Impacts of Growth/Fiscal Analysis Team Interim Report

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Montgomery County imposes impact fees on new development to fund the impacts of growth on the transportation and school systems. The *Impacts of Growth/Fiscal Analysis Team* is looking at ways to measure a broad range of the impacts of growth on schools, transportation, libraries, parks, open space, affordable housing, energy, and the environment. To do this, the team is looking at the way Montgomery County has developed impact fees as well as ways other jurisdictions across the country are assessing and funding the impacts of growth. This report examines the current status of impact fees and attempts to identify issues and questions for consideration and further examination.

The following is a series of questions the Planning Board and the Council could consider upon review of current growth policy legislation. Several sections follow addressing impact taxes in Montgomery County in more detail, specifically, school and transportation impact taxes, impact taxes for other public facilities such as libraries, parks and fire/rescue services, as well as environmental impact taxes. Each section provides information regarding existing programs in Montgomery County, programs in other jurisdictions, and questions for further research. The questions raised within the text of the report are commented on in greater detail. In addition, there are a few additional questions within the body of the report, not listed here, as they focus on program details rather than new thought.

Questions the Planning Board and the Council could consider:

1. As the County investigates growing smarter, should it consider more innovative ways to fund this type of growth?

If the majority of new development comes from higher density and infill projects, payments or fees to fund this growth should reflect the developments' impact on existing infrastructure.

> **a. Should innovative infrastructure financing include the creation of impact fee zones (or districts)?**
>
> By creating several zones or districts, variability in growth rates and costs can be better defined across a region.

b. Should the Council consider expanding the collection of fees for schools to commercial development or change the way residential construction is assessed for schools?

Commercial development increases the need for workers. This additional workforce increases the need for housing and schools. Nine counties in California are currently collecting school fees from retail, office and industrial development. Some other jurisdictions base school fees on number of bedrooms or by location.

c. Should impact fees on commercial development be linked to the need for affordable housing?

Most *Jobs/Housing Linkage Programs* require a non-residential development to contribute fees to mitigate its potential housing impacts, but some require non-residential developers to actually provide market-rate and/or affordable housing directly. In some cases local governments provide the developer with regulatory relief (e.g. density bonuses or reduced parking requirements) to offset the cost to the developer of providing the linkage requirement.

d. Should a separate parking impact fee be considered?

The Planning Board's 2002 Transportation Policy Report recommended studying the feasibility of establishing parking impact taxes, with both one-time and annual options considered. The objective was to both provide a financial disincentive to parking, particularly for general office employees and to raise additional revenues to fund TDM options. The administration required to implement a parking fee was one reason that further detailed study was not completed.

e. Should other impact fees for other government infrastructure (public safety, libraries, parks) be considered?

Other jurisdictions use impact fees to fund infrastructure beyond roads and schools. Improving important quality of life facilities such as parks, libraries and community/recreation centers is gaining acceptance. Over 100 jurisdictions, nationwide, impose such fees. Further research can explain how these fees are used, how adequately these fees cover the costs of development, what legal challenges have occurred regarding these fees, and the overall duration of such programs.

2. Should the county consider looking beyond impact fees that focus on financing infrastructure created by new development?

New development, be it *greenfield*, or infill, represents only part of the County's capital project needs. As the County experiences less *greenfield* development and more revitalization, funding for legacy infrastructure may become an even greater burden.

3. What details should a *capital needs inventory* include for the basis of establishing impact taxes? Should the County consider developing a long-range County-wide capital facility plan.

Most jurisdictions assess impact taxes based on some pro-rata share of an inventory of capital needs. The needs may be short-range (i.e., six-year CIP cycle) or long-range (i.e., 20-year plan). The needs may be area-wide or assigned to geographic districts. The level of detail and types of projects can vary (i.e., should the purchase of new buses for either transportation or schools be an explicit part of the inventory?). The types of credits for either development exemptions (i.e., affordable housing) or developer-funded improvements (i.e., a turn lane not identified in the inventory) need to be considered in the development of appropriate pro-rata shares.

4. Should Montgomery County continue to calculate transportation impact fees based on building square footage or number of dwelling units?

Some jurisdictions, such as Bakersfield, CA, base commercial fee rates on daily vehicle trips. This trip-based fee has two primary advantages; it's more directly related to impacts and it's responsive to TDM measures. The primary disadvantage to a trip-based fee is that it's more speculative, particularly for emerging land uses such as age-restricted housing.

5. How should different funding sources (state, federal, private) for transportation projects be considered?

Most jurisdictions that assess transportation impact taxes base their fee structure on the capital costs in the local improvements program. However, considering shortfalls in state transportation budgets, some analysts suggest that local impact fees should be less parochial and contribute to state-funded transportation projects.

Montgomery County has already begun this process by allocating $156 million for SHA and WMATA projects in the FY 07-12 CIP (PDF 500722). About one- third of this allocation ($50M) is to be funded by impact tax contributions. Further strategic discussion is needed on both the degree to which further contributions might be both pursued by the County and how much revenue should be contributed via impact taxes.

6. How should transportation impacts from public projects be assessed?

The Planning Board has been asked to specifically address the question of assessing impacts from public projects such as the FDA Headquarters project in White Oak or the Base Realignment and Closure project in Bethesda. From the perspective of impact fee calculations, staff proposes to keep both the funding, and the impacts, of state and federal projects separate from those approved by the County (but this recommendation should be linked to the discussion regarding Question #5 above).

7. How could transportation impacts from other jurisdictions be assessed?

This question is associated with the phrase *through traffic*. It applies to traffic that travels through Montgomery County (such as a trip from College Park to Tyson's Corner). Like Question #6, the means in which this question is answered depends primarily on the answer to Question #5.

8. How many different types of land uses should be considered for assessing impact fees?

Montgomery County's transportation impact fees are assessed according to five types of residential and eight types of commercial uses, each classified in three geographic areas (Clarksburg, Metro Station Policy Areas, and other). As will be described and referenced in Table 5, many jurisdictions have greater stratification for both land uses and geographic areas. Montgomery County may be better served by a program that includes additional stratification, primarily to establish fees that better reflect the different levels of travel demands that are generated by different types of land uses.

9. Should the County develop and assess environmental impact fees for new development?

A number of important considerations factor into this question. First, recognizing that most of the County's environmental problems are due to existing development. Second, there is comparatively little *greenfield* development left in the County, so any benefit that would result from impact fees on new development would be proportionately small. And, third, with the small amount of *greenfield* development left, traditional impact fees on new development will likely be inadequate to meet most of the County's environmental needs, and alternative fee mechanisms will most probably be required.

10. Considering that most of the County's environmental problems are due to existing development, what is the best fee-based approach to improving and protecting the environment?

Because environmental resources are needed by all residents and degraded by all development and human activities associated with developed land, perhaps a fee that is assessed countywide, similar to the County's Water Quality Protection Charge could be developed, as opposed to a traditional impact tax on new development. Once it is clear how much funding and additional staff will be required to meet new regulations, and the necessary linkages between development and environmental degradation are established, the County could consider a variety of revenue-raising mechanisms to accomplish this such as excise taxes, additional property taxes, transfer taxes, etc.

11. What are the main driving forces that the County will be facing in the future regarding environmental issues and needs, and what will be required to deal with these driving forces?

The main driving force is likely to be regulatory. In fact, this trend is already well underway. After many years, the EPA and the State have become very serious about enforcing the terms of the Clean Water Act (CWA). This will mean increased regulatory pressure for the State and Counties to achieve and maintain water quality standards, not only in the Chesapeake Bay, but also in local streams. Attaining air quality standards under the Clean Air Act is also an ongoing issue. New regulatory requirements have already appeared, and new ones are being developed. It is not yet clear what exactly will be required of local governments, but it seems evident that a significant increase in staff, programmatic, and financial resources will be required to meet recent and emerging regulatory initiatives. New revenue raising mechanisms will likely be required to fund these new programs and initiatives.

Following careful consideration of the previous questions, two overriding questions remain.

> **What are the political and economic limits to the local government's ability to raise funds through impact fees?**
>
> **Once funding limits are determined, how are priorities for various capital improvement needs established? Could the County develop a long-range County-wide capital improvement program responding to both growth and change.**

IMPACT FEES IN MARYLAND

In order to impose a development impact fee or an excise tax in a Maryland jurisdiction, that jurisdiction must have explicit authority from the state's General Assembly to do so. Fifteen Maryland counties, listed on the accompanying table, impose either a development impact fee or an excise tax. These charges support public school construction, transportation, parks and recreation projects and utilities.

Jurisdictions imposing a development excise tax may set the tax amount at any reasonable level and there need not be a connection, or nexus, between where the money is collected and where it is spent. The General Assembly can authorize the amount of the tax and specify activities on which the tax can be imposed.

Impact fees are more complex. Jurisdictions must study the impact of the fees on public services and establish a connection between the amount of the fee and the new development's impact. They must also collect and spend the impact fees in the same place.

Maryland Counties with Impact Fees or Excise Taxes

Anne Arundel	Howard

Calvert	Montgomery
Caroline	Prince George’s
Carroll	Queen Anne’s
Charles	St. Mary’s
Dorchester	Talbot
Frederick	Washington
Harford	

Montgomery County and Impact Fees

Montgomery County established an impact fee structure in 1986 for Germantown and Eastern Montgomery County. The Council and the Executive opted for this structure because they believed it could be imposed without state enabling legislation. The fees applied to all development projects except those undertaken by the government, but could be used only for specific transportation projects. The elected officials planned to issue bonds to pay for the projects, then use the impact fee proceeds to pay a portion of the bond debt. They believed that existing residents would benefit from new transportation facilities along with new residents, so impact fees charged as part of development should not bear the entire cost of the new facility. In Germantown, officials expected impact fees to support half the cost of designated projects.

To calculate the fees, which were assessed as building permits were approved, county staff determined, for Eastern Montgomery County and for Germantown, the cost of the designated transportation project and the percentage of development in each area that was yet to occur. This fraction

$$\frac{\text{Project cost}}{\text{Percentage of remaining development}}$$

allowed calculation of a factor used to assess the fees on each unit of a residential development or on the square footage of a non-residential development. Receipts from the impact fees totaled about $1 million a year. The fee structure included credits against the impact fees for improvement projects that were required as conditions of development approvals, which reduced impact fee receipts somewhat. The County updated the fees every two years.

Developers who objected to the fee took the matter to court, and in 1990, the state Court of Appeals held that Montgomery County had imposed a tax, not a fee, on development, and that the County had no authority under state law to impose the tax. The Council quickly reimposed the fees under a different section of state law, which grants jurisdictions additional taxing powers, including the right to impose development impact fees. The legislation re-imposing the fees was subsequently upheld by the Court of Appeals, which found that the fees constituted an excise tax, which the county had the right to impose under the law granting jurisdictions additional taxing powers.

The County continued to collect the impact fees in Germantown and Eastern Montgomery County until the mid-1990s, when the Council expanded the impact fees to

Clarksburg. In 2002, the Council and the Executive expanded both the scope of the impact fee structure and the areas to which it would be applied.

The Council approved the Executive's proposal to expand impact fees to the entire county over an 18-month period. This legislation created three sets of districts in which impact fees would be collected: Planning Policy Areas around existing Metro stations; the Clarksburg policy area; and a general district, which included all areas, including municipalities, not part of the other two categories. The fees would continue to be collected for transportation projects, but the projects would no longer be specific. Instead, a broader range of projects, including road projects that added capacity; transit centers or park-and-ride lots; new Ride On buses; and transit or trip reduction programs, could be funded using impact fees. The fees were lowest in Metro station Policy Areas and highest in Clarksburg. The fees are adjusted every two years, based on changes in the Consumer Price Index.

The Council also increased the rate of the county's recordation tax and specified that the increment of the increase would be devoted to school projects that were part of the county's Capital Improvements Program.

In 2003, the Council approved a separate development impact fee for schools, to take effect in March 2004. This fee applied throughout the county to residential development, with a specified fee for each housing type. The fees could be used to fund new schools or any other project that added teaching stations.

Montgomery County's Impact Fee Structure

The development impact fees for transportation improvements and for school improvements are similarly structured. The laws recognize that growth must be accommodated through improvements to the county's transportation facilities and its schools and find impact fees to be a reasonable method of raising funds for those purposes. Each sets a specific time—the issuing of building permits—for the collection of the fee. Each exempts Moderately Priced Dwelling Units, and other dwelling units meeting standards based on affordability, from the impact fees. In some cases, the transportation impact fee requires money collected to be spent where it is collected; Metro Station Policy Area funds must be spent in the same Policy Area or an adjacent Policy Area; money collected in Clarksburg must be spent in Clarksburg; and Rockville and Gaithersburg funds must be spent in those cities. General district impact fees may be spent anywhere in the general district. The schools impact fees may be used anywhere in the county.

Both fee structures allow developers to apply for refunds of impact fees if the county has not appropriated the funds for a project within six fiscal years after the fee has been collected. Each impact fee allows credits if the developer constructs or contributes to a specific improvement of the type covered by the fees (although dedications of land for new schools do not warrant a credit).

The following tables list the transportation and school impact fees for Montgomery County.

TABLE 1: Development Impact Tax for Transportation Improvement Tax Rates

	Existing Rates	New Rates
<u>Residential</u>		
General		
Single-family detached	$5,500	$5,819
Single-family attached	$4,500	$4,761
Multi-family residential (except high-rise)	$3,500	$3,703
High-rise residential	$2,500	$2,645
Multi-family senior residential	$1,000	$1,058
Metro Station		
Single-family detached	$2,750	$2,910
Single-family attached	$2,250	$2,381
Multi-family residential (except high-rise)	$1,750	$1,852
High-rise residential	$1,250	$1,323
Multi-family senior residential	$ 500	$ 529
Clarksburg		
Single-family detached	$8,250	$8,729
Single-family attached	$6,750	$7,142
Multi-family residential (except high-rise)	$5,250	$5,555
High-rise residential	$3,750	$3,968
Multi-family senior residential	$1,500	$1,587
Non-Residential (per square foot GFA)		
General		
Office	$5.00	$5.30
Industrial	$2.50	$2.65
Bioscience facility	$0.00	$0.00
Retail	$4.50	$4.75
Place of worship	$0.30	$0.30
Private elementary and secondary schools	$0.40	$0.40
Hospital	$0.00	$0.00
Other non-residential	$2.50	$2.65
Metro Station		
Office	$2.50	$2.65
Industrial	$1.25	$1.30

Bioscience facility	$0.00	$0.00
Retail	$2.25	$2.40
Place of worship	$0.15	$0.15
Private elementary and secondary schools	$0.20	$0.20
Hospital	$0.00	$0.00
Other non-residential	$1.25	$1.30
Clarksburg		
Office	$6.00	$6.35
Industrial	$3.00	$3.15
Bioscience facility	$0.00	$0.00
Retail	$5.40	$5.70
Place of worship	$0.35	$0.35
Private elementary and secondary schools	$0.50	$0.55
Hospital	$0.00	$0.00
Other non-residential	$3.00	$3.15

TABLE 2: Development Impact Tax for Public School Improvement Tax Rates

<u>Residential</u>

	2003 Rates	Current Rates
General		
Single-family detached	$8,000	$8,464
Single-family attached	$6,000	$6,348
Multi-family residential (except high-rise)	$4,000	$4,232
High-rise residential	$1,600	$1,693
Multi-family senior residential	$0	$0

Impact tax for single–family units is increased by $1.00 for each square foot of floor area over 4,500 sq. ft. up to 8,500 sq. ft.

Impact Fee Projections and Receipts

Schools

When the County Council approved the schools impact fees in 2003, it did so with certain assumptions about how much money the fees would generate. The Council believed that the fees would generate $24 million in fiscal year 2005 and $28 million annually thereafter. The assumptions were detailed and included estimates of the number of additional units; the percentage of each housing type; the number of units in each of the fee districts; and the percentage of units that would be exempt from the impact fees.

The assumptions proved to be optimistic. The fees generated less than $8 million in fiscal 2005 and less than $7 million in fiscal 2006. A *permit rush* in which developers raced to submit building permit applications prior to the effective date of the impact fees can explain much of the fiscal 2005 shortfall; about 1,700 permits approved in fiscal 2005 were not subject to the impact fee, about half the assumed number of additional units. There is no similar explanation for the fiscal 2006 shortfall. In response, the Council significantly reduced its revenue estimates from the schools impact tax for the fiscal years 2007 to 2012.

Transportation

Predicting revenues from the transportation impact fees is particularly difficult because of developers' ability to take impact fee credits for projects they must construct or contribute to as a condition of a development approval. Although the County assesses a developer the entire calculated impact fee for each unit she builds, her project may also include a requirement to construct millions of dollars in intersection improvements, which offset her impact fees on a dollar for dollar basis.

The uncertainty associated with impact fee credits contributed to a Council decision in September 2005 to reduce the revenue projections for the impact fee from $12.5 million in fiscal 2007 to $8 million, and to adjust its projections for the remaining CIP years accordingly.

Conclusion

The significant difference between the original revenue projections for the schools impact fee, which were the product of very detailed assumptions, and the first two years of actual income, raises real questions about the fees' effectiveness as a source of infrastructure financing. If the substantial shortfall cannot be satisfactorily explained, it may be unwise to rely too heavily on impact fees as a long-term revenue source.

SCHOOL IMPACT TAXES

Montgomery County

Montgomery County's Adequate Public Facilities Ordinance (as implemented through the Growth Policy) and the Development Impact Taxes are related. Montgomery County revises its Growth Policy every two years. As part of this process, Montgomery County evaluates the adequacy of its public school system using enrollment projections, existing capacities of schools, as well as projected capacities based on additions and new schools. In 2003, Montgomery County adopted a Growth Policy that established a School Facilities Payment. This payment is a fee paid by developers who develop in an area where school enrollment is above the standard (the standard being 100% capacity for high schools and 105% of capacity for middle and elementary schools), but is below 110% of capacity. The School Facilities Payment is $12,500 per student, using the most up-to-date student generation rates available. Student generation rates predict the number of students generated by various household types.

Development impact taxes, on the other hand, are paid throughout the County on new residential development. These fees are based on the projected growth in the county over the next twenty-five to thirty years. Growth rates provide an estimate of population growth within the county. The projected cost of providing educational facilities to accommodate this growth is then calculated. School impact taxes vary by development type based upon an approximation of the cost per dwelling unit of providing educational facilities to serve the new residential development. These fees are updated every two years and the current rates are shown in Table 2.

As stated earlier, the school impact tax program has raised approximately $7 million in revenue for each of the past two years. It is estimated that 72% of the growth in residential development for Montgomery County between 2005 and 2030 will be in multi-family dwellings. This phenomenon will further reduce the expected income stream from School Impact Fees since multi-family dwellings are taxed at a lower rate than single-family homes.

In 2002, prior to adoption of the School Impact Fee, legislation was passed to increase the County Recordation Tax. The increase in the tax was designated to fund public school capital improvement plans. The first year of the program, the increase in the Recordation Tax raised $23 million for public school funding. In 2006, the tax generated $44 million.

Other Local Jurisdictions in Maryland

Other local jurisdictions have established School Impact Fees, among them Anne arundel County and Frederick County. In 1987, Anne Arundel County adopted Bill 50-87, which requires any person who improves real property to pay a development impact fee. This law was amended in 1992, and 2001, clarifying the requirements for the fee. In Anne Arundel County, only residential development is charged a school impact fee. Like Montgomery County, these fees vary by type of residence:

Anne Arundel County's School Impact Fee

Residential Type	School Fee
One Family Detached	$3,714
One Family Attached	$2,346
Two Family	$3,297
Three and Four Family	$2,197
Five of More Family	$1,684
Mobile Home	$3,020

Frederick County also imposes a School Impact Fee. Its ordinance was established in accordance with Section 9J of Article 25 of the Annotated Code of Maryland and went into effect on July 1, 1993. The Ordinance states that each applicant who applies for a residential zoning certificate or building permit to improve real property by development of or by changing the use of a property will pay a development impact fee.

Frederick County's Public School Development Impact Fee

Residential Type:	School Fee
Single-Family Detached	$10,868 per dwelling unit
Townhouse/Duplex	$ 8,894 per dwelling unit
All Other Residential (including Mobile Homes)	$ 1,735 per dwelling unit

Jurisdictions Nationwide

Nationally, eleven states have adopted some form of impact fee/excise tax legislation to fund public school facilities. These states include California, Colorado, Florida, Illinois, Maryland, North Carolina, New Hampshire, Tennessee, Vermont, Washington, and West Virginia. Most of these programs are run at the jurisdictional level, with varying degrees of participation within the states. Every jurisdiction imposes school impact fees on residential development; most jurisdictions use different rates for different types of residential development. California is the only state that charges retail, office, and industrial development a school impact fee.

Washington State

In 1991, the King County Council of Washington State established concurrency standards and impact fees for public school districts. The key provisions of the legislation included the following:

- Formation of a School Technical Review Committee (STRC)
- Annual Council reviews
- An impact fee program
- Concurrency

In addition, the legislation sets forth that school impact fees will be assessed and collected on every new residential dwelling unit in the unincorporated portion of a school district for which an impact fee has been established. This fee will be collected at the time of permit issuance or final plat approval. The amount of the fee is based on the fee schedule that is in affect at the time of permit application or final plat approval. The following are school impact fees for King County, Washington, effective January 1, 2007:

TABLE 3 - Washington State

School District	Existing Fee Amount Per Unit	
	Single Family	Multiple Family
Auburn, No. 408	$5,657	$1,229
Federal Way, No. 210	$3,018	$ 856
Fife, No.417	$3,629	$ 586
Issaquah, No. 411	$6,136	$1,264
Kent, No. 415	$4,928	$3,034
Lake Washington, No. 414	$2,975	$ 307
Riverview, No. 407	$ 538	$ 124
Snoqualmie Valley, No. 410	$3,992	$ 798

The following types of development are exempt from school impact fees: 1) Any form of housing exclusively for the elderly, 2) Replacement or remodeling of existing homes, 3) Shelters for temporary placement, 4) Relocation facilities, 5) Transitional housing facilities, 6) Low-income housing, 7) Group homes, 8) Temporary dwellings for medical hardship, and 9) Accessory dwelling units.

California

In California, communities have considerable discretion in setting development fees. In fact, school impact fees became so popular, and so pricey that beginning in 1999, school fees were capped by State law at $1.93 per residential square foot. In 2000, the cap was increased to $2.05. California calculates it fee based on square footage of development, rather than per dwelling unit.

TABLE 4 - California

Average Residential Development Fees by Project Type

Fee Type	**25 Unit Single Family**	**Infill House**	**45 Unit Apartment**
Planning Fee	$1,175	$ 457	$ 510
Building Permit	3,608	3,783	1,737
Building Fees	1,388	1,423	na
Capital Facilities	19,552	16,547	13,268
School Fees	5,583	5,135	2,300
Utility Fees	6,357	na	na
Transport/Parks	3,628	na	na
Quimby/Special	2,349	na	na
Other Impact Fees	1,633	na	na
Total Fees	**24,325**	**20,326**	**15,351**

Florida

Impact fees in Florida are the subject of considerable controversy and a matter of increasing fiscal importance. In 2004, impact fee collections in the state were reported as $1,182,450,641, with $510,833,648 going to school districts.

There are two methodologies commonly used in Florida to formulate impact fee programs. These are the consumption based and improvements based methodologies. The consumption based (also known as “standards based”) methodology calculates impact fees based on the value of public infrastructure consumed per unit of land use. The value of public infrastructure is usually developed by calculating the replacement cost of existing public capital infrastructure. This value is then related to a facility based standard such as, fire stations per 1000 population, acres of park per 1000 population, library or other building square footage per 1000 population, etc…

The improvements based (also known as “needs based”) methodology charges new development based on a specific set of capital improvement projects. This approach is usually based on a long-range master plan that includes a list of future projects that are determined to be necessary to accommodate existing and future growth at the adopted level of service.

The basic difference between the two methodologies is that the consumption based impact fee charges new development based on the value of the capital asset being consumed by each unit of land use, whereas, the improvements based impact fee charges new development based on the cost of a specific set of improvements and their associated cost per unit of land use. The key underlying assumption for consumption based impact fees is that growth consumes some capacity of all public facilities and not just the new infrastructure being built.

In Florida, school impact fees are calculated in a variety of ways. Some jurisdictions calculate their fee based on the number of bedrooms being constructed. Other jurisdictions calculate a fee per dwelling unit. In both cases, fees are calculated for different types of dwelling units. Another method used is to calculate fees based on square footage, as in California.

TABLE 5 - Florida Counties

Type and Amount of Fees

County	**Single Family**	**Multi Family**	**Mobile Home**
Broward (bedroom)	$216 - $2,959	$50 - $4,000	$50 - 2,453
Citrus (dwelling unit)	135	135	135
Collier (type)	1,778	827	1,234
Dade (square feet)	500 square feet = $1071 – 3,800 square feet = $4,100 by formula		
Hernando (type)	981 - 1,173	907	1,057 - 1,173
Hillsborough (bedroom)	39 – 488	8 – 236	56 – 286
Lake (bedroom)	424 – 1,739	63 – 337	77 – 1,402
Martin (square feet)	< 801 square feet = 628	-	> 2,300 square feet = 1,006
Orange (dwelling unit)	2,119	1,280	1,660
Osceola (dwelling unit)	1,022	475	673
Palm Beach (square feet)	800 square feet = 311	-	3,600 square feet = 1,415
St. Johns (dwelling unit)	381	286 – 451	381
St. Lucie (dwelling unit)	800	608	182
Seminole (dwelling unit)	1,384	639	955
Volusia (dwelling unit)	984	984	984

The City of Boulder, Colorado also calculates a school excise tax based on square footage of development. The school excise tax in Boulder is $1.14 a square foot up to 6000 square feet per dwelling unit.

Questions related to funding schools that the Planning Board and the Council could consider:

1. Should the Council consider expanding the collection of fees for schools to commercial development?

Commercial development increases the workforce, thereby increasing the need for housing and schools. Nine counties in California are currently collecting school fees from retail, office and industrial development.

2. Should the Council consider other methods of calculating school costs due to growth or change?

Other jurisdictions have successfully captured school costs by assessing residential construction with a variety of methods including number of bedrooms, square footage, or by location. Others have assessed any residential improvement such as remodeling or replacement.

TRANSPORTATION IMPACT TAX

The impact tax structure in Montgomery County is generally progressive with most general approaches being used in other urbanized areas to both raise revenues and guide growth. Some jurisdictions have adopted innovative tools to calculate fees based on more complex modeling approaches and focus fee application to specific modal or project initiatives. The Planning Board and staff will need to consider whether such approaches better support our public policies, are understandable, and are pragmatic.

The discussion of impact taxes is described below in three parts. Part A compares our approach to calculating transportation impacts to that of other jurisdictions. Part B compares our approach to assessing transportation impact taxes to that of other jurisdictions. Part C presents nine questions regarding transportation impact taxes that the staff and Board should consider during the next several weeks.

Part A. How are other jurisdictions measuring the transportation impact of new development?

In general, Montgomery County remains at or near the vanguard in assessing transportation impacts and otherwise considering and mitigating the adverse transportation impacts of development. We share several common elements with most urbanized jurisdictions in the country in defining transportation impacts:

- The primary means of assessing transportation impacts is by the level of vehicular congestion during weekday peak commuter hours.
- Multimodal quality of service is addressed through a system of tradeoffs, allowing transit, pedestrian, and bicycle impacts and amenities to be considered in lieu of roadway capacity improvements via variations in standards in different geographic districts (our Policy Areas) and the ability to mitigate certain vehicular impacts either through fees, trip reduction program commitments, or provision of alternative amenities (such as offsite sidewalks or bus shelters)
- Impacts are defined by a step function; impacts are not considered adverse until a certain numeric threshold is reached, above which point an applicant is tasked with mitigating any additional impacts they are forecast to cause.

There are two notable areas where Montgomery County differs from most jurisdictions in defining transportation impacts:

- Most jurisdictions do not require a traffic impact analysis (our Local Area Transportation Review) for developments that generate fewer than 100 peak hour vehicle trips. Our threshold is 30 peak hour vehicle trips, meaning that we “catch” many more projects in our net.
- Most jurisdictions use the delay-based measurements in the Highway Capacity Manual, or similar simulation tool, to assess intersection congestion. We use the Critical Lane Volume (CLV) technique, which some describe as a more blunt tool

to assess impact. The two primary complaints regarding the CLV technique is that it is not descriptive to the average person and that it does not sufficiently reflect the nuances of traffic operations observed in the field. The counter-argument is that the CLV technique remains a right-sized tool for the job as the far more detailed operational analyses available would tend to obfuscate, rather than clarify, identification of impacts and mitigating actions. This discussion has been a recurring feature of biennial Growth Policy discussions during the past decade and staff expects a similar discussion this spring. To date, the Planning Board and County Council have ultimately concurred with staff assessment that the CLV technique remains the most pragmatic tool for assessing impacts and mitigation responsibility.

Part B. How are other jurisdictions using transportation impact fees or taxes to mitigate impacts of new development?

We share several elements in common with other jurisdictions in establishing transportation impact fees or taxes:

- The impact fee amounts are considered a pro-rata share of the cost of needed areawide improvements, rooted in an estimate of the costs of unbuilt roadway capacity distributed among estimated development growth.
- Developers are typically required to address localized impacts by providing additional transportation infrastructure and the cost of that infrastructure is counted as a credit against their impact fee payment.

The literature review conducted to date identifies two areas, however, where other jurisdictions are following more aggressive, or progressive, transportation impact fee procedures:

- Many jurisdictions have established fees based on more finely grained vehicle trip generation and or vehicle trip-length assessments, and
- Some jurisdictions have notably higher impact fees than we do, in part due to the fine-grained process noted in the prior bullet.

An August 2006 survey of fees from Duncan Associates contains summary comparisons of impact fees for some 200 jurisdictions nationwide. While Montgomery County's transportation impact taxes remain higher than national averages, the highest fees in that reference (that could be independently confirmed by staff) include smaller jurisdictions:

- El Dorado County, CA (Tahoe region) has a $17,600 fee for a single-family dwelling unit (Montgomery County's corresponding rate is listed at $5,500).
- Pitkin County, CO (Aspen) has a $11,700 fee for 1,000 GSF of retail space (Montgomery County's corresponding rate is listed at $4,500).
- Livermore, CA (Bay area) has a $11,800 fee for 1,000 GSF of office space (Montgomery County's corresponding rate is listed at $5,000).

The Duncan Associates survey provides one fairly simplistic comparison of fees across jurisdictions. Most jurisdictions, including Montgomery County, have a more complex impact fee structure. Table 6 provides a sample from Orlando, FL; demonstrating a fairly simple matrix by 55 types of land uses and seven geographic locations. Orlando's fee structure for commercial properties reflects trip generation rates. For instance, general retail rates range from $4,000 to $9,000 per 1,000 square feet but convenience store rates range from $20,000 to $33,000 per 1,000 square feet.

Some jurisdictions are shifting to more innovative means for establishing impact fees. For instance, Broward County, Florida, has established a separate Transit Oriented Concurrency (TOC) fee in eight of their ten concurrency districts, based on a pro-rata share of implementing a five-year adopted Transit Development Plan.

TABLE 6 - City of Orlando

Impact Fee Rate Schedule								
	Fee Basis	Traditional City	AC-3A Downtown	AC-3 Activity Center	ASTU Itn Dr.	City Other	East Wash AC-N	Special Plan Areas
Single Family	/ unit	$1,757	$1,661	$2,216	$1,633	$2,400		
Multi-Family	/ unit	1,234	1,166	1,556	1,147	1,685		
Mobile Home	/ unit	916	866	1,155	851	1,252		
Hotel/Motel	/ room	1,916	1,266	2,365	1,743	2,561		
General Office < 100,000gsf	/ 1000 sq. ft.	2,739	2,500	3,714	2,737	4,016		
General Office 100,000-199,999gsf	/ 1000 sq. ft.	2,263	2,034	3,022	2,227	3,268		
General Office >200,000gsf	/ 1000 sq. ft.	1,937	1,724	2,561	1,887	2,769		
Retail < 99,999gsf	/ 1000 sq. ft.	6,872	5,544	8,607	6,342	9,343		
Retail 100,000-199,999gsf	/ 1000 sq. ft.	6,637	5,217	8,175	6,023	8,873		
Retail 200,000-299,999gsf	/ 1000 sq. ft.	6,591	4,309	8,019	5,909	8,704		
Retail 300,000-399,999gsf	/ 1000 sq. ft.	5,858	3,800	7,071	5,210	7,675		
Retail 400,000-499,999gsf	/ 1000 sq. ft.	5,366	3,459	6,437	4,743	6,986		
Retail 500,000-999,999gsf	/ 1000 sq. ft.	4,900	3,120	5,981	4,407	6,492		
Retail 1,000,000-1,249,999gsf	/ 1000 sq. ft.	4,252	2,826	5,418	3,992	5,881		
Retail > 1,250,000gsf	/ 1000 sq. ft.	3,938	2,679	5,137	3,785	5,575		
Mixed Use Project	Varies	Alternative Impact Study, Project Specific						
Specialty Retail < 25,000gsf	/ 1000 sq. ft.						2,150	

Specialty Retail <25,000gsf	/ 1000 sq. ft.							4,134
Hospital	/ 1000 sq. ft.	3,271	3,106	4,178	3,078	4,517		
Industrial	/ 1000 sq. ft.	1,298	1,232	1,657	1,221	1,792		
Manufacturing	/ 1000 sq. ft.	711	675	908	669	982		
Warehousing	/ 1000 sq. ft.	924	877	1,179	869	1,275		
Bank	/ 1000 sq. ft.	16,510	14,610	18,578	13,689	20,164		
Day Care	/ 1000 sq. ft.	5,026	4,753	6,785	4,999	7,336		
Elementary Scholl	/ 1000 sq. ft.	1,901	1,797	2,584	1,904	2,794		
High School	/ 1000 sq. ft.	1,703	1,709	2,299	1,694	2,486		
Junior College	/ 1000 sq. ft.	3,632	3,645	4,902	3,612	5,301		
University	/ 1000 sq. ft.	5,304	5,324	7,160	5,276	7,742		
Medical/Dental Office	/ 1,000 sq. ft.	5,855	5,049	6,992	5,152	7,561		
Heavy Industry	/ 1,000 sq. ft.	279	265	316	233	341		
Senior Adult Housing	/ 1000 sq. ft.	681	621	879	648	952		
Assisted Living	/ 1000 sq. ft.	488	0	272	200	294		
Nursing Home	/ 1000 sq. ft.	1,136	1,078	1,450	1,069	1,568		

Part C. What types of questions should the Planning Board and County Council be considering regarding transportation impact taxes?

During the Growth Policy review in 2003, staff estimated that the un-built master planned infrastructure would have a capital cost of approximately $6 billion dollars. If that cost were distributed equally among forecasted households and jobs, each housing unit would have a transportation impact fee of about $26,000 and the fee for each 1,000 square feet of commercial space would be three to four times that value. While estimates of both demographic growth in the County and needed infrastructure have changed slightly, the order of magnitude between expected growth and the capital costs required to accommodate that growth remains roughly the same as it was in 2003.

Staff believes that, as in 2003, the County Council should not propose to cover all costs of planned but un-built infrastructure through fees on the next 25 years of development. Yet, the information staff has compiled to date suggests that higher transportation impact fees are one useful way to address projected transportation system funding shortfalls. Staff suggests that the Planning Board and County Council consider the following nine questions during the next several weeks in considering how transportation impact fees might be revised.

1. What independent variable should the tax be based on?

Currently, the County's impact fees are based on building square footage or the number of dwelling units. These independent variables are pragmatic as they are fairly easy to measure and used consistently throughout the development review and permitting process. Some jurisdictions, such as Bakersfield, CA, base commercial fee rates on daily vehicle trips.

A trip-based fee has two primary advantages; it's more directly related to impacts and it's responsive to TDM measures. The primary disadvantage to a trip-based fee is that it's more speculative, particularly for emerging land uses such as age-restricted housing. This disadvantage could be addressed in part through trip monitoring; one could argue that the current Alternative Review Procedure for Metro Station Policy Areas (including higher fees and a Trip Mitigation Agreement) is essentially a trip-based fee.

Trip-based fees are commonly assessed using travel characteristics results from a four-step travel demand model, similar to our TRAVEL/3 model. Such results have the potential to be confusing; the unpredictable "black box" syndrome was one of the complaints raised regarding Policy Area Transportation Review. This complaint could be addressed, however, by using the forecasting tools only at the time that fees are established or revised, rather than in the iterative Policy Area Review process through which the potential jobs and housing capacity benefits of specific capital projects was reviewed. Staff recommends that the fee values should be based on vehicle trip generation forecasts regardless of whether the value is codified as a trip-based independent variable or first converted to a floor-area basis.

2. Should a separate parking impact tax be considered?

The Planning Board's 2002 Transportation Policy Report recommended studying the feasibility of establishing parking impact taxes, with both one-time and annual options considered. The objective was to both provide a financial disincentive to parking, particularly for general office employees and to raise additional revenues to fund TDM options. The administration required to implement a parking fee was one reason that further detailed study was not completed.

3. How should different funding sources (state, federal, private) be considered?

Currently, staff understands that the County's impact tax system is designed to provide revenues only for projects that Montgomery County would typically fund, primarily through DPWT projects. Therefore, the transportation impact tax structure is not currently intended to support capacity improvements on Interstate or state-maintained highways or federally funded transit projects such as the Corridor Cities Transit-way or Purple Line.

The Montgomery County approach appears to be typical. Most jurisdictions that assess transportation impact taxes base their fee structure on the capital costs in the local improvements program. However, considering shortfalls in state transportation budgets, some analysts suggest that local impact fees should be less parochial and contribute to state-funded transportation projects.

Montgomery County has already begun this process by allocating $156 million for SHA and WMATA projects in the FY 07-12 CIP (PDF 500722). About a third of this allocation ($50M) is to be funded by impact tax contributions. Further strategic discussion is needed on both the degree to which further contributions might be both pursued by the County and how much revenue should be contributed via impact taxes.

4. How should transportation impacts from public projects be assessed?

The Planning Board has been asked to specifically address the question of assessing impacts from public projects such as the FDA Headquarters project in White Oak or the Base Realignment and Closure project in Bethesda. From the perspective of impact fee calculations, staff proposes to keep both the funding, and the impacts, of state and federal projects separate from those approved by the County (but this recommendation should be linked to the discussion regarding Question #3 above).

5. How should transportation impacts from other jurisdictions be assessed?

This question is associated with the phrase "through traffic". It applies both to traffic that travels through Montgomery County (such as a trip from College Park to Tyson's Corner). Like Question #4, the means in which this question is answered depends primarily on the answer to Question #3.

6. How should lower cost infrastructure elements, credits for LATR improvements, and maintenance and operations be included?

One potential shortfall between revenue estimation and actual expenditures may be the consideration of the many lower-cost infrastructure elements not typically considered in a long-range planning exercise, and the impact tax credit given to development projects for projects constructed to meet Local Area Transportation Review requirements.

For instance, in the County's approved FY 06 budget, $73.5M of impact fee revenue for FY05-10 was allocated to twenty capital projects. However, about a third of the revenue ($24.6M) was allocated to projects that are not on the County Council's 10-Year Transportation Plan, notably $18M for Ride-On fleet expansion. Staff finds that the application of impact fees to acquire new buses and construct sidewalks is appropriate, but that such expenditures "below the radar" of a long range plan should be incorporated, either explicitly or implicitly, in the establishment of the fee. In the FY 07-12 budget, the relationship between the long range plan and the impact fee was reconciled; Ride-On buses and sidewalk construction are no longer proposed to be funded by impact fees.

Similarly, a developer seeking approval of 100 single-family residential units might be required to build a $200,000 right-turn lane at a nearby, but offsite, intersection to satisfy LATR requirements. In such a case, the impact tax payment would be initially charged as $581,900 (the unit rate of $5,819 times 100 units), but after the $200,000 credit for building the turn lane, the net impact fee revenue would be $381,900. Most LATR turn lane improvements are not specifically called for in area Master Plans.

7. How should revenues and expenditures be linked; geographically, functionally, or temporally?

A common community concern is that fee collection is a poor substitute for developer-funded improvements, because fees collected might:

- Be spent elsewhere in the County rather than directed towards local mitigating impacts.
- Be allocated to projects that have no functional nexus to the impacts
- Be directed towards desired projects that are delayed indefinitely, in which case the funds, which must be spent in six years, would be diverted elsewhere

Montgomery County has addressed this concern in recent years through several different mechanisms (including temporary mechanisms) such as:

- Impact taxes in Germantown and Eastern Montgomery County,
- The Development Approval Payment (DAP) system,
- The Expedited Development Approval Excise Tax (EDAET), and
- Development Districts, such as Kingsview Village and Clarksburg
- Metro Station Policy Areas

The consideration of a revised impact tax system should consider how public support can be strengthened by ensuring that fees collected are fairly distributed

8. How many different types of land uses should be considered?

Montgomery County's transportation impact fees are assessed according to five types of residential and eight types of commercial uses, each classified in three geographic areas (Clarksburg, Metro Station Policy Areas, and other). As described previously and referenced in Exhibit A, many jurisdictions have greater stratification for both land uses and geographic areas. Staff finds that some additional stratification is warranted, primarily to establish fees that better reflect the different levels of travel demands that are generated by different types of land uses.

9. What horizon year should be used and how often should the fees be recalibrated to consider changes in planned land uses, infrastructure, or cost estimates?

The assessment of needs and revenues and any amortization assumptions requires establishment of an end-state objective. The trade-offs between the relative certainty of a short-term objective and the more comprehensive planning effort in a long-term objective, requires further discussion.

Most long range planning activities in the Washington region rely at least in part on the MWCOG Cooperative Forecasts, which project demographic growth and the Constrained Long Range Plan (CLRP) for transportation in five-year increments. The Round 7.0 forecasts have a horizon year of 2030. Not all of the County's master planned transportation facilities are included in the 2030 CLRP, nor is the County assumed to be built out by 2030.

Many jurisdictions (i.e., Bellingham, WA) evaluate transportation impact fees on an annual basis considering the costs of implementing local improvements in a six-year transportation plan. Staff understands that most of the County's prior experience in geographically explicit impact fees was designed to fund a set of short-term, specific projects for which capital cost estimates and environmental approvals were fairly well established.

Regardless of the horizon year considered, the formal definition of the end-state objective and the frequency with which fees are re-established should be defined. The County's current fee structure is updated every two years, but only to reflect the effects of inflation. Many jurisdictions based their fees on the costs included in an adopted CIP. In such a case, changes to forecast land use (such as successive MWCOG cooperative forecasts) or infrastructure (such as a Purple Line amendment) would alter the fee structure on a regular basis.

OTHER INFRASTRCTURE

As stated earlier, Montgomery County makes limited use of impact taxes, as they are collected for roads and schools. At this time, none are oriented towards improving important quality of life facilities such as parks, libraries, and recreation/community centers. And the County does not utilize impact taxes to support public safety concerns such as fire/rescue or police stations. The need to build, maintain and enhance these facilities continues as population continues to increase from new development and in-migration. Currently, expansion and upkeep of these facilities are paid for through the general fund.

Other jurisdictions, nationally and locally, have begun to address the use of impact fees to support the demand for increased general government functions that comes with development. In the 2005 National Impact Fee Survey, prepared by Duncan Associates, 245 jurisdictions representing 20 states were surveyed. (See tables below). Like Montgomery County, most jurisdictions impose fees for roads and schools. But nationally, 159 imposed impact fees to pay for parks, 16 for libraries, 20 for police, and 19 for fire/rescue services.

TABLE 7 - National Average Impact Fees, 2005

Facility	**No of Jurisdiction**	**Single Family (unit)**	**Multi-Family (unit)**	**Retail (1,000 sf)**	**Office (1,000 sf)**	**Industry (1000 sf)**
Roads	191	$2,027	$1,375	$3,782	$2,400	$1,406
Drain	47	$1,246	$588	$875	$560	$855
Parks	159	$1,862	$1,444	$628	$574	$492
Library	55	$362	$275	$0		
Fire	97	$330	$265	$269	$265	$174
Police	72	$300	$266	$401	$282	$162
General Government	48	$697	$545	$416	$402	$308
Schools	97	$3,025	$1,728	$333	$333	$333
Other	40	$2,080	$1,762	$2,659	$1,872	1,590
Avg. Non-Utility Fee	234	$5,237	$2,441	$3121	$3,025	$2,033
Water	123	$2,670	$1,330	$512	$485	$474
Sewer	129	$2,519	$1,437	$550	$465	$454
Average Total Fee	245	$7669	$4,792	$4,544	$3,195	$2,247

Other jurisdictions use impact fees to fund infrastructure beyond the school and roads fees used by Montgomery County. These next five sections will present the different fees assessed and examples of the jurisdictions that use them. These fees include libraries, parks, public safety, general government buildings, and employee housing. Where information is available, the examples include the jurisdictions that imposed the fee, fee schedules, and how fees are formulated. The local examples used are Frederick and Anne Arundel Counties, Maryland.

Libraries

Frederick County, Maryland

Frederick County imposes impact fees on new residential development to fund the proportionate share of the cost of land acquisition for libraries; library facilities, including construction, furniture, fixtures, equipment and technology; and collection materials, including, but not limited to, books, reference materials, audio and visual materials, electronic and digital information resources, periodicals and others. The Impact Fee is calculated by multiplying the demand added by the new development on a per unit basis.

Frederick County's Library Development Impact Fee	
Residential Development	Per Dwelling Unit
Single-Family Detached	$727.00
Townhouse/Duplex	$679.00
All Other Residential (including mobile homes)	$457.00

Collier County, Florida

The current library impact fees range from $214 to $299 for residential land uses. The library impact fees are charged only to residential land uses and net impact cost is reflected in a cost per housing unit impact fee. A comparison of the current Collier County LOS, LOS standard (LOSS), LOS of the other Florida counties, and the State Standards were used as a framework for computing the development impact for libraries.

The six major elements associated with the development of the library facilities and Items impact fee include:

- Level of Service Standards (circulation)
- Library Facility Costs
- Library Items Impact Cost
- Summary of Library Capital Costs and Associated Funding Sources
- Net Library Facility and Items Impact Cost
- Proposed Library Impact Fee Schedule

Parks

Broward County, Florida

Broward County assesses impact fees to offset the impact of the development on the capital cost of providing regional services and infrastructure. The park fees are paid only by residential development. Recreational impact fees are assessed through the platting process or through the site plan/building permit process in the unincorporated area and are due prior to plat recordation or prior to the issuance of a building permit.

Park impact fees assessed by Broward County are based on the type of dwelling unit and the number of bedrooms.

TABLE 8 - Recreational (Park) Impact Fee Schedule

<u>Current Ordinance 92-1* Schedule Only</u>

Effective October 1, 2006

Dwelling Type	Bedrooms	Impact Fees	Administrative Fees
Single Family	2 or less	$328	$10
*Townhouse	3	$417	$15
Duplex & Villa	4 or more	$491	$15
Mobile Home	1 or less	$226	$8
	2	$295	$10
	3 or more	$425	$14
Garden Apartment	1 or less	$193	$7
High Rise	2 or more	$299	$11

*The 3 bedroom rate is the maximum for townhomes, duplexes and villas.

City of Albuquerque, New Mexico

Parks and Recreation fees are based on a current level of service calculated at 2.6 acres/1,000 people. This ratio is used to calculate how many acres of parks are needed to accommodate future population growth. They then calculate the historic and anticipated per capita cost to add new parks. This ranges from $0.39 to $1.63/sq ft based on the service area.

Public Safety

Anne Arundel County, Maryland

Anne Arundel County imposes impact fees for a land use change or improvement that causes any impact on public safety, as well as public schools and transportation, based on the net increase in impacts attributable to the change of use or improvement. Determining a gross fee based on the new use or improvement and subtracting from the gross fee the amount of the fee attributable to the previously existing use or improvement calculates the net increase. A replacement of or addition to an existing dwelling is not subject to a development impact fee.

TABLE 9 – Anne Arundel County

Land Use Type (per unit)	School Fee	Transportation Fee	Public Safety Fee	Total Fee
Residential Type:				
One Family Detached			$122	$4,781
One Family Attached	$3,714	$945	$94	$3,300
Two Family	$2,346	$860	$116	$4,166
Three and Four Family	$3,297	$753	$85	$3,019
Five or More Family	$2,197	$737	$70	$2,430
Hotel/Motel Room (per room)	0	$1,171	$40	$1,211
Amusement, Recreation, Place of Assembly (per parking space)	0	$192	$9	$201
Industrial and Warehouse (per 1,000 gross sq. ft.)	0	$439	$20	$459
Self-Storage (per 1,000 gross sq. ft.)	0	$384	$26	$410
Hospital (per bed)	0	$1,692	$68	$1,760
Office Space (per 1,000 gross sq. ft.)	0			
Under 100,000 sq. ft.	0	$1,964	$137	$2,101
Between 100,000-199,999 sq. ft.	0	$1,587	$115	$1,702
200,000 sq. ft. and Over	0	$1,210	$90	$1,300
Mercantile (per 1,000 sq. ft.)	0	$2,504	$442	$2,946
Effective July 1, 2006				

Anne Arundel Development Fee Formulas for Public Safety

Public Safety Fee = FP x TCI - (PTC + FTC)/PP

Where:

FP = Functional population per land use type (the measure of demand for services based on the allocation of Anne Arundel County population among residential and nonresidential land uses)

TCI = Total public safety capital improvement value

PP = Peak population (which equals permanent residents, seasonal population, and transient population)

PTC = Credit amount for past tax payments

FTC = Credit amount for future tax payments

Nationwide 27 states have enacted public safety impact fee enabling legislation since the 1970s. There are several good examples of impact fees used by local jurisdictions in a national search. In one example, Albuquerque, the state of New Mexico established enabling legislation that gave the city the authority to implement impact fees

City of Albuquerque, New Mexico

Public Safety costs are measured based on functional population, using a 24/7 population. Level of service is based on the number of stations per 20,000 residents. These fees range from $99.68/1000 sq ft for offices to $454.78/1000 sq ft for retail and $275.92/1000 sq ft for residential.

Phoenix, Arizona

The city calculates impact fees for fire protection and police facilities, as well as equipment repair facilities, libraries, major streets and bridges, parks and recreational, solid waste, wastewater and storm drainage facilities. These fees are based on the cost of providing new or expanded facilities and the number of homes and businesses supported. To standardize the amount of new service that each land-use type demands, the City uses Equivalent Dwelling Units (EDUs). One standard single family home equals one EDU, and every other land-use type is standardized to that value.

<u>Standards for Police Service: Description and Unit Cost</u>

The capital facility needs for police services required by new development are based on the same standard of service required in existing areas of the city. To maintain a safe and equivalent level of service across the city, as well as to maintain adequate response times to calls for service while promoting the Phoenix Policing philosophy. Each precinct serves approximately 100,000 EDUs, plus or minus 20,000 EDUs. Citywide EDUs are calculated by multiplying the EDU factor by either the number of residential dwelling units or the square footage for non-residential land use types, to arrive at a total number of EDUs. Both the current and projected number of precincts to arrive at an average number of EDUs that will be served by each precinct now and with future growth divides citywide EDUs.

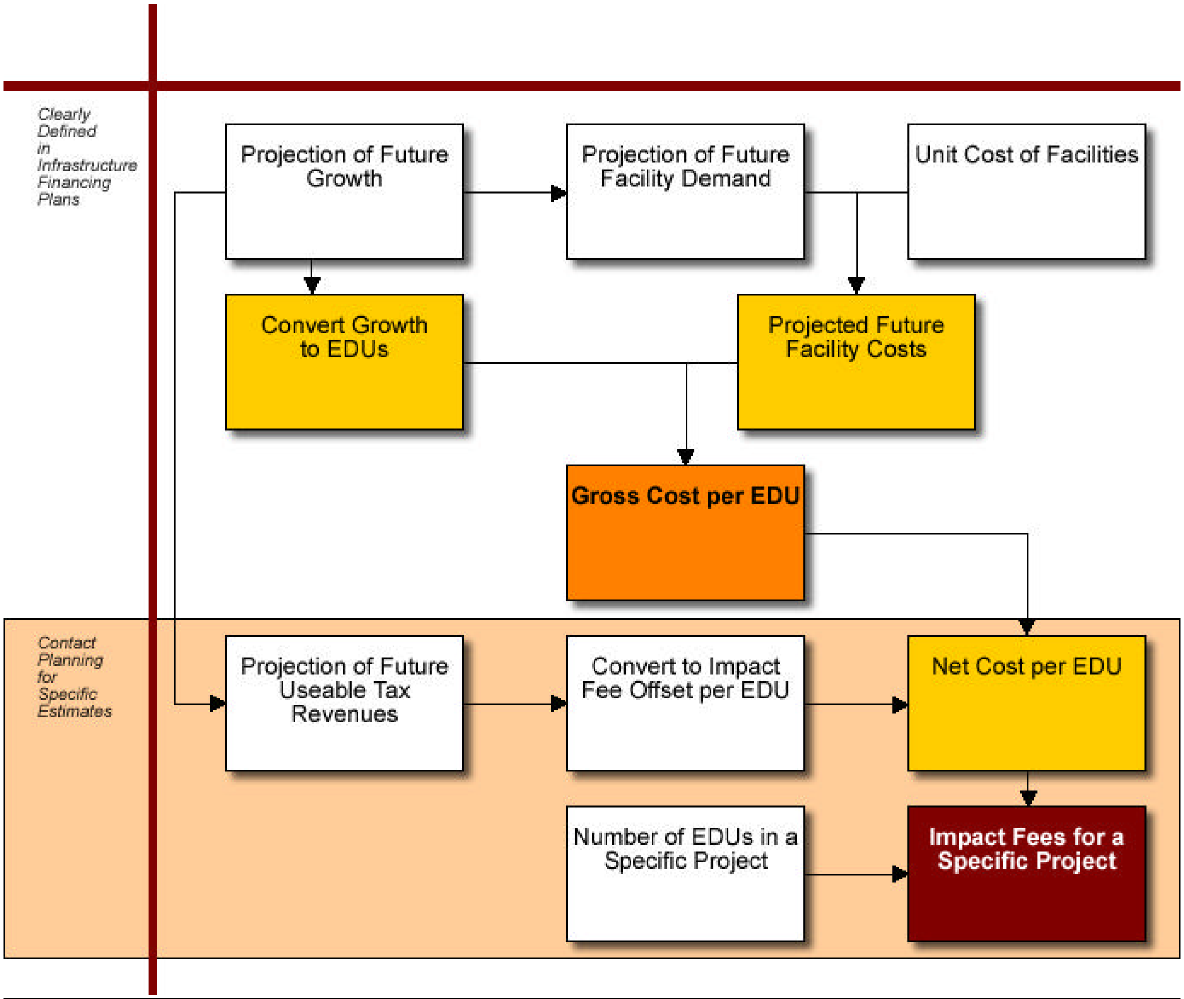
TABLE 10
Infrastructure Financing Plan Appendices for the Development Impact Fee Area of Phoenix 2006

Fleet Allotment and Cost

	Total*	# Active Vehicles	Mileage	Avg. Per Car Per Year	Average Per Day
Desert Horizon Precinct	135	127	2,474,552	19,485	53
Cactus Park Precinct	142	141	2,287,356	16,222	44
South Mountain Precinct	157	149	2,161,325	14,506	40
Maryvale Precinct	136	129	2,274,122	17,629	48
Squaw Peak Precinct	121	116	2,045,383	17,633	48
Central City Precinct	125	121	1,665,912	13,768	38
Precinct Total	**816**	**783**	**12,908,650**	**99,243**	**45**
		Overall	Average	16,540.5	

	Citywide		
Total Precinct Vehicles	816		
Other Vehicles	1,206		
Radio Patrol to Other Vehicles	0.68		
	Sergeant	**Lieutenant**	**Officer**
Marked Patrol Vehicle Cost**	$36,700	$36,700	$32,700

*Total includes all vehicles per precinct
**Includes first year cost (32,700 (additional $4,000 for an additional radio in Sergeants and Lieutenants vehicles)
***Includes precinct patrol vehicles only



Phoenix Impact Fee Flow Chart
source: Phoenix.gov

Government Service Buildings

Collier County, Florida

Collier County established an impact fee program to help it finance new or expanded General Government Building facilities to provide government services to businesses and residents that are not included in other impact fee program areas.

The Collier County Growth Management Plan did not specially address General Government Building facilities for level of service. But the "functional" weekday daytime population approach for daytime-use facilities was used to establish a common unit of demand across different land uses. To calculate functional population they established the inventory of General Government Buildings in the base and planning horizon years

The Capital Demand Estimates are calculated based on the general formula:

$$\underline{\mathbf{Q = (S \times D) - I}}$$

Where
Q is the quantity of facility (in sq ft) needed to be built or expanded over the planning horizon;
S is the standard of service (in sq ft/person) for the facility;
D is the projected demand, such as population, to be served at the end of the planning horizon; and
I is the current inventory of facilities in square feet.

Employee Housing

Pitkin County, Colorado (Aspen Vicinity)

The employee housing impact fee is to require the applicable development to pay to mitigate the impacts of development and land use to the employee housing stock managed or controlled by Pitkin County.

Residential structures with 5,750 square feet or less of interior space, will not be assessed an impact fee. For residential structures over 5,750 square feet, 100 percent of the impact will be mitigated for the full size of the structure.

Commercial land with under 1,000 square feet is not subject to the impact fee. For structures over one thousand 1,000 square feet, 25 percent of the impact over 1000 sq ft needs to be mitigated.

The impact fee for residential development or land use will vary based upon the size of the residential development. The formula to determine the fee amount for each specific residential development is as follows:

Residential Development of 9,000 Square Feet or Less:

- Construction Employment for all Units = {[0.547 * (Unit FT² * .001)] \ 40}
- Post-Construction Employment – Locally Occupied Unit = Exponent [-4.67138 + (0.000328 * Unit FT²)]
- Post-Construction Employment – Second/Vacation Home = Exponent [-4.67138 + (0.000328 * Unit FT²) + 2.00514]
- Total Employees = Construction Employment + Post- Construction Employment
- Impact Fee = Total Employees * $34,173

Residential Development Over 9,000 Square Feet

- Add $1,141.67 per 1,000 square feet for locally occupied units
- Add $5,515.00 per 1,000 square feet for second/vacation homes

A schedule for specific sizes of residential development that demonstrates employees generated, the affordable housing units needed and the impact fee is set down below

.

TABLE 11: EXAMPLE FEE/SUBSIDY FOR RESIDENTIAL DEVELOPMENT			
Size of Residential Development	**Subsidy per Employee @100% Target**	**Fee Subsidy @ 100% Target**	
		Local Occupancy	**2nd Home**
6,000 sq. ft.	$34,173	$5,062	$19,772
7,000 sq. ft.	$34,173	$6,412	$26,833
8,000 sq. ft.	$34,173	$8,107	$36,457
9,000 sq. ft.	$34,173	$10,282	$49,635
10,000 sq. ft.	$34,173	$11,423	$55,150

For Commercial Development

- Number of Employees = Unit Size x Employee Generation
- Fee = Number of Employees x $8,543

The parks/recreation/open space development exactions are applicable to new residential subdivisions.

Question for the Planning Board and the County Council to Consider on Other Impact Fees

- Based on current impact fees used in Montgomery County (Schools and transportation), should other impact fees for other government infrastructure (public safety, libraries, parks) be considered?

Work Program Items

The above jurisdictions' impact fees are just a few examples of the methods used by state and local governments to recover the cost development bring to community infrastructure. The material collected and research performed was done rapidly, and should be followed-up to verify four basic aspects of the fees:

- Funding – the amount of moneys raised by the impact fees, how they were used, and were they sufficient to cover costs of the development,
- Durability - the overall duration of the program, is it still in use, is the program enforced, and what changes have occurred fees over time,
- Legal challenges - what legal challenges have been brought due to these impact fee schedules, how successful were the challenges, and are they ongoing,
    - Directed development - how have these fees affected development in these jurisdictions. Have they encourage development in preferred areas, or have they had unexpected impacts.

ENVIRONMENTAL IMPACT FEES

Environmental impacts from development in Montgomery County are, as in other counties nationwide, generally addressed by environmental regulations, as opposed to development impact fees. For a variety of reasons, however, the regulatory approach has not provided adequate protection to natural systems. This is seen in the continued decline in the quantity and quality of natural areas along with air and water quality. Natural systems have been largely left out of "bottom line" analyses because the true economic value of the services they provide has not been recognized and properly evaluated.

Unfortunately, environmental protection is generally not profitable. In addition, there is much that is still not well understood regarding the linkages between development and the response of receiving ecosystems, especially on a watershed scale, which makes it difficult to evaluate the impacts of any particular development. Montgomery County, like many progressive local jurisdictions, has a number of fees of other types to fund certain environmental programs and services, but they are limited in scope and application, and do not address the major environmental problems the County faces. Such fees are not traditional impact fees in that they raise revenue for countywide programs and are levied countywide, and not on new development. With respect to water and sewer issues, WSSC works closely with DEP to ensure adequate public facilities with respect to water supply and sanitary wastewater collection and treatment, and levies its own rates and fees. WSSC, in consultation with the County, may need to reassess water and sewer capacities in light of any new significant demographic changes that may occur as a result of any new development strategies and patterns.

To meet the need to remedy the impacts of older development, as well as meet new and emerging environmental regulatory requirements, Montgomery County will likely need new mechanisms to fund any needed new environmental programs and implement solutions. With so little *greenfield* development left in Montgomery County, and with most of the damage to the environment already done through existing development, traditional impact fees on new development will likely be inadequate to meet those needs.

Impact Fees and Environmental Impacts

Impact fees are generally designed to pay for capital improvements required in response to new development. They are not primarily revenue raising mechanisms, but rather a way to provide growth-related infrastructure.

Impact fees are in common use by local governments to provide for public infrastructure needs that are created by new development including: water and sewer, roads, schools, police, fire, rescue, solid waste, parks and open space, libraries, and hospital facilities.

Environmental impacts due to development are due both to the removal of green infrastructure, and impacts to the remaining natural features due to development-related erosion, and stormwater discharges. This type of impact is somewhat different from the broader additional infrastructure needs that result from the creation of local infrastructure through development, and are typically handled through impact fees. In contrast, environmental impacts have been, and generally continue to be addressed through regulatory approaches. The regulations are designed to protect key resources such as buffers, put restrictions on total resource loss, and limit impacts to the remaining resources from stormwater, erosion, sediment, and other pollutants. The expense in meeting these regulations is borne by the developer. How well environmental impacts might lend themselves to an impact fee on new development as opposed to an approach based on regulations and other types of fees is debatable. In jurisdictions that still have significant amounts of greenfield development, environmental impact fees on new development might be more of an option. But in counties that are almost built out, such as Montgomery County, the damage is essentially already done, and a fee approach other than a traditional impact fee that is more appropriate in dealing with existing impacts will probably be required.

Although environmental regulations have had a beneficial effect in Montgomery County, the unfortunate truth is that they have not succeeded in adequately preserving enough natural systems and affording sufficient protection to those that are preserved. This is seen in the steady loss of natural resources such as forests and wetlands, the degradation of these resources due to fragmentation, invasive species, pollution, lower air quality, and the continuing decline in stream health.

There are a number of reasons for this. One is that development in Montgomery County began long before there were any environmental regulations. As a result, large portions in the County were developed with little or no stormwater management. Another reason is when environmental regulations were promulgated the state of knowledge of environmental protection and mitigation techniques was fairly rudimentary. Since then, the effectiveness of environmental regulations has gradually improved, as our knowledge and understanding of environmental systems and engineering techniques has developed. There is much, however, still to be learned. Yet another reason is the long lag time between the signing of the Clean Water Act, and the beginning of its enforcement in a meaningful way. This lag time has had a negative effect on environmental accountability, both in the public and the private sectors.

There are also economic factors. The situation in Montgomery County has shown the inherent tension between economically profitable ventures and environmental protection. Unfortunately, environmental protection has generally not been profitable, and the forces that do drive the economy, such as business and demographic factors, have dominated decision-making. In addition, there has never been anything like full-cost accounting when it comes to environmental matters. We tend to take the services that natural resources provide for granted, and they are not properly factored into economic decision-making. The services provided by natural resources are worth millions of dollars, but their loss is never debited from a ledger sheet. Unfortunately, environmental resources have never been properly evaluated in making trade-off decisions with growth and development. The assumption has been that the regulations are sufficient to ensure a sustainable amount, type distribution, and health of the natural features that society might wish to have considered, but are actually not considered out of an overriding concern for the "bottom line". Until major market-based incentives exist for environmental protection, and/or decisions are made to commit resources to meeting recent and emerging regulations, the environment will likely continue to tend to get short shrift when set against the dominant economic and demographic pressures.

Environmentally Related Fees in Montgomery County

As mentioned above, Montgomery County handles environmental impacts of new development through regulations and guidelines, as opposed to traditional environmental impact fees. With wetlands, mitigation is always required for wetland disturbances over one acre in size. But it should be noted that the forest and wetland regulations are not designed to be no-net-loss instruments, and the decrease in these resources, as well as the associated degradation of the environment in general, continues.

The County has some environmental fees that are not traditional development impact fees. When natural resource-related fees are assessed, as in forest conservation fees and sediment and erosion control fees, they are used to assure compliance with the regulations, or as penalties for clearing below threshold values, but not to achieve more than the minimum requirements under the regulations. They also serve to defray the cost of County staff to administer the programs.

The County's Water Quality Protection Charge—a stormwater utility—is a relatively recent addition. This fee is also not a traditional impact fee, but is rather assessed on all residential and commercial properties based on impervious surface. Funds generated by the charge go to support County inspection and maintenance of stormwater facilities. Although this fee is not designed to correct past problems it is levied countywide on all who contribute to stormwater runoff.

Water and Sewer

The Washington Suburban Sanitary Commission (WSSC) provides water and sewer service in Montgomery County. WSSC works closely with DEP to ensure adequate public facilities with respect to water supply and sanitary wastewater collection and treatment. WSSC has its own fees and rates for the services it provides and it bills customers directly.

WSSC bases its planning and Capital Improvement Projects on the County's master plans for land use. The likely future trend, however, towards infill and redevelopment, as the County's stock of *greenfield* development dwindles, may require a reassessment of water and sewer planning. If the County charts a new course in accommodating large numbers of new residents in infill and redevelopment areas, the assumption that existing infrastructure in developed areas is adequate may prove to be wrong. WSSC, in consultation with the County, may need to reassess water and sewer capacities in light of any new significant demographic changes that may occur as a result of any new development strategies and patterns.

Environmental Fees in Other Jurisdictions

Montgomery County's approach to environmental needs is reflected in other local jurisdictions throughout the Country. Environmental needs elsewhere are also generally handled, not through development impact fees, but through regulations and other types of fees. As with Montgomery County, most other counties use have environmental fees that are designed to ensure compliance with environmental regulations and to fund government resources to administer the programs. More progressive counties, including Montgomery County, tend to have stormwater fees that are generally similar in approach, structure, and application. In parts of the Country with severe air quality problems, such as California, some counties have established air quality fees to discourage long commutes.

Questions the Planning Board and the County Council should be considering regarding environmental fees.

1. Should the County develop and assess environmental impact fees for new development?

A number of important considerations factor into this question:

- Most of the County's environmental problems are due to existing development.
- There is comparatively little *greenfield* development left in the County, so any benefit that would result from impact fees on new development would be proportionately small and alternative fee mechanisms will most probably be required.
- Holding new development responsible for past environmental deficiencies would raise an equity issue.
- The time and cost of developing environmental impact fees for new development would be large in proportion to the benefit.
- Most of the environmental problems in the County are due to development that has already occurred, so impact fees would not address most of the problems.

2. What are the main driving forces that the County will be facing in the future regarding environmental issues and needs?

- The main driving force is likely to be regulatory. In fact, this trend is already well underway. After many years, the EPA and the State have become very serious about enforcing the terms of the Clean Water Act (CWA). This will mean increased regulatory pressure for the State and Counties to achieve and maintain water quality standards, not only in the Chesapeake Bay, but also in local streams.

- The State is moving to develop and enforce Total Maximum Daily Load (TMDL) allocations for water bodies that are listed for impaired water quality. TMDL Guidance for local governments is under development.

- The recent State House Bill 1141 requires specific linkage between the County's General Plan and water supply sufficiency and quality, wastewater service sufficiency, and stream water quality. This may require a new functional master plan or set of functional master plans to cover all County watersheds, and to provide a comprehensive watershed management basis for master planning.

Pressure from the public is increasing for stepping up the requirements of the County's National Pollutant Elimination System (NPDES) permit, and to include performance based standards for water quality and stream habitat.

3. What is the state of our knowledge regarding environmental needs and regulatory requirements of the County, and what will be required to meet these new regulations and needs?

- Recent voluntary and regulatory initiatives indicate the state of rapid change that we are currently in. The State is developing TMDL Guidance for local governments, guidance for implementing HB 1141, and is coordinating a Basin-Level plan initiative for implementing the Chesapeake Bay Tributary Strategy. Attaining air quality standards under the Clean Air Act is also an ongoing issue. It is not yet clear what exactly will be required of local governments, but it seems evident that a significant increase in staff, programmatic, and financial resources will be required to meet recent and emerging regulatory initiatives. New revenue raising mechanisms will likely be required to fund these new programs and initiatives.

- The County is already looking at water quality related issues by way of the County Executive's Clean Water Task Force (CWTF). A report is due in Spring 2007. The CWTF is working to identify and prioritize needs and issues for short and linger term action, and begin to identify what additional resources will be required to meet these needs.

- The recent State Guidelines for continued County eligibility for Program Open Space funds requires local green infrastructure plans. A green infrastructure plan is being prepared, but funds to implement it are currently limited. With so little green filed development left, the regulatory review process for new development will be limited as a green infrastructure plan implementation mechanism. A fee that funds green infrastructure enhancements may be needed in addition to other new mechanisms.

- Developing any new fees or taxes to help fund new programs to address environmental needs and regulatory requirements will itself be a major undertaking. Before it can be done we must be clear on what is specifically required, when it will be required, who will do it and how, and how much it will cost.

- Making defensible quantitative linkages between environmental enhancement and protection fees and specific enhancement and protection goals will also be a major challenge due to an incomplete understanding of some of the specific relationships and connections between development and ecosystem and watershed response.

- Justifying significant increases in fees and taxes for environmental protection, restoration, and enhancement will probably require a major paradigm shift in how costs are accounted for and evaluated. Full-cost accounting, or something like it, while challenging for environmental resources, would give a better idea of what the tradeoffs are when making decisions regarding development, environment, and general quality of life. An understanding of the economic value of the services provided by environmental resources and the impacts of their loss may not end up overriding other economic, human, and demographic considerations, but at least the decisions can be made with a fuller understanding of the magnitude of the tradeoffs.

4. Considering that most of the County's environmental problems are due to existing development, what is the best fee-based approach to improving and protecting the environment?

- Because environmental resources are needed by all residents and degraded by all development and human activities associated with developed land, perhaps a fee that is assessed countywide, similar to the County's Water Quality Protection Charge could be developed, as opposed to a traditional impact tax on new development. Once it is clear how much funding and additional staff will be required to meet new regulations, and the necessary linkages between development and environmental degradation are established, the County could consider a variety of revenue-raising mechanisms to accomplish this such as excise taxes, additional property taxes, transfer taxes, etc.