



Skagit County Planning & Development Services

DALE PERNULA, AICP *Director*

JACK MOORE, CBCO *Building Official*

Supplemental Staff Report

From: Dale Pernula, AICP, Director
Re: Capital Facilities Plan 2016-2021 Update
Date: October 13, 2015

This memo addresses public comments received during the written comment period between September 17 and October 8, and testimony received at the public hearing on October 6.

Key Issues for Planning Commission Deliberations

Staff has identified the following key issues for the Planning Commission to continue in its deliberations on the proposal:

- Does the proposal effectively meet the statutory requirements for a capital facilities plan (described in the staff report)?
- Does the proposal effectively plan for future county growth?
- Should the Planning Commission incorporate the school district recommendations into the proposed code amendments?

Public Comments

The written comments received at the public hearing or during the public comment period are available on the proposal website at www.skagitcounty.net/cfp.

Responses to Public Comments

🔊 School districts request clarity on when impact fee payment occurs.

Staff agrees that this section should be reworked consistent with the other comments below. Staff has discussed each of the school districts' comments with their legal counsel. Following these responses, staff has included an updated version of the code amendment attachment that reflects the changes identified by the school districts. Changes from current code are shown in orange; changes from the public comment draft are shown in teal. Staff has discussed these changes with counsel for the school districts, and they approve.

🔊 School districts support impact fee deferrals being limited to *only* at time of final inspection.

Staff agree that, of the three options for deferrals allowed in the statute, at time of final inspection is the only workable option for Skagit County.

💡 **School districts support 20-deferral limit on impact fees.**

While permit staff have indicated that the County is quite unlikely to ever hit the limit for 20 deferrals in a single year by a single applicant, staff are supportive of adding a hard cap to this section.

💡 **School districts support specifying in 14.30.020 that impact fee calculation occurs at time of deferral.**

This is consistent with statute. Staff agrees with this correction.

💡 **School districts request clarity on district boundaries.**

Staff agrees language to this effect could be helpful and has provided some different language to that effect that addresses both school districts and cities/towns.

💡 **School districts request preservation of 14.30.090(6) to address refunds and request replacement of 14.30.090(7) with language from the statute regarding refunds.**

Staff agrees that the refund section needs to be reworked to ensure compliance with the statute and proposes new language to fix both of these sections.

💡 **School districts request language in 14.30.120 noting that the statute requires adoption of impact fee schedule by ordinance.**

Staff agrees with the point, however this is already addressed in proposed SCC 14.30.020(1), so we have added language to that section. This is also already the County's practice, and the impact fee schedule is proposed as an attachment to the CFP ordinance.

Attachment 1

Plain text = existing code with no changes
~~Strikethrough~~ = existing code to be deleted
Underlined = new code to be added
Italics = instructions to code reviser

SCC Chapter 14.30 Public Facilities Impact Fees

14.30.010 Findings and authority.

The Board of Skagit County Commissioners (the “Board”) hereby finds and determines that new growth and development in Skagit County will create additional demand and need for public facilities in Skagit County, and the Board finds that new growth and development should pay a proportionate share of the cost of new public facilities needed to serve the new growth and development. Therefore, pursuant to Chapter 82.02 RCW, the Board adopts this Chapter to assess impact fees for certain public facilities. The provisions of this Chapter shall be construed as to intent in order to carry out the purposes of the Board in establishing the impact fee program.

14.30.020 Assessment of impact fees.

~~(1) The County shall collect impact fees on a district-by-district basis as reflected in this Section. The County may collect fees on behalf of any special purpose district, or a town or city for development within its urban growth area (any of which are referred to in this chapter as a “district”), that has submitted its Capital Facilities Plan and impact fee calculations to the County, and whose Plan has been incorporated into the County’s Comprehensive Plan.~~

Comment [A1]: Covered below and in new 14.30.030

~~(2) To facilitate the terms under which the County shall collect impact fees for a district, the district and the County shall enter an interlocal agreement in a form acceptable to the Prosecuting Attorney concurrent with amendment of this Section to impose the impact fee. Such interlocal agreement shall address administrative provisions, including, but not limited to, methods of collection, accounting, refund and indemnification of the County by the district against any and all claims for refund or challenges to payment of the impact fees for that district.~~

Comment [A2]: Duplicative of statement in new 14.30.030

~~(3) For all development activity located within a district for which fees have been imposed, the County will collect 100 percent of the impact fee at the time the building permit is issued. This shall include the issuance of all building permits for residential development as defined in “development activity” of SCC Chapter 14.04 unless specifically exempted elsewhere in the Chapter.~~

~~(4) The adjustments to the impact fee schedule reflects the legislative determination that while the full impact fees per dwelling unit accurately characterize the cost of the public facilities required for each new development, as documented in each district’s Capital Facilities Plan, the County has as a matter of policy decided to provide adjustments for local bond issues. The County is authorized to reduce or to increase the adjustments as part of its annual review of the fee schedule by adopting an amendatory ordinance. Additional technical studies of fee adjustment formulas are required for reductions or increases in the amount of adjustment.~~

Comment [A3]: There are no such adjustments; none are contemplated and may be contrary to interlocal agreements with the districts.

- (1) Impact fees are hereby required for all building permits in the categories of development activity identified in the County's impact fee schedule, which must be adopted by ordinance and must specify the service area for each category of development.
- (2) Impact fees are calculated at the time ~~they are due~~ the building permit is issued at the rate then in effect. Applications do not vest to the impact fees in effect at the time of application.
- (3) Impact fees are due at the time the building permit is issued, except an ~~An~~ applicant for a building permit for a single-family residence may ~~pay the impact fees at the time the building permit is issued or may defer payment pursuant to this subsection.~~
- (a) Deferrals are limited to 20 building permits per applicant, as defined in RCW 82.02.050(3)(g)(i), per year.
- (b) The applicant must grant and record a deferred impact fee lien in favor of the County, on forms provided by the Department, concurrent with the Department's issuance of the building permit.
- (c) The deferral lasts 18 months or until final inspection, whichever is earlier.
- (d) The Department must withhold certification of final inspection until the applicant pays the impact fees in full.
- (4) When an impact fee is required, the County may also collect an administration fee, per the adopted fee schedule, to cover the cost of administration.

14.30.030 Collection within Municipal UGAs and Special Purpose Districts

- (1) The County must collect impact fees on behalf of any special purpose district, or a town or city for development within its urban growth area (any of which are referred to in this chapter as a "district"), that has complied with the provisions of this section.
- (2) Before the County may collect impact fees on behalf of a district:
- (a) the District must submit its capital facilities plan, impact fee schedule, and impact fee calculations to the County;
- (b) the County must incorporate the district's capital facilities plan into the County's comprehensive plan;
- (c) the County must adopt the district's impact fee schedule by ordinance; and
- (d) the County and the district must enter into an interlocal agreement with the district consistent with this section.
- (3) The interlocal agreement between the County and the district must include the following:
- (a) procedures for the collection, accounting, and refunds of impact fees consistent with this Chapter;
- (b) a requirement for the district to use the impact fees and any interest earned in accordance with state law governing impact fees;
- (c) a requirement to provide an annual report to the County consistent with RCW 82.02.070;
- (d) a requirement for the district to indemnify the County against any claim for refunds or challenges to payment of the impact fees for that district.

Comment [A4]: New title and new section; existing content in .080 subsections (1)-(2) and (4)-(5) is reorganized here; subsection (3) is deleted. New subsection (4) moved from .120(2).

(4) The County's collection of an administration fee, pursuant to SCC 14.30.020, is in addition to any impact fees collected for a district. The County will not collect a district's own administration fees.

14.30.040 Exemptions.

(1) The following shall be exempt from the payment of all impact fees:

- (a) That portion of any housing development reserved or set aside exclusively for the elderly, including nursing homes and retirement centers, so long as these uses are maintained in perpetuity and the necessary covenants or declarations of restrictions, approved by the County and any affected district, are recorded on the property;
- (b) Replacement to a similar intensity of a residential structure or mobile home having been actively occupied for the 3 previous years with a new residential structure or mobile home at the same site or lot when such replacement occurs within 12 months of the demolition or destruction of the prior structure or the removal of the mobile home;
- (c) Alterations or expansion or enlargement or remodeling or rehabilitation or conversion of an existing dwelling unit or units where no additional units are created and the use is not changed;
- (d) The construction of accessory structures to a residential use that will not create additional impacts on public facilities;
- (e) Miscellaneous improvements, including, but not limited to, fences, walls, swimming pools, and signs;
- (f) Demolition or moving of a structure.

(2) Certain development approvals shall be exempt from the payment of impact fees if mitigation has already been provided, as specified below. All units are exempt from the payment of impact fees if, prior to the date of the ordinance codified in this Chapter:

- (a) A developer and the County and the affected a district have entered into a voluntary agreement for the payment of fees, dedication of land, or the construction of a public facility segment by the developer; or
- (b) A SEPA mitigation condition exists imposing the obligation of the payment of fees, dedication of land, or the construction of a public facility segment upon the developer on behalf of the district; or
- (c) A land division condition exists imposing the obligation of the payment of fees, dedication of land, or the construction of a public facility segment upon the developer on behalf of the district.

Provided, however, that no exemption shall be allowed if the voluntary agreement, SEPA mitigation condition, or land division condition indicates that payment of the impact fee is necessary. Additionally, no exemption shall be allowed until the developer has provided the Administrative Official documentation demonstrating compliance with the terms of the voluntary agreement, SEPA mitigation condition, or land division condition.

(3) The Administrative Official shall be authorized to determine, after consultation with ~~the any~~ affected district, whether a particular development activity falls within an exemption identified in this Section, in any other Section, or under other applicable law. Determinations of the Administrative Official shall be in writing and shall be subject to the appeals procedures set forth in SCC 14.30.070.

14.30.050 Credits.

(1) ~~After the effective date of the ordinance codified in this Chapter, developer dedications, construction of public facilities, or improvements to public facilities for which an impact fee has been adopted pursuant to this Chapter shall be governed by this Chapter. If an impact fee has not been adopted for a particular public facility or service, then the other requirements for provision of public facilities services, including Chapter 14.28 SCC, Concurrency, Chapter 14.12 SCC, SEPA, and Chapter 14.18 SCC, Land Divisions, shall apply. The feepayer shall direct the request for a credit or credits to the Administrative Official who shall forward the request to the affected district. The district shall first determine the general suitability of a dedication, improvements, and/or construction for district purposes. The district shall then determine whether the dedication, improvements, and/or the facility segment constructed is included within the district's adopted Capital Facilities Plan, or the Board of Administrative Officials for the district may make the finding that such dedication, improvements, and/or facilities would serve the goals and objectives of the district's Capital Facilities Plan. The district shall forward its determination to the Administrative Official, including cases where the district determines that the dedication, improvements, and/or construction are not suitable for district purposes. The Administrative Official shall institute a 15-day public notice of the intended action and then may adopt the determination of the district and shall inform the applicant, in writing, of the adoption of the district's determination. If a development subject to an impact fee is approved subject to a condition that the applicant construct a public facility that is identified in the county's or affected district's capital facilities plan and is acceptable to the county and any affected district, the development applicant is entitled to a credit for the actual cost of providing the facility against the impact fee for that type of public facility.~~

(2) For each request for a credit or credits, once ~~a district~~the County has determined that the dedication improvements, and/or construction would be suitable for district purposes, the ~~district shall~~County must select an appraiser. The appraiser shall be directed to determine ~~for the district~~ the value of the dedication, improvements, or construction provided by the feepayer on a case-by-case basis.

(3) The feepayer shall pay for the cost of the appraisal or request that the cost of the appraisal be deducted from the credit which the Administrative Official may be providing to the feepayer, in the event that a credit is awarded.

(4) After receiving the appraisal and after consultation with ~~the any affected~~ district, the Administrative Official shall provide the applicant with a letter or certificate setting forth the dollar amount of the credit, the reason for the credit, where applicable, the legal description of the donation, and the legal description or other adequate description of the project or development to which the credit may be applied. The applicant must sign and date a duplicate copy of such letter or certificate indicating his/her agreement to the terms of the letter or certificate, and return such signed document to the Administrative Official before the impact fee credit will be awarded. The failure of the applicant to sign, date, and return such document within 60 calendar days shall nullify the credit.

14.30.060 Tax adjustments.

~~Pursuant to and consistent with the requirements of RCW 82.02.060, the capital facilities plans of each district should provide adjustments for future taxes to be paid by the new development which are earmarked or proratable to a particular facility which will serve the new development. The impact fee schedule kept on file in Planning and Development Services should be reasonably~~

Comment [A5]: Restated in many fewer words and more consistent with RCW 82.02.060 which requires the projects to be listed in the CFP.

adjusted for taxes and other revenue sources which are anticipated to be available to fund particular system improvements.

Comment [A6]: Not consistent with the statute.

14.30.070 Appeals.

No change.

14.30.080 Authorization for interlocal agreements and the establishment of impact fee accounts.

(1) The County and the district shall enter into an interlocal agreement that addresses the amount, method of collection, accounting and refunds of impact fees authorized pursuant to this Chapter. All aspects of this Chapter, including interlocal agreements, must be in place prior to collection of fees.

(2) As a condition of the interlocal agreement, a district shall establish an impact fee account with the Office of the Skagit County Treasurer, who serves as the treasurer for specific districts in Skagit County. The account shall be an interest-bearing account.

(3) For administrative convenience, impact fees may be deposited in a County account, provided that, the County shall transfer the impact fees and the interest earned on the fees to a district, or shall deposit the impact fees and the interest earned on the fees into the impact fee account established by a district, within 31 calendar days of receiving the fees.

(4) Funds withdrawn from the impact fee account for the district must be used in accordance with the provisions of SCC 14.30.100. The interest earned shall be retained in this account and expended for the purposes for which the impact fees are collected.

(5) On an annual basis, pursuant to the interlocal agreement, each district shall provide a report to the Board on its impact fee account, showing the source and amount of all moneys collected, earned, or received, and the public improvements that were financed in whole or in part by impact fees.

Comment [A7]: Moved to new section .030.

(6) Impact fees must be expended or encumbered within the period identified in RCW 82.02.070, unless the Board identifies in written findings extraordinary and compelling reason or reasons for a district to hold the fees beyond the statutory period. Under such circumstances, the period of time within which the impact fees shall be expended or encumbered, shall be established after consultation with that district and the affected property owner or fee payer.

Comment [A8]: Moved to section .100 governing use of funds, where it is applicable to county as well as the district.

14.30.090 Refunds.

(1) If the County or a district fails to expend or encumber the impact fees within 6 years of when the fees were paid the period established by statute, or where extraordinary or compelling reasons exist, within such other time periods established pursuant to SCC 14.30.080, the current owner of the property on which impact fees have been paid may receive a refund of such fees. In determining whether impact fees have been expended or encumbered, impact fees shall be considered expended or encumbered on a first-in, first-out basis.

(2) The County, based on consultation with the any affected district and the Skagit County Treasurer, shall notify potential claimants by first-class mail deposited with the United States Postal Service at the last known address of such claimants. Fees are identified with land parcels; therefore, a potential claimant or claimant must be the owner of the property at the time refunds are initiated.

(3) Owners seeking a refund of impact fees must submit a written request for a refund of the fees to the Administrative Official within 1 year of the date the right to claim the refund arises or the date that notice is given, whichever is later.

(4) Any impact fees for which no application for a refund has been made within this 1-year period shall be retained ~~by a district~~ and expended on a related type of public facility for which the fees were originally collected.

(5) Refunds of impact fees under this Section shall include any interest earned on the impact fees ~~by a District~~.

(6) [Per RCW 82.02.080\(2\)](#), ~~When~~ the County seeks to terminate any or all components of the impact fee program, all unexpended or unencumbered funds from any terminated component or components, including interest earned, shall be refunded pursuant to this Section. Upon the finding that any or all fee requirements are to be terminated, the County shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least 2 times and shall notify all potential claimants by first-class mail at the last known address of the claimants. All funds available for refund shall be retained for a period of 1 year. At the end of 1 year, any remaining funds shall be retained by a district, but must be expended for the appropriate facilities. This notice requirement shall not apply if there are no unexpended or unencumbered balances within the account or accounts being terminated.

~~(7) The County shall also refund to the current owner of property for which impact fees have been paid all impact fees paid, including interest earned on the impact fees, [when the developer does not proceed with the development activity and no impact has resulted; except if a public facility or facilities system development activity for which the impact fees were imposed did not occur; provided that, if a district has expended or encumbered the impact fees in good faith prior to the application for a refund, the district can decline to provide the refund. If within a period of 3 years, the same or subsequent owner of the property proceeds with the same or substantially similar development activity, the owner can petition the district for an offset. The petitioner must provide receipts of impact fees previously paid for a development of the same or substantially similar nature on the same property or some portion thereof. The district shall determine whether to grant an offset. The district shall forward its determination to the Administrative Official, and the Administrative Official may adopt the determination of the district and may grant or decline to grant an offset, or the Administrative Official may make an alternative determination and set forth the rationale for the alternative determination. Determinations of the Administrative Official shall be in writing and shall be subject to the appeals procedures set forth in SCC 14.30.070.](#)~~

Comment [A9]: This goes beyond the statutory requirement to be refund impact fees.

14.30.100 Use of funds.

(1) Pursuant to this Chapter, impact fees:

- (a) Shall be used for public facility improvements of the district that will reasonably benefit the new development; and
- (b) Shall not be imposed to make up for deficiencies in the district's facilities serving existing developments; and
- (c) Shall not be used for maintenance or operation.

(2) Impact fees may be spent for ~~a district's~~ improvements, including, but not limited to, facility planning, land acquisition, site improvements, necessary off-site improvements, construction, engineering, architectural, permitting, financing, and administrative expenses, applicable impact

fees or mitigation costs, capital equipment pertaining to public facilities, and any other expenses which can be capitalized.

(3) Impact fees may also be used to recoup public facility improvement costs previously incurred ~~by a district~~ to the extent that new growth and development will be served by the previously constructed improvements or incurred costs and provided the proposed impact fee otherwise meets the requirements of RCW 82.02.050 through 82.02.100.

(4) In the event that bonds or similar debt instruments are or have been issued for the construction of public facility or system improvements for which impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities or improvements provided are consistent with the requirements of this Section and are used to serve the new development. Capital facilities plans using impact fees for the purpose of assisting in the provision of capital facilities of facility systems must clearly differentiate between funds used for new improvement and those funds used to correct existing deficiencies.

~~(5) Impact fees must be expended or encumbered within the period identified in RCW 82.02.070, unless the Board identifies in written findings extraordinary and compelling reason or reasons for holding the fees beyond the statutory period, after consultation with any affected district.~~

~~14.30.110 Review.~~

~~The fee schedule set forth in the schedule kept on file in Planning and Development Services shall be reviewed by the Board as it may deem necessary and appropriate in conjunction with the annual update of the Capital Facilities Plan Element of the County's Comprehensive Plan.~~

~~14.30.120 Impact fees and administrative fees.~~

~~(1) The impact fee schedules set forth in the schedule kept on file in Planning and Development Services are generated from the formulae for calculating impact fees set forth in a district's capital facilities plan. Except as otherwise provided in SCC 14.30.040, 14.30.050 or 14.30.130, all development activity located within a district for which fees have been imposed will be charged the impact fees in the appropriate schedule kept on file in Planning and Development Services.~~

~~(2) The County's cost of administering the impact fee program shall be \$35.00 per dwelling unit for development projects of 1—10 dwelling units, then \$25.00 for dwelling units 11—20, and \$15.00 for all dwelling units over 21. This fee shall be paid by the applicant to the County at the time of project development approval by the County and acceptance of approval by the developer.~~

14.30.130 Independent fee calculations.

(1) If a district believes in good faith that none of the fee categories or fee amounts ~~set forth~~ in the ~~adopted impact fee~~ schedule ~~kept on file in Planning and Development Services~~ accurately describe or capture the impacts of a new development, the district may conduct independent fee calculations and submit such calculations to the Administrative Official. The Administrative Official, as part of a project permit review, may impose alternative fees on a specific development based on the calculations of the district, or may impose alternative fees based on the calculations of the Department. The alternative fees and the calculations shall be set forth in writing and shall be mailed to the feepayer.

(2) If a feepayer opts not to have the impact fees determined according to the ~~adopted impact fee~~ schedule ~~set forth in the schedule kept on file in Planning and Development Services~~, then the feepayer shall prepare and submit to the ~~County and any~~ affected district an independent fee

Comment [A10]: Moved from .080 where it was only applied to districts and also required consultation with the property owner.

Comment [A11]: Unnecessary.

Comment [A12]: Moved to section on districts.

calculation for the development activity for which final land division, or other development approval, or a building permit is sought. The documentation submitted shall show the basis upon which the independent fee calculation was made. The County and any affected district shall review the independent fee calculation and provide an analysis to the Administrative Official concerning whether the independent fee calculation should be accepted, rejected, or accepted in part. The Administrative Official, as part of a project permit review, may adopt, reject, or adopt in part the independent fee calculation based on the analysis prepared by the district, or may impose alternative fees based on the calculations of the Department, the feepayer's independent fee calculation, the specific characteristics of the development, and/or principles of fairness. The fees or alternative fees and the calculations shall be set forth in writing and shall be mailed to the feepayer and to the district.

(3) Any feepayer submitting an independent fee calculation will be required to pay the County a fee to cover the cost of reviewing the independent fee calculation. The fee shall be \$500.00, plus any additional staff time spent in the review and the cost of consultant services if the County deems these services to be necessary. The County shall require the feepayer to post a cash deposit of \$500.00 prior to initiating the review.

(4) While there is a presumption that the calculations set forth in a district's capital facilities plan are valid, the Administrative Official shall consider the documentation submitted by a feepayer and the analysis prepared by a district, but is not required to accept such documentation or analysis which the Administrative Official reasonably deems to be inaccurate or not reliable, and may, in the alternative, require the feepayer or the district to submit additional or different documentation for consideration. The Administrative Official is authorized to adjust the impact fees on a case-by-case basis based on the independent fee calculation, the specific characteristics of the development, and/or principles of fairness. The fees or alternative fees and the calculations shall be set forth in writing and shall be mailed to the feepayer and to the affected district.

(5) Determinations made by the Administrative Official pursuant to this Section may be appealed subject to the procedures set forth in SCC 14.30.070.

14.30.140 Existing authority unimpaired.

Nothing in this Chapter shall preclude the County from requiring the feepayer or the proponent of a development activity to mitigate adverse environmental impacts of a specific development pursuant to the State Environmental Policy Act, Chapter 43.21C RCW, based on the environmental documents accompanying the underlying development approval process, and/or Chapter 58.17 RCW, governing land divisions and subdivisions; provided, that, the exercise of this authority is consistent with RCW 43.21C.065 and 82.02.100.