Session No. 3: DEVELOPER CONTRIBUTIONS

FHWA EDC-5 VCIT IDOT PEER EXCHANGE
September 17, 2019

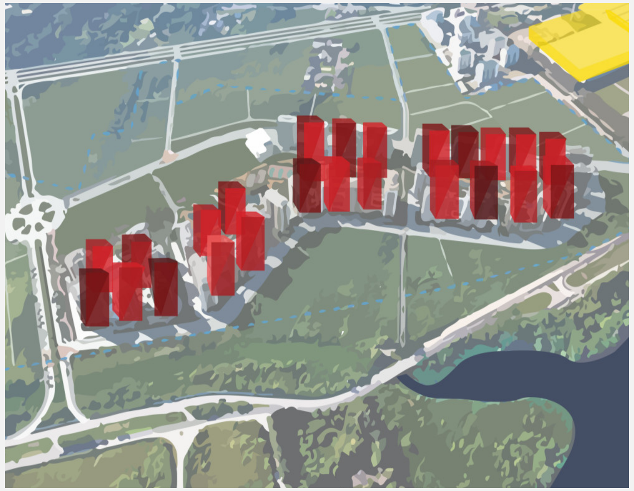
Julie Kim
Senior Fellow, Stanford Global Projects Center
VC SME Consultant, Volpe Center
juliekim@Stanford.edu

TOOL #3—DEVELOPER EXACTIONS

Developer Pays

Financial responsibilities placed upon developers to provide some or all of public improvements necessitated by their projects

- Directly linked to approvals for land use entitlements
- Benefit of "concurrency"—collected at the project outset when most needed
- Often used in conjunction with special assessments
- Two basic developer exaction cateogries:
  - ✓ Mandatory: In-lieu fees (impact fees, linkage fees, tap fees)
  - ✓ Volunatry: (1) Land dedications, (2) In-kind contributions, (3) Negotiated contracts (development agreement, CBA)



CBA–Community benefits agreement

U.S. Department of Transportation Volpe Center

IMPACT FEES—MANDATORY

GENERIC TERMS

"Impact" Fees:

- Cost of incremental capacity needs for developer project
- Include a wide range of improvements/services (both on-site/off-site)

"Linkage" Fees:

- Cost of mitigating large-scale secondary effects (e.g., affordable housing, offsettig traffic increase)

"Tap" Fees:

- Utility connection fee

Impact fees or MOBILITY FEES in tranansportation sector are most common exactions

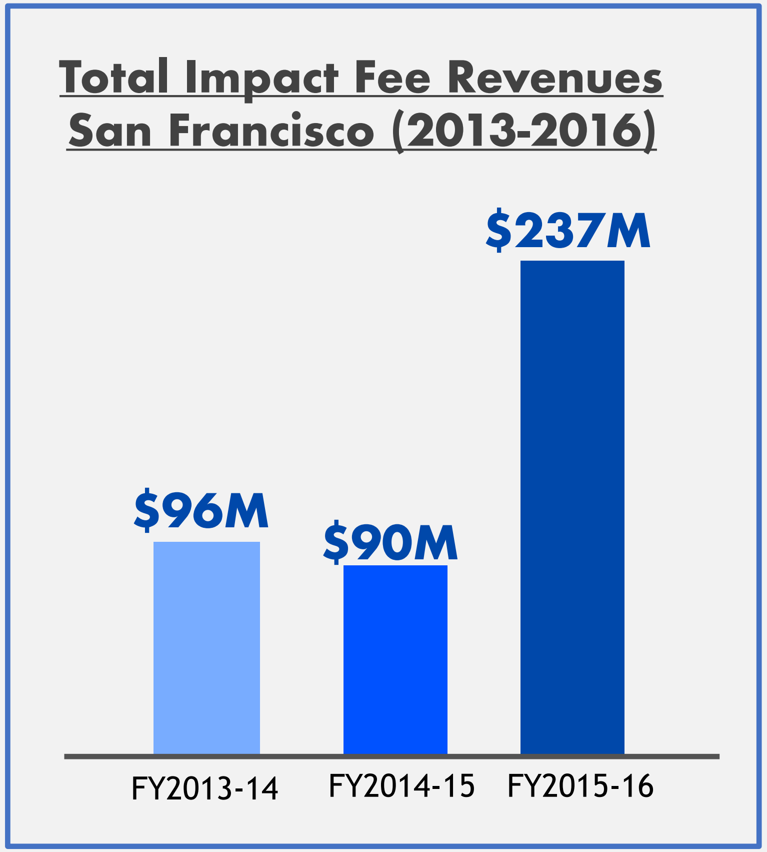
Many Mobility Fee Variants:

- Road or Traffic Impact Fees
- Intersection Development Charges (IDC)
- System Development Charges (SDC)

IMPACT FEE OPPORTUNITIES & ISSUES

Significant revenue source with wider coverage but potential legal issues when mandatory

- "Regulatory takings" concerns
- Essential (rational) nexus & rough proportionality tests (*Nollan/Dolan/Koontz*)—nexus/fee study needs
- Shockingly little uniformity; often depend on local political/economic climate
  - ✓ In robust real estate market, impact fees can be up to 20% of property value



In upcycle, impact fees are passed onto buyers;
In downcycle, they are assumed by developers

U.S. Department of Transportation
Volpe Center

PROJECT CASE EXAMPLE

- **Mobility Fees, Osceola County, Florida**

SUGGESTED DISCUSSION TOPICS

1. Yield/Revenue Potential—Amount, Timing, Stability, Flexibility
2. Equity—Financial Responsibility
3. Efficiency—Benefit vs. Cost, Direct Usage-Based
4. Adminstrative Ease
5. Transparency
6. Political/Legal Feasibility

YIELD/REVENUE POTENTIAL

- Depends on rate of development; usually not a problem because fees are enacted to cover the costs of public improvements
- Easy to predict revenues generated; predictability may vary with methodology used to calculate fees
- Yield tended to be routinely lower than amount needed to <u>fully</u> offset the development impacts on transportation infrastructure
- Can support pay-as-you-go but upfront debt financing can be secured (backed by future yield) if major improvements must be in place prior to development

EQUITY

- Main challenge is to ensure equity between existing and new development
- Tend to favor existing development at the expense of future development (windfall gain for existing owners from property value increase with infra improvements)
- Value capitalization may disproportionally impact lower income households by making housing less affordable, particularly for renters

EFFICIENCY

- Problem if fees are set below the marginal cost of providing infrastructure to new development
- If capitalization is in favor of existing properties, efficiency is lost due to the breakdown of payment-benefits correspondence (free rider issue)
- In general, efficiency losses tend to be less when compared to other VC tools

ADMINISTRATIVE EASE

- Administering impact fees can become very complicated with complicated formula; requires skilled staff and time
- Trade off between simplicity and accuracy in choice of methodology; often based on average trip generation by land use (e.g., residential, commercial)
- Distinguishing features—trip and/or cost basis, disposition of expenditure, credits and discounts
- If fees are directly related to trip generation estimates, administrative costs can be lower
- Can be facilitated by coordination with the development review process

TRANSPARENCY

- The more straight forward the relationship between fees and trip generation, the more transparent
- Complex methodologies reduces transparency but can improve efficiency and equity
- In general, impact fees are among the most transparent VC tools

POLITICAL/LEGAL FEASIBILITY

- Courts have generally upheld right to change impact fees as long as essential nexus/rough proportionality tests can be passed
- Legal and quantitative basis for fees can be enhanced by nexus and fee studies
- Residents generally support development should pay its own way; developers value predictability and assurance of sufficient infra capacity

U.S. Department of Transportation Volpe Center