JD  
Title:         Safety & Traffic Engineering Branch  
Date:          May 17, 2005

*Question: What is Colorado DOT’s process for mitigating local development impacts?*

Colorado Department of Transportation (CDOT) does not have authority to impose development impact fees. CDOT uses Intergovernmental Agreements (IGAs) with the local agencies to mitigate impacts. The way it works in Colorado is the first person (development) in pays all of the costs associated with the improvements. Developments that follow then pay their share for the improvements. If there is a 20% increase in traffic that triggers payment. Someone will have to pay to fix.

Interestingly enough, this is not an official program.

CDOT works directly through the locals, except on access control for the state highway. If somehow a development gets access through political means, CDOT will purchase access with federal funds through a deed, or use eminent domain.

### **California Department of Transportation (In-person)**

Contact: Terri Pencovic and Betty Miller  
Title: Intergovernmental Review (IGR) Program Manager and IGR Coordinator  
Date: May 17, 2005

*Question: What is California DOT's process for mitigating local development impacts?*

The cities and counties can impose impact fees because of their "police powers". The State is "not always getting" mitigation to the state highway. The biggest problem is the inconsistencies between the jurisdictions. For example, down in Southern California the Southern California Association of Governments (SCAG) has a regional fee program, yet elsewhere there are jurisdictions that have no program at all. Also, Caltrans' review of local developments varies by district. The Traffic Impact Study (TIS) guidelines and early coordination with local jurisdictions is key. Deputy Directive (DD) 25 is being revised to help local development reviews (LDR) be more consistent statewide.

It is important to understand the different scenarios and roles during LDR. There are four categories of agencies available during LDR: responsible agency, commenting agency, lead agency, and trustee agency. The State tried pursuing making Caltrans a trustee agency for state highways, but highway infrastructure cannot be considered a resource. Basically, what it comes down to is Caltrans needs to get involved early in the local development process and provide good comments on proposed local development projects.

### **New Jersey Department of Transportation (Phone)**

Contact: Sandra Goslin  
Title: Supervising Transportation Analyst  
Date: May 19, 2005

*Question: What is New Jersey DOT's process for mitigating local development impacts?*

New Jersey adopted the third access code in the United States behind Colorado and Florida. Development must get a permit for crossing a state frontage road. The type of permit needed

depends on the number of trips generated. If the development generates 500 or more trips it is considered a “major”. Development that triggers 200 or more trips is considered a “major with planning” and requires a traffic impact study. New Jersey code states that fees charged can be banked for fifteen years. However, New Jersey DOT would rather have transportation improvements rather than fees.

New Jersey is moving towards legislation for addressing off-site development. However, getting past the “home rule” is difficult. Currently, development is responsible for traffic at the state highway frontage no matter how far away their lots are. There is a drive to change legislation and provide the State more authority. For example, there is a local street that the locals let go to Level of Service (LOS) F, this street then feeds into a state highway, and the locals want to know what the state is going to do to reduce congestion on the state highway.

Is the process working? The current access code has been readopted twice and no one has complained. In fact, people have defended it. There are meetings going on now to change the code, particularly the “rural areas access code”. In New Jersey, the zoning must conform to the access.

#### **New Hampshire Department of Transportation (E-mail)**

Contact: Bill Oldenburg  
Title: Chief of Preliminary Design  
Date: May 19, 2005

*Question: What is New Hampshire DOT's process for mitigating local development impacts?*

A very interesting topic and well timed for us here in New Hampshire. We are currently updating our Drive Access Manual which is our guideline for gaining access onto a State roadway. This is one of the topics which we are discussing, whether we can charge impact fees to developers for the various aspects of the review process.

Currently if a developer wishes to gain access to a State roadway they must fill out a Drive Permit Application. This is a simple form and there is no charge to submit the application. The application is submitted to the appropriate District Maintenance Office in the development area. The District Office determines if more information is needed to approve the application. If the development is large, over 100 peak hour trips, then a Traffic Impact Study must be completed. In NH this involves analysis of the Build vs. No Build scenarios for the opening year and the design year of 10 years in the future. Once this is complete the developer is required to provide roadway mitigation so that the roadway capacity and safety are not degraded. This mitigation is usually physical in nature, i.e. adding turn lanes, adding thru lanes, signalization, etc. The mitigation can also be in consideration of future development, i.e. give cross easements to abutters for access, donate right of way to the State for future widening. Also as part of future mitigation we may ask the developer to offer a bond or letter of credit to the State if we have a project to improve the roadway in the future. This bond is usually calculated by using a "fair share" proportion of the amount of traffic the development will add vs. the cost of the

construction (so if the development adds 5% new traffic to an intersection they will be asked to contribute 5% of the cost to improve the intersection).

Currently the NHDOT does not charge for any part of the application or review process. It also does not charge any impact fees for developers. In our review for our Drive Manual update will have found that imposing a fee will be very difficult, since this fee is seen by many as a hidden tax and is anti-business. New taxes or fees must be approved by our Legislature and this problematic politically in the "Live Free or Die" state.

Contact: Mike Pillsbury, New Hampshire DOT  
Title: Highway Maintenance Engineer  
Date: June 6, 2005

In response to your additional questions, I am not aware of local impact fees being utilized for highway mitigation on the State maintained system. Developers are adequately addressing the impacts to the State highways under our current process (though occasionally the mitigation does come up a little short). At this time we do not have any immediate plans to alter the process.

#### **Rhode Island Department of Transportation (E-mail)**

Contact: Robert Shawver  
Title: Associate Chief Engineer  
Date: May 26, 2005

*1. Have impact fees charged at the local level ever gone towards state highway mitigation?*

No.

*2. Do you feel the current process is working (is local development paying their fair share towards highway impacts)?*

No. Development can greatly burden the highway system and ultimately result in State expenditure for infrastructure improvements, yet there is no formal system for providing the State with funding for the required transportation improvements. Large project developers have funded certain transportation improvements necessary for their development (signals, intersection improvements, etc.) where they find it necessary for obtaining subdivision, zoning or highway access approvals.

*3. Any ideas to improve (i.e. more State DOT authority)?*

Assessing a State imposed impact fee on large-scale development makes some sense. In Rhode Island the aggregate affect of small scale development probably has much more impact on the transportation system than the large-scale development that occurs here. Our DOT is not sufficiently staffed to review all development proposals received by local government. Capturing significant impact fees from small development for transportation improvements is probably not feasible from either a political or practical standpoint.



While impact fees feel good from an equity and smart growth standpoint. State DOTs shouldn't have to rely on impact fees to make the improvements necessary to the transportation system. The best solution to maintaining the transportation system and making transportation improvements in a timely fashion is to provide the DOT with a stable and adequate operating and capital budget.

### **Texas Department of Transportation (Phone)**

Contact: Mark Marek  
Title: Associate Chief Engineer  
Date: May 26, 2005

*Question: What is Texas DOT's process for mitigating local development impacts?*

Texas DOT uses Traffic Impact Analysis (TIAs) for large development projects like a Super Wal-Mart. In those cases the development might pay for a new signal or right-turn pocket after negotiating. Currently these negotiations are done on a case-by-case basis, unless there is a really big project.

Texas is big on property rights, making even access management difficult for simple driveway space. Texas is not ready to push for more authority. Legislation is quiet right now after the last access management legislation, and they do not want to stir the pot with such a controversial issue. Maybe in the future, if the time is right, Texas DOT may pursue more authority. Mr. Marek did not want to suggest any ways to improve the process or comment on whether or not the current process is working.

### **South Carolina Department of Transportation (E-mail)**

Contact: Michael A. Dennis  
Title: Planning Chief, Planning and Environmental  
Date: May 27, 2005

*1. Have impact fees charged at the local level ever gone towards state highway mitigation?*

Currently, I don't believe there are any impact fees being charged in SC on any level. They are being discussed in several areas, but as far as I know, currently there are no impact fees in place. They are becoming more and more popular with elected officials though.

*2. Do you feel the current process is working (is local development paying their fair share towards highway impacts)?*

Since we don't have any "per-se" impact fees, I would obviously say it is not working. The closest thing we would have to an "impact fee" would be requiring developers to pay for such items as turn lanes at intersections or signal lights at entrances.

*3. Any ideas to improve (i.e. more State DOT authority)?*

Closer and better coordination between local governments and the SCDOT. A lot of things still slip through the cracks and development is allowed without checking with the state to see what type of future project is being planned for the area.

I don't know of anyone at the state level. In SC, that is considered a local government thing and we don't get involved.

### **West Virginia Department of Transportation (E-mail)**

Contact: Richard L. Warner, P.E.  
Title: Urban Studies Section, Planning and Research Division  
Date: May 27, 2005

*1. Have impact fees charged at the local level ever gone towards state highway mitigation?*

Not to my knowledge.

*2. Do you feel the current process is working (is local development paying their fair share towards highway impacts)?*

West Virginia is still primarily a rural state where intense land-use development is not a widespread problem for our transportation system. The process may not be working as well in the parts of our state where the pace and extent of development is more intense. Our eastern panhandle (primarily Berkeley and Jefferson Counties) is perhaps the best example. The transportation system in those counties stands a real chance of eventually becoming overwhelmed by the increasing level of travel demand related to continuing land-use development, unless additional funding sources for highway and transit improvements can be found.

There is very little zoning control of land-use in West Virginia, and the Division of Highways owns and maintains virtually the entire highway system within the state. We are generally required by state laws to grant access to properties that front our highways as long as our basic permit requirements can be met. The Division can require developers to make improvements to our roadway system based on recommendations of traffic impact studies that we can require as part of our access permitting process. These are limited to access improvements in the immediate area impacted by the development. They may include signalization, the addition or expansion of turning lanes, pavement markings and signing, and similar improvements, and they tend to address access needs in present-day terms. However, we are unable to require developers to contribute to the mitigation of the longer-term, cumulative effects of land-use development on our highway system. Overall mobility along an urban arterial, for example, can ultimately be adversely affected by continued land-use development adjacent to the roadway. When this happens the Division of Highways normally has no recourse but to attempt to bear the full cost of remedial improvements alone. Unfortunately, in many cases the Division is financially unable to meet such needs.

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*3. Any ideas to improve (i.e. more State DOT authority)?*

Addressing the above issues would require significant changes in our state's laws and may be viewed in the short term as contrary to the state's pro-business policies. However, should our revenues for transportation system improvements decline in the future as has been projected, and if the need for system improvements continues to accelerate in many parts of the state, that view could change as we experience more development-related transportation problems.

**Maine Department of Transportation (E-mail)**

Contact: Stephen Landry  
Title: Assistant State Traffic Engineer  
Date: May 27, 2005

*1. Have impact fees charged at the local level ever gone towards state highway mitigation?*

Yes, impact fees at the local level have gone forward toward state highway mitigation, actually quite a bit has. The biggest problem we have as a state, is when we take in an impact fee, it is tough for us to incorporate that money directly in a project. The money has to go to the bottom line and not directly in a project which causes some financial issues for us because there is no way to cipher that money to the appropriate project.

*2. Do you feel the current process is working (is local development paying their fair share towards highway impacts)?*

I would like our process to be more fair and do more impact fees, but the rules and statute in place basically say the last person in pays.

*3. Any ideas to improve (i.e. more State DOT authority)?*

I am not sure how to make it better. If we had some good ideas that were legal I would move forward on that.

**Illinois Department of Transportation (E-mail)**

Contact: Colleen Corr  
Title: Assistant to the Director, Office of Planning and Programming  
Date: May 27, 2005

*1. Have impact fees charged at the local level ever gone towards state highway mitigation?*

No.

*2. Do you feel the current process is working (is local development paying their fair share towards highway impacts)?*

Yes. IDOT has a sufficient source of funds elsewhere and does not need a share of the local impact fees.

*3. Any ideas to improve (i.e. more State DOT authority)?*

IDOT is happy with the status quo.

**Arkansas Department of Transportation (E-mail)**

Contact: Virginia Porta  
Title: Staff Planning Engineer – Policy Analysis Section  
Date: May 31, 2005

*1. Have impact fees charged at the local level ever gone towards state highway mitigation?*

Arkansas does not currently have any State or local impact fees for surface transportation (not including airports). We (the Department) and local governments do have the authority to impose those fees but it has not been an option that either the State or the local governments have exercised. The Department does have a minimal driveway permit 'application fee' but it is not termed an impact fee.

*2. Do you feel the current process is working (is local development paying their fair share towards highway impacts)?*

*No answer given.*

*3. Any ideas to improve (i.e. more State DOT authority)?*

The State Legislature recently enacted legislation that provides for Regional Mobility Authorities. Through that, these authorities (no less than a single county) may, with a vote of the people, levy local sales taxes to fund transportation improvements.

We would be very interested in hearing what you learn about impact fees from other states.

**New Mexico Department of Transportation (E-mail)**

Contact: Terry Doyle  
Title: District 3  
Date: May 31, 2005

*Question: What is New Mexico DOT's process for mitigating local development impacts?*

From a DOT perspective, we are not involved with impact fees in any way. The City of Albuquerque is currently in the process of establishing impact fees, but their structure does not provide any funding for State Routes, US Routes or Interstates.

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**Idaho Department of Transportation (E-mail)**

Contact: Pat Raino  
Title: Intermodal Planning Manager  
Date: May 31, 2005

*1. Have impact fees charged at the local level ever gone towards state highway mitigation, if so do you have an example?*

No; however, developers will need to pay for the safety improvements to our system necessitated by the development. For instance, putting in a turn lane or pedestrian facilities associated with development that is located adjacent to our roads.

*2. Do you feel the current process is working (is local development paying their fair share towards highway impacts)?*

Likely there are costs associated with development that are not being paid. It would be difficult to describe fair share.

*3. Any ideas to improve (i.e. more State DOT authority)?*

Greater state DOT authority would be great, but is not something our legislature or Department is contemplating.

**Georgia Department of Transportation (E-mail)**

Contact: Derrek A. Crowe  
Title: State Access Management Supervisor  
Date: June 9, 2005

*Question: What is Georgia DOT's process for mitigating local development impacts?*

We as government have a responsibility to attempt to meet the growing demands of our economy, and we do not impose impact fees. We do; however, require developers to perform road improvements to satisfy the findings of the traffic impact study for the development under a permitting process.

These improvements can include left and right turn lanes in and out of the development, traffic signals when warranted, proximal intersection improvements, drainage improvements, and the donation of right of way and setbacks of the development for future right of way needs on DOT projects.

Many of our local governments have adopted the use of impact fees through their planning and zoning requirement to address the impact on their roads, water, sewer, educational systems, etc. We do have a voice in this process and strive to improve the relationships with all local governments to assure the needs of the traveling public is addressed.

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**Virginia Department of Transportation (E-mail)**

Contact: Matt Grimes, P.E.  
Title: Research Scientist, Virginia Transportation Research Council  
Date: June 9, 2005

*Question: What is Virginia DOT's process for mitigating local development impacts?*

In Virginia, by law, only a few of our counties in the Metro Washington DC region are allowed to assess actual impact fees for anything other than the financing of public water & sewer facilities. These counties that do have impact fee authority can use the revenues for transportation infrastructure.

The DOT has no authority whatsoever to assess impact fees. However, for all entrances and other work done on the state highway system (we control nearly all roads, including "county" roads) the DOT can negotiate / require some level of improvements in the vicinity of the development being proposed, as a condition of the entrance permit.

In other counties, the developer can give "voluntary" proffers to encourage the board of supervisors to approve a rezoning request. These proffers are often in the form of cash or constructed improvements for roads & streets. In the more sophisticated counties, many developers question whether road proffers are truly voluntary, since they are a generally expected part of a rezoning application.

Once a parcel of land has been zoned for development, the developer can build the maximum allowable density / traffic generation allowed by the county zoning ordinance, without any proffers or transportation impact fees. This is a major problem because many parcels were zoned for development many years ago, and the surrounding infrastructure can no longer handle the traffic generated by the development.

Our current process is not working and has many problems:

**STATEWIDE PROBLEMS:**

Virginia has no state level planning agency, and no requirement for regional cooperation between localities regarding land use. The state, including the DOT, has no authority over land use, with the exception of some environmentally based constraints imposed on counties close to the Chesapeake Bay, which is an environmentally endangered estuary.

Virginia localities are required by law to have a comprehensive plan, with a transportation element, but they are not required to abide by the plan, and the comprehensive plan land use designation of a parcel can be changed by a developer in the same fashion as changing the zoning.

With the exception of real estate and commercial business license taxes, most Virginia counties are very limited in their ability to levy taxes. This provides an incentive for developing land,

since a commercial property will generate more revenues for the county than a hayfield. Furthermore, funding for "county" roads is provided by the state, so a local board of supervisors can approve projects in the interest of economic development, and let the state deal with any transportation problems that may arise.

## VDOT PROBLEMS

Our land development authority is based on our authority to regulate commercial entrances. While we can advise county staff and boards of supervisors on the transportation impacts of a development, we cannot require improvements that are not directly related to the safety and maintenance of an entrance. We do have authority over median breaks and traffic signals, and can deny them if they would cause capacity problems. Often the threat of no signalized entrance is enough to make developers promise some road improvements, since many large retailers insist on signalized access.

Our current regulations regarding entrance permits are decades old, and our procedure manual, which directs staff in development review is so old that copies of it are no longer being made. (These are in the process of being updated).

VDOT land development review is decentralized into 9 districts. There are often different interpretations of the regulations and differing levels of strictness between the various districts. Some officials are unaware of the authority that VDOT has with respect to entrance permit approval, which is the foundation of our development review authority.

Sometimes an applicant will appeal the conditions and restrictions that VDOT staff impose upon an entrance permit, such as restricting the number or location of entrances, prohibiting certain turning movements, or requiring improvements. Savvy consultants learn which high level VDOT officials, and more problematically, which state senators, Commonwealth Transportation Board (CTB) members (appointed by the Governor as the controlling board of VDOT) & other politicians to contact if they want to get entrance permit conditions and restrictions lifted. Time and time again engineering principles must bow to political pressure.

There is no law prohibiting CTB members from serving on the Board while working as a legal or technical consultant to a land developer, or developing major tracts of land themselves. As long as they disclose their relationship, CTB members can vote to approve access breaks and entrances that would directly benefit development projects that they will profit from.

## Pennsylvania Department of Transportation (E-mail)

Contact: James Smedley  
Title: Transportation Planner  
Date: June 13, 2005

*1. Have impact fees charged at the local level ever gone towards state highway mitigation, if so do you have an example?*

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No, local level impact fees have not been used for state highway mitigation projects. In Pennsylvania, enabling legislation for local impact fees comes from the Pennsylvania Municipalities Planning Code (MPC). Article V outlines the requirements to impose local impact fees (many municipalities find the current process/requirements to be too expensive and difficult to implement).

*2. Do you feel the current process is working (is local development paying their fair share towards highway impacts)?*

The current process for local development paying for highway impacts, in my opinion, is probably not as effective as could be. With the local impact fee structure as is - many communities do not impose an impact fee on new development, as it is too expensive/difficult to implement. In addition, the MPC does not allow local governments to require off-site improvements for new development without the use of impact fees. PennDOT has 11 engineering districts across the state - they require certain improvements be made for Highway Occupancy Permits (access permits). This is dependent on state law that outlines the criteria that the new development must meet or exceed via traffic impact studies, etc. to be required by PennDOT to improve the roadway, which is mostly signalization, intersection improvements, etc.

*3. Any ideas to improve (i.e. more State DOT authority)?*

Some local governments would like to see PennDOT have more authority to require new developments to provide for new/improved road infrastructure; however, in Pennsylvania there is a strong Builders' Association that has been very effective in lobbying for their constituents and would most likely not be in favor of more DOT authority. One item to consider may be to change the MPC to make it easier for local governments to impose impact fees - it won't be an easy effort...



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## CHAPTER SIX: CONCLUSION

The history of development impact fees in California continues to evolve, and impact fees are becoming a more popular tool for local governments. These cash strapped local governments are increasingly using impact fees to bridge the funding gap that used to be filled from other sources. Cumulative and regional traffic impacts are gaining more attention, forcing local jurisdictions to develop successful impact fee programs.


Regional and state agencies are getting more involved in the development process, and nexus studies are helping local and regional agencies address cumulative and regional traffic impacts from development. Impact fees are necessary to accommodate growth and pay the cost of infrastructure improvements. Within California, Caltrans has the authority to construct, improve, and maintain state highways, but must work closely with local governments, through the IGR process, for mitigating impacts to the state highway from development.

On the basis of the responses from other State Departments of Transportation, most states have similar issues to California. Most State DOTs work in partnership with their local governments, but have no authority for imposing or collecting impact fees from development. Some states feel more DOT authority for imposing impact fees is necessary, but that option is not a political reality at this time. None-the-less, several states are pursuing legislation that would provide their DOTs more authority for mitigating impacts to the state highway.

As impact fees have evolved, so has public support for impact fees. Future research will need to address a method for providing states more authority in mitigating development impacts to highway infrastructure. With regional traffic growing, new development will need to address their impacts to the regional highways. In time, the political atmosphere will change, and there may be an opportunity to address state authority in the local development process. These changes may be necessary sooner, if transportation funding continues to decline.

What remains to be seen, is can a regional traffic impact fee program be put in place that accurately captures regional fair share costs? And in the future, will local governments support more State DOT authority in the development process? Hopefully, this paper provides a start in answering these questions.

## APPENDIX A: EXECUTIVE ORDER D-24-83

<p>EXECUTIVE DEPARTMENT STATE OF CALIFORNIA</p>	<p><b>FILED</b> In the office of the Secretary of State of the State of California OCT 3 1983 At 3:30 o'clock P. M. MARION FONG ELL, Secretary of State By <i>Cathleen Patricia</i> Deputy Secretary of State</p>
	
<p>EXECUTIVE ORDER D-24-83</p>	
<p><b>WHEREAS</b>, the President of the United States has issued Executive Order 12372, entitled "Intergovernmental Review of Federal Programs"; and</p>	
<p><b>WHEREAS</b>, Executive Order 12372 requires federal agencies to comply with state programs for intergovernmental review of federal programs; and</p>	
<p><b>WHEREAS</b>, the Federal Intergovernmental Cooperation Act of 1968, the Metropolitan Demonstration Cities Act, and the National Environmental Policy Act of 1969 encourage coordination of State and Federal development activities; and</p>	
<p><b>WHEREAS</b>, Executive Order 12372 encourages the State, in consultation with local general purpose governments and local special purpose governments considered appropriate, to develop a state process to review and coordinate Federal financial assistance, state plans, and direct Federal development; and</p>	
<p><b>WHEREAS</b>, the State of California is committed to cooperation among local, State, and federal officials and to the development of procedures implementing Presidential Executive Order 12372 which foster a strengthened federalism and ensure an effective intergovernmental partnership review of federal actions in or affecting California;</p>	
<p><b>NOW, THEREFORE, I, GEORGE DEUKMEJIAN</b>, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this order to become effective immediately:</p>	
<ol style="list-style-type: none"> <li>I. That to fulfill the intent of Presidential Executive Order 12372 and ensure the uninterrupted intergovernmental review of federal actions in or affecting the State of California upon the expiration of OMB Circular A-95 on September 30, 1983 that:             <ol style="list-style-type: none"> <li>a. The "State of California Procedures for Intergovernmental Review of Federal Financial Assistance and Direct Development Activities" be recognized as the official State Process for the State of California effective October 1, 1983.</li> </ol> </li> </ol>	

Page Two

- b. The Office of Planning and Research is hereby designated as the State of California "Single Point of Contact" for the purpose of transmitting official State and local government comments on Federal proposals under review pursuant to Presidential Executive Order 12372 and this Order.



IN WITNESS WHEREOF I have hereunto set my hand  
and caused the Great Seal of the State of  
California to be affixed this 1st day of October  
1983

*George Deukmejian*  
Governor of California

ATTEST:

*March Fong Eu*  
Secretary of State

by *Anthony F....*  
Deputy Secretary of State

## APPENDIX B: DEPUTY DIRECTIVE 25

California Department of Transportation

### DEPUTY DIRECTIVE

Number: DD-25

Refer to  
Director's Policy: 06-Caltrans' Partnerships  
07-Project Delivery

Effective Date: 8-19-94

Supersedes: P&P 88-01

Title: Local Development -- Intergovernmental  
Review

#### POLICY

Caltrans protects State transportation services and facilities from significant degradation caused by local development while simultaneously promoting economic vitality. This is achieved through timely and consistent reviews of local development proposals in which the reviews are based upon current policies, procedures, standards and professional judgment. The results are improvements or actions which help achieve compatibility between land use and the statewide transportation system. Caltrans coordinates its local land use and development review efforts with all appropriate entities, including cities, counties, Regional Transportation Planning Agencies, and Congestion Management Agencies. Caltrans seeks the support of these entities in the planning and recommendation of mitigation for local development impacts on the local and State transportation systems.

#### BACKGROUND

This Directive applies to local development activity subject to Intergovernmental Review (IGR) provisions contained in the California Environmental Quality Act of 1970 (CEQA) and Governor's Order D-24-83. Proposals for local development are advertised and circulated for public review when an environmental document is required under CEQA or the National Environmental Policy Act. These requirements allow Caltrans to review proposed development projects and other governmental actions that may adversely impact the State's transportation system.

Caltrans conducts local development reviews in compliance with established standards, guidelines, and manuals which include, but are not limited to, the following: Caltrans' Intergovernmental Review/California Environmental Quality Act (IGR/CEQA) Guidelines, Highway Capacity Manual, Highway Design Manual, Encroachment Permits Manual, Traffic Manual, Subdivision Map/Act Planning Law, Regional Transportation Plan Guidelines, local General Plans/Specific Plans, etc.

#### RESPONSIBILITIES

The Deputy Director for Transportation Planning is responsible for the overall IGR/CEQA program and ensures that a statewide framework exists that allows the IGR process to interact with other applicable processes, such as the encroachment permit process and with the State Clearinghouse.

The Deputy Director for Transportation Management ensures that a consistent methodology for traffic operational and safety analysis and evaluation exists.

The Deputy Director for Transportation Engineering ensures that the design standards applied for mitigation measures are those included in the

Deputy Directive  
Number DD-25  
Page 2

Highway Design Manual design standards for State highway facilities and AASHTO design standards, or local standards as appropriate for local roads that connect or cross State facilities.

The Chief, Division of Transportation Planning:

- Establishes statewide IGR procedures and training and assists Districts in implementing the IGR process.
- Serves as Departmental resource on local land development activities.

District Directors:

- Ensure that Caltrans participates in local land use and development activities.
- Ensure that the IGR and permit processes are integrated and consistent with Caltrans' policy.
- Ensure that Caltrans' expectations of local agencies and developers are reasonable, clearly conveyed and based on current policies, procedures and standards.
- Ensure that Caltrans works closely with lead agencies and developers to evaluate transportation facility and service improvement needs for existing and planned local development.
- Ensure that local projects are designed so that safety and operational integrity of State transportation facilities are not compromised.
- Ensure that significant impacts to State transportation facilities and services are identified and evaluated and that reasonable measures that avoid or adequately mitigate identified impacts are recommended.
- In developing mitigation measures, ensure that consideration is given to the long-term, permanent economic benefit of planned local development.
- Ensure consistent and uniform application of review procedures and mitigation requirements within and between Districts.

Employees involved in IGR and permit processes conduct business in a manner that facilitates cross-functional coordination, cooperation and support.

**APPLICABILITY**

All Caltrans functions involved with local development and land use activities through the IGR process.

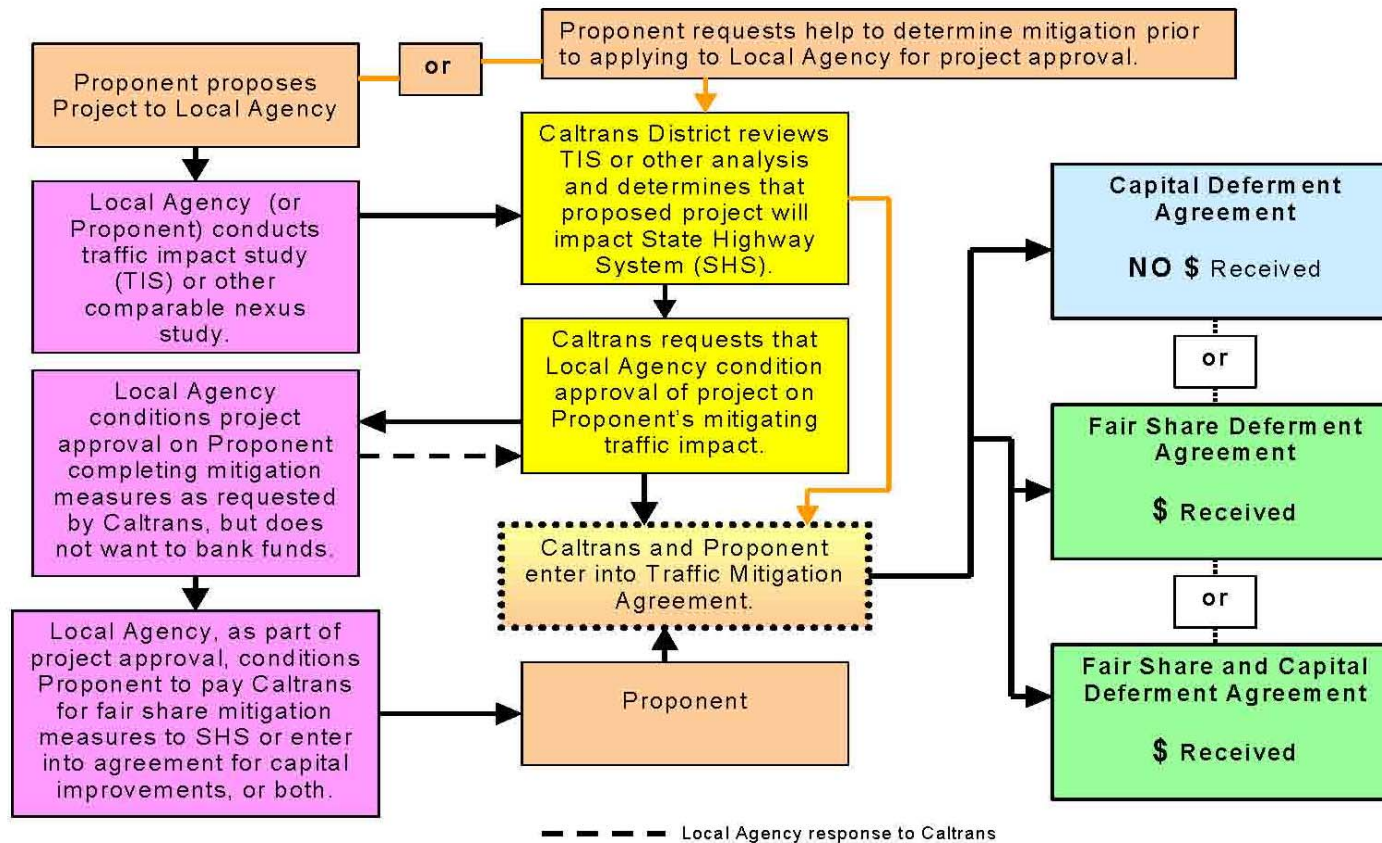


R. P. WEAVER  
Interim Chief Deputy Director

## APPENDIX C: TRAFFIC MITIGATION FLOW CHART



California Department of Transportation  
Traffic Mitigation Agreements with Local Development Project Proponents  
*Executing Fair Share Funds and Deferred Capital Improvement Agreements with Proponents (Developers)*





## APPENDIX D: DELAWARE STATE CODE

Subchapter IV. Tax Credit and License Fee Reduction for Mitigation of Commuter Traffic During Peak Tr... Page 1 of 4



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[§ 2030](#) | [§ 2031](#) | [§ 2032](#) | [§ 2033](#) | [§ 2034](#) | [§ 2035](#) | [§ 2036](#) | [§ 2037](#)

### TITLE 30

#### State Taxes

#### PART II

#### Income, Inheritance and Estate Taxes

#### CHAPTER 20. BUSINESS TAX CREDITS AND DEDUCTIONS

#### Subchapter IV. Tax Credit and License Fee Reduction for Mitigation of Commuter Traffic During Peak Travel Periods

##### § 2030. Short title.

This subchapter shall be known and may be cited as "The Travelink Traffic Mitigation Act." (67 Del. Laws, c. 160, § 1.)

##### § 2031. Declaration of purpose.

The purpose of this subchapter shall be to mitigate traffic congestion associated with commuting to and from the work site during peak travel periods and to accomplish traffic mitigation through the provision of a tax incentive to employers. Employer programs which specifically target "welfare to work" employees are exempt from the peak period limitation. An additional purpose shall be to decrease the number of single occupant vehicles and increase the use of alternative modes of travel during the commute to and from work. (67 Del. Laws, c. 160, § 1; 68 Del. Laws, c. 425, § 1; 72 Del. Laws, c. 188, §§ 1-3.)

##### § 2032. Definitions.

(a) "The Department" shall mean the Department of Transportation and its several divisions, agencies, authorities, and administrations as appropriate.

(b) "Department-approved travelink program" shall mean an employer's program, approved by the Department, to reduce commute trip traffic congestion during peak travel periods and also non-peak travel periods for welfare-to-work programs by supporting the use of alternative modes of employees commuting from their homes or within the proximity of their homes to their places of employment.

(c) "Direct Costs" shall mean those unreimbursed costs incurred by employers associated with a Department-approved travelink program, limited to the following:

- (1) Any employer-provided vehicle, acquired or leased, and used as part of a travelink program;
- (2) Maintenance of an employer-provided vehicle used in the program;
- (3) Subsidization of employee commuting costs or incentives in the form of direct payments to employees or 3rd party providers of transportation, including public transit;
- (4) Administrative costs, such as personnel costs (salary, benefits and training, but not overhead) and payments to 3/fr/fd parties, excluding the Department, for general administration including development, implementation and maintenance costs directly related to the Travelink program.

<http://www.delcode.state.de.us/title30/c020/sc04/index.htm>

6/14/2005

## Subchapter IV. Tax Credit and License Fee Reduction for Mitigation of Commuter Traffic During Peak Tr... Page 2 of 4

Administrative costs are limited to no more than 4 billable hours per week per 50 employees per week thereafter. The maximum billable hourly rate is \$20; and

(5) Capital costs incurred as part of a Department-approved travelink program.

(d) "Employee" shall mean an individual employed by an employer, and also shall mean an individual participating in programs relating to the Job Training Partnership Act, Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322 >29 U.S.C. § 1501 et seq., as amended.

(e) "Employer-provided vehicles" shall mean any automobile, van, or bus, either owned, leased, chartered or subsidized by an employer, used in a ride-sharing arrangement during peak travel periods and also non-peak travel periods for welfare-to-work programs, provided, however, that a minimum of 3 employees must commute in the vehicle during said periods so as to make such vehicles eligible for the benefits provided in this subchapter.

(f) "Employer" shall mean any person, partnership, association, bank, trust company, national bank, corporation, company, mutual company, joint-stock company, society, trust, trust company, unincorporated organization, trustee, trustee in bankruptcy, receiver, or other natural or artificial legal entity authorized to do business in this State, or any group, cooperative or association thereof having no less than 100 employees reporting to a specific work-site during the peak periods. Employer programs which specifically target "welfare-to-work" employees are exempt from the peak period limitation.

(g) "Peak travel periods" shall mean between the hours of 6:30 a.m. and 9:30 a.m. and between the hours of 3:30 p.m. and 6:30 p.m.

(h) "Ride-sharing arrangement" shall mean any voluntary association of employees who, with the assistance, contribution, or promotion of their employers, participate in a Department-approved travelink program.

(i) "The Secretary" shall mean the Secretary of the Department of Transportation or the Secretary's duly appointed delegate. (67 Del. Laws, c. 160, § 1; 68 Del. Laws, c. 425, §§ 2, 7; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 188, §§ 4-10.)

**§ 2033. Reduction in business taxes and/or license fees for mitigation of commuter traffic.**

(a) Employers who participate in a Department-approved travelink program shall be eligible for a credit against the taxes and/or fees imposed by the following statutory provisions and such credit shall be taken annually at the conclusion of the tax year, subject to such return requirements as may be imposed by the State Bank Commissioner, Insurance Commissioner, Secretary of Labor or Secretary of Finance:

- (1) Chapter 11 of Title 5;
- (2) Sections 702 and 703 of Title 18;
- (3) Chapter 19 of this title;
- (4) Section 2702(b) of this title;
- (5) Chapter 33 of this title;
- (6) Section 2301(d) of this title;
- (7) Section 2902(c) of this title;
- (8) Section 2903(c) of this title;
- (9) Section 2904(c) of this title;



(10) Section 2905(b)(1) of this title;

(11) Section 2906(c) of this title; or

(12) Section 2907(c) of this title.

The amount of the credit shall be determined under subsection (b) of this section. Credits under this section shall be taken by the employer against taxes in the order specified in this subsection.

(b) Subject to the limitations contained in subsections (c) and (d) of this section, the credit granted under subsection (a) of this section shall be 10% of the direct cost (DC) of developing, implementing and maintaining the Travelink plan/program, or the product of either equation described below, whichever product of the equations below is less:

(1)  $TC = (CTR/CTG) \times DC$ ; or

(2)  $TC = CTR \times \$250$ .

As used in this subsection, TC is the amount of the tax credit; CTG is the number of commuter trips generated, defined herein as the annualized number of employees reporting and departing from the place of employment during the peak travel periods and also non-peak travel periods for welfare-to-work programs; CTR is the number of commuter trip reductions, defined herein as the number of employees participating in a Department-approved travelink program for at least 100 days of the applicable taxable year or a pro rata share thereof for a program encompassing less than a full taxable year; and DC is the employer's allowable direct costs.

(c) The amount of the credit allowable under this section for any taxable year shall not exceed 100 percent of the amount of taxes and/or fees imposed upon the employer by the statutes referred to in subsection (a) of this section, for such taxable year (computed without regard to this section).

(d) The amount of the credit determined under subsection (b) of this section for any taxable year that is not allowable for such taxable year solely as a result of the limitation contained in subsection (c) of this section shall be a credit carryover for up to 3 subsequent taxable years. In applying the limitation contained in subsection (c) of this section to any taxable year to which a credit may be carried under this subsection, any credit carryovers to such taxable year shall be considered to be applied in reduction of the taxes and/or fees imposed upon employers referred to in subsection (a) of this section for such taxable year in the order of the taxable years from which such taxable years are carried over, beginning with the credit carryover from the earliest taxable year, and only after all such credit carryovers to such taxable year have been allowed in full shall any credit that would be allowable in such taxable year without regard to this subsection be allowed. (67 Del. Laws, c. 160, § 1; 68 Del. Laws, c. 425, § 5; 72 Del. Laws, c. 188, §§ 11-13.)

#### § 2034. Rules and regulations.

The Secretary shall prescribe such rules and regulations as the Secretary may deem necessary to carry out the purposes of this subchapter, including but not limited to the following:

(1) Procedures for approval of Travelink Programs, including:

a. A provision giving approval priority to those employers whose place of employment is adjacent to, or for which the predominant commuting routes to the place of employment are, those roads and highways that are at Level of Service D, as defined by the Department, or at lower levels of service, during the peak travel periods;

b. A provision giving approval priority to those employers who develop a mitigation plan which delineates goals and congestion relief techniques extending beyond any plans or programs of the employer existing prior to February 6, 1990;

c. A provision giving approval authority to those employers who develop a mitigation plan

Subchapter IV. Tax Credit and License Fee Reduction for Mitigation of Commuter Traffic During Peak Tr... Page 4 of 4  
targeted to welfare-to-work clients;

d. A provision giving approval priority to those employers who develop an ongoing marketing program directed towards and capable of increasing and sustaining employee participation over time;

e. Development of a Department-administered monitoring plan; and

(2) Coordination of the provisions of this subchapter with the Division of Revenue, the State Bank Commissioner, the Insurance Commissioner, or other state agencies, divisions or departments affected by this subchapter. (67 Del. Laws, c. 160, § 1; 68 Del. Laws, c. 425, § 3; 69 Del. Laws, c. 161, § 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 188, §§ 14, 15.)

#### **§ 2035. Confidentiality.**

Written or recorded information, provided by employers as part of their application for or participation in a Department-approved travelink program, shall be treated as confidential, and to the extent used for that purpose shall not be considered as a public record under the provisions of Chapter 100 of Title 29. (67 Del. Laws, c. 160, § 1; 72 Del. Laws, c. 188, § 16.)

#### **§ 2036. Department responsibilities.**

The Department is responsible for reviewing and approving any public or private traffic mitigation plan or program including, but not limited to, clean air compliance programs, Travelink programs, commuter benefit programs, Department-approved incentives contained in any zoning, subdivision or any other land use or development project designed to enhance traffic mitigations, programs approved by county or local government, and any and all other public or private plans designed either in whole or in part to reduce traffic through the use of incentives or disincentives such as, but not limited to, parking charges, parking preferences and financial penalties proposed by employers for single occupant vehicles commuting to the work site. (68 Del. Laws, c. 425, § 4.)

#### **§ 2037. Limitation on credits.**

(a) The total amount of eligible credits allowed under this subchapter ("Travelink credits") shall not exceed \$100,000 in any State fiscal year.

(b) If the total amount of Travelink credits for which all taxpayers apply in any State fiscal year exceeds the amount set forth in subsection (a), then the Travelink credit to be received by each applicant for that year shall be the product of the amount set forth in subsection (a) multiplied by a fraction, the numerator of which is the eligible Travelink credits applied for by the applicant and the denominator of which is the total of all eligible Travelink credits applied for by the applicants. (72 Del. Laws, c. 188, § 17.)

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## APPENDIX E: DRAFT WASHINGTON LEGISLATION SB 5164

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### ENGROSSED SUBSTITUTE SENATE BILL 5164

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State of Washington                      59th Legislature                      2005 Regular Session

By Senate Committee on Transportation (originally sponsored by  
Senators Haugen, Oke, Jacobsen, Swecker, Poulsen, Spanel and Shin)

READ FIRST TIME 03/07/05.

1        AN ACT Relating to mitigation or mitigation fees imposed by the  
2        department of transportation; amending RCW 82.02.100; reenacting and  
3        amending RCW 43.79A.040; adding new sections to chapter 43.21C RCW; and  
4        adding new sections to chapter 47.04 RCW.

5        BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6        NEW SECTION.    **Sec. 1.**    A new section is added to chapter 43.21C RCW  
7        to read as follows:

8            (1) The department of transportation may impose mitigation fees, or  
9        require mitigation, from development activity that creates additional  
10       significant demand and need for transportation improvements to highways  
11       of statewide significance or related facilities or state highways in  
12       urban growth areas as defined in RCW 36.70A.030, as determined by the  
13       department. This authority may be exercised only under this chapter.

14            (2) The mitigation or mitigation fee(s):

15            (a) Must be determined within the time frame and in conjunction  
16       with the process established under this chapter;

17            (b) May be imposed only for state transportation improvements that  
18       are reasonably related to the development activity;

1 (c) May not exceed a proportionate share of the costs of state  
2 transportation improvements that are reasonably related to the  
3 development activity;

4 (d) Must be used for state transportation improvements that will  
5 reasonably benefit the development activity;

6 (e) Must be spent in all cases within six years of collection, or  
7 the unspent funds must be refunded; and

8 (f) Must be transparent and the method and details of how the  
9 mitigation or mitigation fee was derived must be included in the  
10 assessment.

11 (3)(a) Subject to (b) of this subsection, the determination of the  
12 mitigation, or the collection of mitigation fees, must be included in  
13 the local entity's mitigation assessment.

14 (b) If there is no local mitigation assessment, or if the  
15 department of transportation chooses to assess its mitigation  
16 separately, then the department of transportation may submit the  
17 mitigation or mitigation fee, or both, separately from the local  
18 jurisdiction, consistent with the mitigation process established under  
19 this chapter. However, the development activity may not be charged  
20 twice for any particular mitigation required.

21 (c) Regardless of whether the mitigation or mitigation fee is  
22 assessed under (a) or (b) of this subsection (3), local jurisdictions  
23 may fund the department of transportation mitigation fee through  
24 alternative revenue sources.

25 (4) The department shall adopt rules under chapter 34.05 RCW  
26 regarding:

27 (a) The criteria applicable to a determination under subsection (1)  
28 of this section as to whether development activity creates additional  
29 significant demand and need for transportation improvements to highways  
30 of statewide significance or related facilities or state highways in  
31 urban growth areas as defined in RCW 36.70A.030;

32 (b) A formula or method for calculating the amount of mitigation or  
33 mitigation fees, or both, to be imposed on the development activity,  
34 considering (i) the type of development activity subject to the fees  
35 and (ii) the proportionate share of the costs of state transportation  
36 improvements that are reasonably related to the development activity;

37 (c) Provisions outlining the types of nonfee-based mitigation that

1 are allowed, establishing standards for such mitigation and outlining  
2 oversight procedures for such mitigation;

3 (d) The administration and collection of the fees;

4 (e) The provision that a development activity may not be charged  
5 twice for any particular mitigation required;

6 (f) The allowance of an adjustment to the standard mitigation fee  
7 at the time the fee is imposed to consider unusual circumstances in  
8 specific cases to ensure that mitigation fees are imposed fairly;

9 (g) An administrative appeals process for the appeal of a  
10 mitigation fee that is in compliance with RCW 43.21C.075; and

11 (h) Procedures for refunding funds not spent within six years.

12 (5) The following development activities are exempt from this  
13 section:

14 (a) Residential development meeting the criteria of "affordable  
15 housing" as defined in RCW 43.63A.510; or

16 (b) Development that generates less than twenty-five "peak hour  
17 trips" on a highway of statewide significance or on its related  
18 facilities or state highways in urban growth areas as defined in RCW  
19 36.70A.030. However, development activity subject to this exemption  
20 may choose, at the developer's option, to subject the development  
21 activity to the provisions of this section.

22 (6) Infrastructure improvement projects currently funded by  
23 federal, state, or local revenue shall not be included as part of a  
24 mitigation, or mitigation fee, assessed on development activity.

25 (7) Mitigation fees imposed under this section must be deposited  
26 into the transportation mitigation fee account, hereby created in the  
27 custody of the state treasurer. Expenditures from the account must be  
28 used only for the purpose or purposes for which the mitigation fees  
29 were imposed, and according to subsection (2) of this section. Only  
30 the secretary of transportation or the secretary's designee may  
31 authorize expenditures from the account. The account is subject to  
32 allotment procedures under chapter 43.88 RCW, but an appropriation is  
33 not required for expenditures.

34 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.21C RCW  
35 to read as follows:

36 (1) Within two working days of receipt of notification or  
37 application for a development project that is either (a) subject to a

1 State Environmental Policy Act review under this chapter or (b) that is  
2 adjacent to a highway of statewide significance or a state highway in  
3 an urban growth area as defined in RCW 36.70A.030, the local  
4 governmental entity receiving the application or notification shall  
5 notify the department of transportation of the proposed project.  
6 Before preparing the environmental impact statement or issuing a  
7 threshold determination, the lead agency shall consult with the  
8 department of transportation. Any significant adverse impacts  
9 identified by the department of transportation must be included in the  
10 environmental impact statement or the threshold determination. The  
11 department of transportation must notify the lead agency of any such  
12 impacts in a timely manner to allow the responsible official to comply  
13 with RCW 43.21C.033.

14 **Sec. 3.** RCW 82.02.100 and 1992 c 219 s 2 are each amended to read  
15 as follows:

16 A person required to pay a fee pursuant to RCW 43.21C.060 or  
17 section 1 of this act for system improvements shall not be required to  
18 pay an impact fee under RCW 82.02.050 through 82.02.090 for those same  
19 system improvements.

20 NEW SECTION. **Sec. 4.** A new section is added to chapter 47.04 RCW  
21 to read as follows:

22 The department of transportation may impose mitigation or  
23 mitigation fees, or both, according to sections 1 and 2 of this act.

24 **Sec. 5.** RCW 43.79A.040 and 2004 c 246 s 8 and 2004 c 58 s 10 are  
25 each reenacted and amended to read as follows:

26 (1) Money in the treasurer's trust fund may be deposited, invested,  
27 and reinvested by the state treasurer in accordance with RCW 43.84.080  
28 in the same manner and to the same extent as if the money were in the  
29 state treasury.

30 (2) All income received from investment of the treasurer's trust  
31 fund shall be set aside in an account in the treasury trust fund to be  
32 known as the investment income account.

33 (3) The investment income account may be utilized for the payment  
34 of purchased banking services on behalf of treasurer's trust funds  
35 including, but not limited to, depository, safekeeping, and

1 disbursement functions for the state treasurer or affected state  
2 agencies. The investment income account is subject in all respects to  
3 chapter 43.88 RCW, but no appropriation is required for payments to  
4 financial institutions. Payments shall occur prior to distribution of  
5 earnings set forth in subsection (4) of this section.

6 (4)(a) Monthly, the state treasurer shall distribute the earnings  
7 credited to the investment income account to the state general fund  
8 except under (b) and (c) of this subsection.

9 (b) The following accounts and funds shall receive their  
10 proportionate share of earnings based upon each account's or fund's  
11 average daily balance for the period: The Washington promise  
12 scholarship account, the college savings program account, the  
13 Washington advanced college tuition payment program account, the  
14 agricultural local fund, the American Indian scholarship endowment  
15 fund, the students with dependents grant account, the basic health plan  
16 self-insurance reserve account, the contract harvesting revolving  
17 account, the Washington state combined fund drive account, the  
18 Washington international exchange scholarship endowment fund, the  
19 developmental disabilities endowment trust fund, the energy account,  
20 the fair fund, the fruit and vegetable inspection account, the future  
21 teachers conditional scholarship account, the game farm alternative  
22 account, the grain inspection revolving fund, the juvenile  
23 accountability incentive account, the law enforcement officers' and  
24 fire fighters' plan 2 expense fund, the local tourism promotion  
25 account, the produce railcar pool account, the rural rehabilitation  
26 account, the stadium and exhibition center account, the youth athletic  
27 facility account, the self-insurance revolving fund, the sulfur dioxide  
28 abatement account, the children's trust fund, the Washington horse  
29 racing commission Washington bred owners' bonus fund account, the  
30 Washington horse racing commission class C purse fund account, ~~((and))~~  
31 the Washington horse racing commission operating account (earnings from  
32 the Washington horse racing commission operating account must be  
33 credited to the Washington horse racing commission class C purse fund  
34 account), and the transportation mitigation fee account. However, the  
35 earnings to be distributed shall first be reduced by the allocation to  
36 the state treasurer's service fund pursuant to RCW 43.08.190.

37 (c) The following accounts and funds shall receive eighty percent  
38 of their proportionate share of earnings based upon each account's or

1 fund's average daily balance for the period: The advanced right of way  
2 revolving fund, the advanced environmental mitigation revolving  
3 account, the city and county advance right-of-way revolving fund, the  
4 federal narcotics asset forfeitures account, the high occupancy vehicle  
5 account, the local rail service assistance account, and the  
6 miscellaneous transportation programs account.

7 (5) In conformance with Article II, section 37 of the state  
8 Constitution, no trust accounts or funds shall be allocated earnings  
9 without the specific affirmative directive of this section.

10 NEW SECTION. **Sec. 6.** A new section is added to chapter 47.04 RCW  
11 to read as follows:

12 The department of transportation may impose and collect latecomer  
13 fees on behalf of another entity for infrastructure improvement  
14 projects initially funded partially or entirely by private sources.  
15 However, there must be an agreement in place between the department of  
16 transportation and the entity before the imposition and collection of  
17 any such fees, that specifies (1) the collection process; (2) the  
18 maximum amount that may be collected; and (3) the period of time during  
19 which the collection may occur.

--- END ---



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## **APPENDIX F: HAWAII IMPACT FEE HISTORY**

### **DECEMBER 2004 DRAFT UPDATED PRESENTATION ON EWA HIGHWAY IMPACT FEES**

In the State of Hawaii, on the island of Oahu, the Ewa Region is zoned to accommodate more than 1/4 of projected growth in Oahu population and employment. The population of the Ewa Region has increased from 43,000 residents in 1990 to 68,000 residents in 2000, and is projected to increase by another 46,000 residents by 2025.

For a variety of reasons, including fiscal constraints, regional highway improvements have not kept pace with Ewa population growth. I would like to briefly explain why and how County impact fees will be used to help finance State highway improvements which are needed in the Ewa Region. Overall, our experience has been positive. But we still have issues to resolve.

#### **OVERVIEW OF LOCAL GOVERNMENT**

To put our experience in context, you need to know that Hawaii has one State government and four county governments. On the island of Oahu, where 3/4 of the State's population resides, the Hawaii DOT is responsible for major State highways and one county named the City and County of Honolulu is responsible for all other highways and local roads. Although there is a similar division of responsibility on other islands, almost 4/5 of the State's urban arterials are located on Oahu.

#### **SOME BACKGROUND ON IMPACT FEES**

In Hawaii, State law does not authorize any State agency to impose impact fees. However, State law authorizes Hawaii's four counties to assess impact fees. As is common in many states, Hawaii law provides that:

- Impact fees are a type of county assessment used to finance county capital improvements needed to serve proposed new development.
- Payment of impact fees can be required as a condition for issuance of building permits.
- Impact fees cannot exceed a fair share of the cost of public capital improvements reasonably needed to serve proposed new development.
- Impact fees cannot be retroactively assessed to development, which already has all required local permits.
- Instead of paying impact fees, developers may provide a fair share of the capital improvements for which impact fees are being assessed.
- Impact fees must be spent for the capital improvements for which they were collected.
- If not spent within six years, impact fees must be returned.

#### **WHY ARE IMPACT FEES BEING IMPOSED IN EWA?**

In Hawaii a State agency named the Land Use Commission has classified all parts of the State into four districts. Most urban uses are prohibited in the Conservation District. The counties use zoning and building permits to regulate urban land uses in the other districts.

For the past two decades, as a Land Use Commission condition on district boundary amendments and as a County condition on zone changes, most but not all Ewa developers have promised to contribute their “fair share” of regional highway improvements. But until relatively recently, there was no consensus what this permit condition meant or how to fairly implement it.

A non-profit organization named the Land Use Research Foundation, and nicknamed LURF, deserves much of the credit for developing consensus that county impact fees should be used to satisfy Ewa Region “fair share” permit requirements. LURF is funded by major private Oahu developers and landowners. Under LURF leadership, Ewa developers provided a DOT traffic consultant with an estimate of development they felt likely to complete by 2010. By August 2001, our consultant completed 2010 regional traffic projections and a plan for major regional highway improvements needed to accommodate projected 2010 traffic. This 2010 Ewa Highway Master Plan primarily recommended State highway improvements. Ewa developers suggested minor refinements. Then in December 2001, LURF made the following proposal for DOT consideration. They proposed that:

- DOT and Ewa developers should jointly select an engineer to estimate costs for design and construction of highway improvements recommended by the refined 2010 Ewa Highway Master Plan.
- DOT’s traffic consultant would calculate impact fees that could be fairly assessed so that future Ewa development would contribute its proportional share of the estimated cost for design and construction of the 2010 Plan. If this proportional share exceeded 20% of the estimated cost, then impact fees would be “capped” to generate a maximum of 20% of the estimated cost.
- Uniform impact fees would be assessed throughout the Ewa Region. Because all Ewa developers would be subject to the same requirements, all would have a “level playing field” and none would have a competitive advantage.
- Impact fees would be established by County adoption of an impact fee ordinance applicable to all new development in the Ewa Region. All future development, including development not subject to “fair share” permit conditions, would need to pay impact fees prior to obtaining building permits.
- Developers would not be assessed for development prior to County adoption of an impact fee ordinance and would not be credited for highway improvements exacted by DOT or the County prior to the impact fee ordinance.
- Developers could satisfy impact fee requirements by providing highway improvements recommended by the 2010 Plan. “Credit” would be limited to estimated costs for design and construction. Impact fees would not be reduced because of cost overruns or dedication of right-of-way.
- Impact fee revenues would be held in a special account reserved for highway improvements recommended by the 2010 Plan.

- DOT should acknowledge that full implementation of this proposal would satisfy both State and County permit conditions requiring developers to provide their “fair share” of regional highway improvements

Since most of this proposal was acceptable to the DOT, we arranged for DOT consultants to prepare highway costs estimates and calculate impact fees, which could fairly be assessed. We had a long internal debate over whether to agree with a “20% cap” on maximum impact fees. But it turned out that projected traffic from future Ewa development only justified impact fees sufficient to pay for about 20% of the estimated \$194 million cost of highway improvements needed by 2010.

Our Deputy Attorney General warned us that the wording of State law in 2002 might prohibit the counties from collecting impact fees for State facilities. However, LURF and Ewa developers felt they had the political clout to convince the City and County of Honolulu to adopt the proposed impact fee ordinance. Our former Director decided to support their efforts with the understanding that they would in turn support State legislation to retroactively authorize county collection of impact fees for State highway improvements. Ultimately, in fall 2002, the County passed Ordinance 02-52 to assess impact fees to pay for Ewa highway improvements. At the time our Deputy Attorney General advised against DOT making any use of impact fee revenues until after the Legislature retroactively “legalized” Ordinance 02-52.

Although no one testified in opposition, despite lobbying from LURF and Ewa developers, the 2003 State Legislature rejected DOT’s proposed bill to retroactively authorize all counties to assess impact fees for State highway improvements. The 2004 Legislature finally passed an amended bill, which authorized the City and County of Honolulu, but not the other counties, to assess county impact fees for State highway improvements. We never learned the rationale for these legislative actions. However, we heard an unconfirmed rumor that legislators from islands other than Oahu were concerned that DOT might give higher priority to Ewa highway improvements and lower priority to highway improvements on the islands they represented.

#### WHAT DOES ORDINANCE 02-52 DO?

Ordinance 02-52 required payment of impact fees as a prerequisite for building permits which result in more dwelling units, lodging units, or non-residential building floor area in the Ewa Region of Oahu after November 1, 2002. The ordinance allows developers to provide highway improvements in lieu of paying impact fees. It also provides for periodic revision of impact fees to reflect a longer time frame and changing conditions. By 2007, in consultation with developers and the County, we are required to reevaluate needed highway improvements, the size of impact fees, and allowable uses of impact fees. Until such time as impact fees are updated, Ewa developers will be assessed:

- \$1,836.00 / unit for single family dwellings
- \$1,245.00 / unit for multi-family dwellings
- \$1,003.00 / unit for hotels
- \$501.00 / unit for timeshare resorts
- \$4.05 / square foot (sf) for retail floor area

- \$3.40 / sf for office floor area
- \$2.02 / sf for other building floor area

We estimate that the County will assess Ewa developers roughly \$38.9 million of impact fees by 2010. Ewa developers will satisfy part of this assessment by paying County impact fees and part by providing needed highway improvements. It should also be noted that DOT provision of proposed Ewa highway improvements at State cost will be used to satisfy impact fees assessed to other State agencies (for development on State land). Over the two years since enactment of Ordinance 02-52, private developers have actually paid the County about \$4.4 million of impact fees.

We have informed the Land Use Commission and the County that impact fees will contribute private developers' "fair share" of the cost to construct the additional highway lanes and interchange improvements listed in Ordinance 02-52. However, Ewa developers understand that in addition to impact fees, DOT will continue to require them to assume all costs for proper design and construction of highway access including required modification of existing intersections to accommodate increasing traffic volumes. They also understand that we will continue to ask them to dedicate right-of-way needed for future highway improvements without any compensation or reduction in impact fees.

#### TRANSFER OF REVENUES

In a June 2003 letter to the County, and in an August 2003 follow-up letter, we proposed deposit of Ewa impact fee revenues into a temporary interest-bearing DOT trust account until after passage of legislation to clearly authorize the County to collect impact fees for State highways. The County never responded. To date there has been no further correspondence between DOT and the County concerning transfer of revenues.

Now that the Legislature has retroactively "legalized" Ordinance 02-52, we would like to use impact fee revenues to supplement our State highway fund and Federal funds for design and construction of regional highway improvements recommended by the 2010 Ewa Highway Master Plan. Our current understanding is that the Honolulu City Council must adopt a resolution approving an inter-agency Memorandum of Understanding (MOU) before the County can transfer impact fee revenues to the DOT. This means that DOT needs to work with the County to prepare a MOU to resolve timing, procedures, and requirements for transfer of revenues.

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## ACRONYMS AND ABBREVIATIONS

AB	Assembly Bill
AICP	American Institute of Certified Planners
Caltrans	California Department of Transportation
CEQA	California Environmental Quality Act
CIP	Capital Improvement Program
DD	Deputy Directive
DIF	Development Impact Fee
DOT	Department of Transportation
IGA	Intergovernmental Agreement
IGR	Intergovernmental Review
LDR	Local Development Review
LOS	Level of Service
LURF	Land Use Research Foundation
MAG	Maricopa Association of Governments
MPO	Metropolitan Planning Organization
NEPA	National Environmental Policy Act
NOD	Notice of Determination
OPR	Office of Planning and Research
PE	Professional Engineer
SB	Senate Bill
SCAG	Southern California Association of Governments
STIP	State Transportation Improvement Program
TAMC	Transportation Agency for Monterey County
TEA-21	Transportation Equity Act for the 21 <sup>st</sup> Century
TIA	Traffic Impact Assessment
TIF	Traffic Impact Fee
TIS	Traffic Impact Study

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## **ABOUT THE AUTHOR**

Nicholas (Nick) Deal is a Master of Science candidate in Transportation Management at San Jose State University. Nick was selected by the faculty as the 2004 Mineta Transportation Institute's 2004 Outstanding Student of the Year.

Nick earned two undergraduate degrees—a Bachelors degree in Political Science, with a minor in Environmental Policy Analysis and Planning, from the University of California at Davis, and a Bachelors degree in Geography from the California State University at Sacramento. He is a member of the American Planning Association and the Association of Pacific Coast Geographers.

Nick is an Associate Transportation Planner with the California Department of Transportation (Caltrans), working in the Office of Transportation Planning. In his work, he participates in various activities to make communities more livable. Nick currently writes long-range (20-year) transportation planning studies. This process includes identifying transportation deficiencies from a multi-modal standpoint, and conducting extensive public outreach to gain community involvement in the search for effective transportation solutions that meet a community's needs.

Nick currently lives in Marysville, with his wife Melissa and their 18-month old son Colin.