

How to Address Georgia's Impact Fee Requirements

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Introduction

In 1990, the Georgia Development Impact Fee Act (DIFA) was enacted into law. DIFA significantly affected the way local governments in Georgia pay for public services and facilities. Impact fees are one-time fees charged to land developers to help defray the costs of expanding capital facilities to serve new growth. DIFA enables local governments to charge new development for a proportionate share of infrastructure capacity it requires. However, the Act places restrictions on the categories of capital facilities for which new development can be charged.¹ It also establishes rules under which impact fees must be calculated, collected, expended, accounted for and administered.

In the past, many local governments have offset certain costs of expanding their infrastructure systems by charging utility hook-up fees or attaching exactions to their land development regulations.² Under DIFA, many exactions previously required of developers by local governments are illegal. Thus, complying with the requirements of DIFA requires many local governments to make changes to their land development regulations and associated administrative activities. DIFA also has major implications for water and sewer authorities, by limiting collection of capital improvement costs. For communities experiencing significant growth, impact fees can be a substantial source of revenue for financing needed capital improvements.

DCA “How to” Guidebook on Impact Fees

Because DIFA involves planning for new capital facilities, lawmakers chose to tie the imposition of impact fees to comprehensive planning as promulgated under the Georgia Planning Act of 1989. This linkage between the two laws makes comprehensive planning the foundation upon which local government impact fee systems must be grounded. Only those local governments that have adopted an approved comprehensive plan, been designated by the state as a “Qualified Local Government” and adopted an impact fee ordinance in compliance with the provisions of DIFA can charge developers for “system improvements.”³

In addition to the required components of all comprehensive plans under the Georgia Planning Act, local governments that intend to charge impact fees must add a Capital Improvements Element (CIE) to their comprehensive plan. The CIE is intended to establish clear public policies regarding infrastructure development and ensure sound fiscal planning for capital improvements.

This guidebook is intended to help local governments that have decided to proceed with impact fees to develop the required CIE component to their comprehensive plan. It assumes that the reader is somewhat familiar with the general scope and planning requirements of the Georgia Planning Act.

Although this guidebook attempts to familiarize the reader with the planning requirements of DIFA, it is not intended to provide all of the technical information required to draft an impact fee ordinance or to develop a schedule of impact fee charges. Carried out properly, these are

exacting tasks that should be approached carefully by local governments and will probably require assistance from legal, fiscal and technical experts.

DCA's Responsibilities Under the Georgia Development Impact Fee Act

As the agency charged with overseeing local government comprehensive planning in Georgia, DCA's involvement with impact fees extends primarily to:

- Interpreting the planning requirements of DIFA through the development of Development Impact Fee Compliance Requirements;
- Providing technical assistance to local governments and regional development centers in complying with the state's DIFA requirements;
- Developing plan review guidelines for CIEs to be used in reviewing and approving these planning documents; and
- Granting final approval of local government CIEs as meeting the state's Development Impact Fee Compliance Requirements and conferring the "Qualified Local Government" status that is required to implement an impact fee system.

Coordinating the Preparation of a Comprehensive Plan with Development of an Impact Fee System

Local impact fee systems may be developed simultaneously with the comprehensive plan, or they may be implemented months or years after the plan is adopted. In deciding whether to develop a CIE in conjunction with its comprehensive plan, a local government should estimate the time lag between plan adoption and impact fee implementation. Local governments that prepare a CIE too far in advance of developing impact fee schedules risk having information in the CIE become outdated before their impact fee ordinances can be put in place. On the other hand, defining desirable levels of service and setting service area boundaries are matters of public policy that should be discussed within the citizen participation process used for developing the comprehensive plan, even if the CIE must be added to the comprehensive plan some time after its adoption.

Completing an impact fee ordinance and developing defensible impact fee structures will require a somewhat different set of technical skills than those needed to develop a local government's plan, including the services of legal counsel, engineers, impact fee consultants and experts on local government finance. The specialized services of experts can be helpful in quantifying service levels and developing cost data required in the CIE component of the plan. Ideally, the CIE should be developed using a team approach in which planners work closely with these other experts. Without some technical assistance in various specialized areas of infrastructure planning, a meaningful CIE that meets the Development Impact Fee Compliance Requirements will be relatively difficult to prepare. On the other hand, preparing a CIE should be relatively easy once the detailed capital improvement planning required to develop an impact fee schedule is underway.

Procedure for Amending a Previously Approved Comprehensive Plan to a CIE

Local governments wishing to add a CIE to a previously approved comprehensive plan will be required to follow the same procedures required for preparing, submitting for review, and adopting their initial comprehensive plan. Local governments may not adopt their CIE until 60 days after it is transmitted to their regional development center for review. The same process must also be followed when adding additional categories of capital improvements to a previously approved CIE. The five-year Schedule of Improvements in the CIE must be updated annually.

¹ DIFA limits the categories of public facilities that can be financed through impact fees to water, wastewater treatment, roads, stormwater management systems, park and recreation facilities, public safety and libraries. Prior to the passage of DIFA, local governments had broader discretion and could require developers to pay exactions or make land dedications for schools; general government facilities and other public purposes.

² DIFA defines a 'development exaction' as "a requirement attached to a development approval or other municipal or county action approving or authorizing a particular development project, including but not limited to a rezoning, which requirement compels the payment, dedication or contribution of goods, services, land or money as a condition of approval."

³ System improvements are defined in the law as "capital improvements that are public facilities and are designed to provide service to the community at large." System improvement costs are "those incurred to provide additional public facility capacity to serve new development." Project improvements, as opposed to system improvements, are "site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users." Project improvements are not regulated by the Act and, therefore, local government activities relating to them are unaffected.

How To Prepare the Capital Improvements Element

The Purpose of the Capital Improvements Element (CIE)

The CIE is intended to be a planning tool to help local governments make rational decisions about the provision of community facilities and to provide legal support for a community's impact fee ordinance. Unlike most local government capital improvements programs, which generally address only short term capital facility financing, the CIE should encompass both short term (five year) and long term (six to twenty year) capital improvement needs.

Adding a CIE to a local comprehensive plan ensures (through the required citizen participation) that decisions about the allocation of public resources have the benefit of adequate public consideration and comment. A well-prepared CIE will require a local government to do fiscal planning at a level of detail that will promote fair distribution of public services and an equitable sharing of costs between existing and new development. The CIE must also provide enough detailed information to ensure that a community's strategy for infrastructure development is practical and realistic, and to demonstrate that a local government has concrete plans for generating sufficient matching funds for use with impact fees to complete scheduled capital improvements. Moreover, the CIE helps to coordinate a local government's scheduled public investments with the stated objectives of its comprehensive plan.

It is likely that the development community, the public and, potentially, the courts will look to a local government's comprehensive plan to assess the reasonableness of its impact fee regulations. One of the legal tests a community's impact fee ordinance could face is whether it is consistent with a community's strategies (as stated in its plan) for accommodating future population and economic growth.

The Required Content of a CIE

The following items must be included in the CIE, and they must be developed individually for each category of capital facility to be financed with impact fees. They include:

- Inventory of Existing Levels of Service;
- Establishment of Service Areas;
- Establishment of Future Levels of Service;
- Projection of Facility Needs; and
- Schedule of Improvements for the first five years after CIE adoption

Seven categories of public improvements are eligible for impact fee funding under DIFA. These categories are:

- Water supply, production, treatment and distribution facilities
- Wastewater collection, treatment and disposal facilities;
- Roads, streets and bridges, including rights-of-way, traffic signals, landscaping, and any components of state or federal highways;
- Stormwater collection, retention, detention, treatment, and disposal

facilities, flood control facilities, and bank and shore protection and enhancement improvements;

- Parks, open space, and recreation areas and related facilities;
- Public Safety, including police, fire, emergency medical and rescue facilities;
- Libraries and related facilities.

The following sections of this guidebook discuss how to develop each part of the CIE. Under each heading is a brief overview, followed by a bulleted list of the specific plan requirements. Text following each bulleted requirement offers suggestions, explanations or factors to consider in meeting the requirements. At the end of some sections are recommendations – as opposed to requirements – which local governments may want to consider to strengthen their CIE.

1. Inventory of Existing Levels of Service

This portion of the CIE involves evaluating existing public facilities and services in your community to establish a baseline for planning future service provision in subsequent parts of the CIE.

The Inventory of Existing Levels of Service **must** include:

- **An inventory of current levels of service for each category of capital improvements for which impact fees are proposed to be charged. Service levels must be expressed in quantifiable terms or in a manner sufficient to allow future evaluation of progress in meeting capital improvements goals.**

DIFA defines “level of service” as "a measure of the relationship between service capacity and service demand for public facilities in terms of demand to capacity ratios, or the comfort or convenience of use or both." Thus, in order to define service levels in a CIE, the inventory must develop criteria for measuring and describing service levels. These criteria will be different for different categories of capital facilities, but will always be designed to measure capacity against demand. (See the “Units of Measure and Criteria for Establishing Service Levels” table in the Appendix for some examples.)

For example, a CIE might describe the current park service level as two acres of neighborhood parks for every 1,000 people. Or it might assign a five-mile service radius for neighborhood parks as a measure of “convenient” access to such parks. Note that it would be possible, using the criteria described in this example, to calculate that a community with an existing population of 10,000 would need ten more acres of neighborhood park land to maintain the current level of service if it added 5,000 new people over the next decade. Or, one could see that some portions of the county fall outside the service radius of existing neighborhood parks and thus pinpoint neighborhoods with a lower standard of convenience than others. Also, it would be possible to calculate that, if the community chose to raise its service level for neighborhood parks to three acres per 1,000 residents, it would need 15 acres of park land in addition to the 10 acres calculated above.

- **Determination of whether the existing level and quality of services is adequate to meet current needs and clearly identify major deficiencies or under-utilization of existing facilities within the jurisdiction.**

This part of the analysis should consider whether the community is satisfied with the level of services currently provided. The CIE should determine whether deficiencies in services create significant problems for the community or present obstacles to meeting the community's needs or goals, and assess the risks or potential negative impacts (economic, social or environmental) of failing to maintain existing service levels.⁴ It

should also identify any opportunities for economic development or land development presented by excess infrastructure capacity, if this exists.

Basically, the analysis should ask, "What will it cost to expand infrastructure or raise service levels, and will the benefits justify the costs?" and, "What service levels is the community willing to support?" Will urban gridlock bring development to a halt unless road are upgraded on the south end of the county? Will housing stock in a historic neighborhood deteriorate unless infrastructure investments are made? If a community is experiencing a great deal of new development, capital facilities will need to be expanded or added just to maintain existing service levels. Before proposing to raise service levels, a community should assess what maintaining existing service levels is likely to involve.

- **Description of variations in current service levels throughout the jurisdiction (i.e., geographic areas that differ in regard to available capacity, distribution systems or quality of service delivery).**

This data may be inventoried in the local comprehensive plan. If not, it is important to indicate areas within a jurisdiction that lack specific services. Are there development "hot spots" in a community where roads, public utilities and other services are overburdened? Are roads congested in some areas, but almost unused in others? Does part of the county have fire hydrants, while the rest must depend on pumper trucks? Does the jurisdiction contain Community Improvement Districts with higher levels of service than elsewhere? Is centralized sewer available only in urban centers? Are recreation facilities more plentiful in one part of the county than another?

- **Identification of parts of the community where the provision of services is, or will be, limited by engineering, economic, or environmental factors.**

This requirement is related to the previous one and could be included in the same discussion. For example, it could happen that sewer service is constrained by the division of the county by multiple drainage basins. Perhaps the topography and drainage patterns make it five times more expensive to provide sewer service on the east side of a mountain than on the west side. Do inadequately sized water lines make it physically and/or economically infeasible to install fire hydrants in sparsely populated parts of a jurisdiction? Explaining these limitations in the inventory will provide a rational framework to support the decisions reached later in the CIE.

⁴ The assessment should consider political realities. Informal surveys, input from citizen participants, and feedback from elected officials may be some ways of determining the community's overall attitudes about various service levels.

2. Establishment of Service Areas

A service area, as defined by DIFA, is “a geographic area . . . in which a defined set of public facilities provide service to development within the area.” An entire jurisdiction may be defined as a single service area for a category of capital improvement, or it may be sub-divided into several distinct service areas. Multiple service areas will almost always be required if a community chooses to vary service levels from one area to another, although there may be cases where the same service levels will be applied across multiple service districts. Each category of capital improvement may have different service areas, since service area boundaries should be established based on criteria appropriate to the particular category of capital improvement.

Many of DIFA's provisions (especially the designation of service areas) are intended to establish a “rational nexus” between charges and benefits.⁵ Thus, establishing service areas will be one of the most important aspects of developing the CIE and of providing legal support for an impact fee system.

Establishing service levels for various parts of a jurisdiction can have social, environmental and economic effects that either support or subvert the growth management objectives embodied in the comprehensive plan. Some specific hints for avoiding legal difficulties in drawing service area boundaries may be found in the “Legal Pitfalls to Avoid...” at the end of this section of the guidebook.

DIFA states that service area boundaries should be based on “sound engineering or planning criteria.” The “Sample Methods of Establishing Service Area Boundaries” table in the Appendix shows some typical criteria that might be used to establish service area boundaries according to the category of capital facility under consideration. Natural or environmental boundaries such as aquifer recharge areas, watersheds or flood plains might be used in defining service areas, as might other engineering considerations such as soil suitability for septic tanks, topography or the locations of existing facilities. Planning criteria considered might include political or jurisdictional divisions or utility service boundaries established by separate service providers. Other planning considerations that should be considered in setting service area boundaries are ease of gathering and tracing data over time (for example, using state Department of Transportation (DOT) traffic analysis zones or census tracts) or maintaining consistency with established planning boundaries such as character areas, neighborhood planning units, park or school districts. Additionally, service areas might be established to support growth management or economic development strategies or to reinforce the land use patterns established in the comprehensive plan.

Poorly drawn service area boundaries can have unintended negative effects. On the other hand, appropriately drawn service area boundaries can promote infill development, help to control urban sprawl, lower the overall cost of public services by encouraging growth where most types of community facilities are in good supply, and effectively direct growth and land use activities, even in the absence of regulatory controls like zoning. For all of these reasons, local

governments are advised to take a critical look at the potential long and short range effects of delineating service areas.

The Establishment of Service Areas **must** include:

- **Determination of whether delineation of separate service areas within the jurisdiction is warranted, and discuss the rationale behind establishing multiple service areas.**

Designating multiple service areas has both drawbacks and advantages. In general, local governments should use the minimum number of service areas required to accomplish their objectives. DIFA requires that impact fees be expended to benefit the service area in which they are collected. Funds collected from one service area may not be shifted, even temporarily, from one area to complete capital improvement projects in another service area. In this respect, multiple service areas limit a local government's discretion and reduce flexibility as to how impact fee funds can be spent. When too many service areas are designated, each area may take a long time to accumulate enough impact fee revenues to actually begin needed improvements. Multiple service areas may also raise the question of whether each service area should be set up as special tax district in order to ensure equity in collection and use of tax revenues in each area.

Nevertheless, there are many cases when multiple service areas are the preferred alternative. Some typical reasons to delineate multiple service areas might be to:

- 1) separate areas intended to have different levels of service (for example, urbanizing versus rural areas);⁶
 - 2) separate areas served by independent facilities, or areas in which the costs of providing service are radically different;⁷
 - 3) steer infrastructure away from areas with severe development constraints;⁸
 - 4) phase or prioritize infrastructure provision to different areas over the planning period in support of environmental or land use policies;
 - 5) minimize problems associated with making older, built-out areas conform to service levels appropriate for developing suburban areas.⁹
 - 6) separate fee assessment and collection by jurisdiction (especially in joint plans), or to otherwise facilitate proposed intergovernmental agreements.
- **Designation of one or more service areas for each type of capital facility to be financed through impact fees. Include legible maps or descriptions that clearly identify all service area boundaries.**

If an entire jurisdiction is designated as a single service area, no service area map is required in the CIE. However, if service area boundaries do not encompass the entire jurisdiction, or if they cross jurisdictional borders, a service area map must be included in the CIE document. It will usually be best to show a separate service area map for each category of capital improvement covered in the CIE, since capital improvement categories will rarely have the same boundaries.

While not required to meet Development Impact Fee Compliance Requirements, local governments are encouraged to:

- **Designate service area boundaries that support, and demonstrate general consistency with the comprehensive plan.**

In particular, local governments should carefully examine service area boundaries and their designated service levels to ensure that there is no conflict between service extension policy and proposed intensity of land uses, housing densities or population distribution established in the comprehensive plan. For example, an area designated as rural in the comprehensive plan should probably not be included in a sewer service area proposed to be served with centralized sewer, since this could inadvertently promote the conversion of farm land to residential subdivisions or commercial activities.

In jurisdictions where zoning is in place, making some types of infrastructure accessible in zones designated for low intensity land uses will encourage developers to petition for rezonings to higher intensity land uses. Even communities with knowledgeable, committed planning commissions will find it difficult to uphold a plan with these types of inconsistencies. Once day-to-day land use and zoning decisions begin to diverge from the land use patterns of the comprehensive plan, the document's effectiveness and its value as a legal support for local government actions deteriorates.

Legal Pitfalls to Avoid in Designating Service Area Boundaries

The following suggestions are provided for consideration by local governments in developing service areas, and are in keeping with general legal principles for Georgia.

1. Service area boundaries should not be “arbitrary or capricious.” Rather, they should be consistent with, and supportive of, the objectives of the comprehensive plan.
2. Avoid defining service areas that give the appearance of discrimination against specific groups. For example, if the only predominantly Hispanic neighborhood in a jurisdiction were defined as a separate service area with lower service levels than the rest of the community, the CIE and/or an impact fee ordinance might be overturned by the courts as discriminatory.

3. Do not draw service area boundaries specifically for the purpose of denying public services to land holdings proposed for future public acquisition by a local government. Withholding public services to a particular parcel to prevent its development or suppress land values could be challenged as a “taking.”

4. Establishment of lower service levels for an area being annexed than for other areas within a municipality can be problematic due to provisions of Georgia's annexation laws. Before annexation can be accomplished by the 60% method (one of several ways land can be annexed in Georgia), a plan of services must be presented at a public hearing as information to voters and land owners within the annexation area. On the basis of these proposed service benefits, individuals within the proposed annexation area then vote whether or not to come into the city. The law says that the services offered to the annexed area must be substantially the same as those offered in other parts of the municipality. Even if an individual voluntarily annexes his land into the city (another annexation method) and the city makes no promises to extend services to him, the next owner of his land could demand to be served and may have legal grounds to do so.

5. Any geological, topographical or other environmental factors that present barriers to providing the service in certain geographic areas within service areas should be explained in the CIE. Withholding services selectively inside designated service areas should be justified through supporting policy statements in the comprehensive plan. For example, a policy might be formulated stating that no sewer connections will be provided to development proposed inside the 100 year flood plain.

⁵ One of the legal precedents upon which DIFA is based is commonly referred to as the “rational nexus test.” The term comes from court cases in which impact fees were held to be valid exercises of police power by local government, provided that:

- they are calculated by measuring the needs created for public infrastructure by the development being charged the fee;
- they do not exceed the cost of such infrastructure; and
- they are “earmarked”, i.e., spent for the purposes for which they are collected so as to benefit those who pay them.

⁶ For example, overlapping service areas for public safety, water, sewer and transportation might take the form of a ring around a growing city where an intensive array of public services would be appropriate, with the balance of the county remaining in a rural service district requiring a different mix of services. Another example of a special purpose service area would be a developing industrial corridor, which might need special wastewater pretreatment facilities or major road expansions. Separate service areas can be used to ensure that the costs of these extra facilities are paid by those who will benefit from the higher service levels -- either the land owners whose land will rise in value, or the developers and end users of the industrial park.

⁷ Costs may vary from one part of a jurisdiction to another based on proximity to existing systems, engineering or environmental factors. If the fees charged for infrastructure, (for example, standardized utility hook-up fees) do not reflect the actual cost of providing the service, leapfrog development is encouraged. Because separate service areas allow fees to be structured to reflect the real cost of providing services to a certain sector or

area, creating multiple service areas may be one way to encourage rational, cost-based decisions by the private sector about where to locate housing, industry or commercial activity.

⁸ Without actually prohibiting development in isolated or environmentally sensitive areas, separate service areas (with fee levels that reflect the higher cost of extending infrastructure in such areas) can be used to ensure that all development within a community is not forced to subsidize the extra costs of providing services to parcels of land that are not particularly suitable for building.

⁹ In some cases, bringing all areas of a community up to a desired service level will be physically impractical. For example, if a downtown business district were included in a road service area where a local government proposed to raise the volume-to-capacity ratio of all arterial streets, the city might be forced to condemn some very expensive real estate, remove parking spaces, or narrow sidewalks to an unacceptable width in order to add the required traffic lanes. Conversely, if a community does wish to raise service areas in previously developed areas, there may be benefits to drawing service area boundaries to link older neighborhoods with vacant land expected to generate plenty of impact fee revenues for new facilities or improvements. For example, a local government building a community park might want to include both developed and undeveloped land in the same service area. In general, service area boundaries should encompass the area where a majority of the users of its facilities will live or work.

3. Establishment of Future Levels of Service

Service levels have serious legal implications under DIFA. Once a local government receives a developer's money under an impact fee system with the promise of providing a certain service level, it is under an obligation to achieve its stated goals. **Establishing appropriate service levels is a policy decision.** Service levels for each category of capital improvement to be financed through impact fees should be clearly expressed in the CIE. Service levels must be established for each defined service area, which are discussed in the previous section of this guidebook.¹⁰

The Establishment of Future Levels of Service **must** include:

- **Designation of future service levels (by service area) for each category of improvement for which an impact fee ordinance will be adopted.**

Within a given service area, a local government cannot set higher service levels for new development than for existing development. If it sets service levels for new development higher than those that already exist in the area, the community must pay (through some means other than impact fees) to bring existing development in the service area up to the new level.

Establishing different service levels for different parts of a jurisdiction will require defining separate service areas.

Capital improvements required to upgrade service levels for existing development need not be completed before a local government can start collecting impact fees, but capital improvements needed to remedy service level deficiencies must be included in the Schedule of Improvements portion of the CIE. To avoid potential legal challenges to its impact fee ordinance, a community will need to demonstrate that substantial progress is being made toward bringing service levels for existing development up to those established for new development within the same service area. Thus, it is important that projects targeted to remedy service level deficiencies be completed on schedule.

- **Statement of future service levels using the same terms or measurements that are used to describe existing service levels, so that progress toward attaining service levels goals can be measured or accurately assessed.¹¹**

As stated in the discussion of Inventory of Existing Levels of Service, it is important to express proposed service levels in quantifiable, or at least very specific, terms. Service levels for different categories of capital facilities can be measured and expressed using a variety of relationships, units and criteria. (See the “Units of Measure and Criteria for Establishing Service Levels” table in the Appendix for some examples.) It is important that the CIE describe existing levels of service and establish future service levels using the same criteria or units of measurement.

Service level definitions should be kept as simple as possible. Some local governments will wish to define service levels using an established service classification system. Designating service levels by the Highway Capacity Manual's level of service (LOS) ratings, Insurance Service Organization (ISO) ratings for fire safety,¹² or other specialized service rating systems is acceptable.

The best measures of service levels are those which relate most directly to capital facility costs and exclude items not fundable through impact fees. For example, instead of using an ISO rating for fire service levels, a local government might define its service level goal by specifying that it will locate fire stations to provide a five minute response time to all residential areas in the community. Using these standards, the total system costs used to calculate impact fees would consist of the cost of land acquisition and facility development for new stations plus the incremental cost of installing or upgrading water lines in fire protection service areas to deliver adequate flow and water pressure for fire fighting.

In setting service levels and choosing criteria by which to measure them, local governments should also take into consideration how much decision-making they wish to leave with line agencies and governmental entities such as public utilities and recreation commissions once the CIE is completed, since the directions set forth in the CIE will place some limitations on the activities and decisions of those agencies. Take parks and recreation service levels as an example. If a local government wishes to leave most of the locational and programming decisions to its parks and recreation department or commission, it may choose to define service levels as a general acreage to population ratio, leaving the specific facility standards to be filled in when the park plan is prepared. On the other hand, if a community's CIE will be the only document guiding the local recreation commission or park department, service standards should be clear enough to reflect specific capital facility needs, such as design capacity and service radii for various types of parks, or specific equipment or playing fields per capita. The same principle could also apply to roads, public utilities and other types of public facilities.

- **Rationale for establishing different service levels in different parts of a community, where future service levels will vary from one service area to another over the planning period.**

One purpose of the CIE is to provide legal support for a community's impact fee ordinance. If there is a logical reason for providing more intensive services in a particular part of a jurisdiction, or constraints that prevent extending capital facilities to certain areas, it is best to state the reasons for these decisions in the CIE.

¹⁰ For each type of capital facility to be financed with impact fees, a community must define either a single service area that covers the entire jurisdiction, or multiple service areas. Service area boundaries may vary with the

category of capital improvement. See the previous section of this guidebook, which discusses service areas in more detail.

¹¹ Service level descriptions should relate capacity to demand. For example, locally collected data might indicate that an average household uses 200 GPD of water. Therefore, a community might define 200 GPD as its residential demand unit for water. If the community currently has 10,000 gallons of unused water filtration capacity, it can accommodate 250 units of new residential development with its existing capacity. If the population and economic projections in the comprehensive plan indicate the need to provide for 6,000 additional residential units by 2010, then the community must add 1.2MGD of additional capacity to maintain its service level goals. Industrial and commercial water needs could also be estimated in terms of the number of residential demand units such uses would consume.

¹² Consider, however, that if a community's CIE sets a service level goal of raising the community ISO level, it may also be incurring responsibility for increasing its work force, providing specialized training to fire fighters, adding administrative expenses or acquiring equipment that cannot be funded through impact fees. If a community chooses to use ISO ratings as the standard for service levels, all associated costs of meeting ISO standards (including those not eligible for impact fees) should be included in the total project costs listed in the CIE's Schedule of Improvements.

4. Projection of Facility Needs

This portion of the CIE identifies the new public facilities or expansions of existing facilities that will be required to achieve the future levels of service established in the previous section. Since these are the facilities that may be financed, at least partially, with impact fees, it is important that these projections be done carefully and based in sound forecasts of future growth and development in each service area established within the community.

The Projection of Facility Needs **must** include:

- **Identification of areas where new capital facilities or infrastructure will be needed to support the local government's desired future development patterns established in the comprehensive plan.**

The availability of utilities (particularly sewer, water and roads) will affect the location and quality of new growth. For example, locating more intensive infrastructure in proximity to highway interchanges may encourage beneficial clustering of commercial activities. Centralized sewer and other types of infrastructure may be also be needed to support more medium- and high-density affordable housing in specific parts of the community. Soil conditions may also be related to land use and infrastructure planning. For example, in areas where soils are relatively unsuitable for septic tanks (dictating minimum lot sizes of one acre or more), lack of wastewater treatment capacity may perpetuate a pattern of sprawling development that could eat up rural open space as rapid growth occurs. Is the community trying to encourage industry to locate in a certain area? If so, providing roads, water and wastewater treatment in the proposed industrial area will be important, but it will be equally important to decide where infrastructure should not go. In short, the Projection of Facility Needs should consider the future land use implications of infrastructure planning decisions.

Environmental policies should also be considered in capital facilities planning. For example, if the community has established a policy of protecting ground water quality in the comprehensive plan, the CIE might assess whether centralized sewer should be a high priority in aquifer recharge areas, or whether it would be better for such areas to remain undeveloped. Is stormwater runoff from development in the flood plain affecting surface water quality? If so, a community's CIE might assess the alternative of not providing infrastructure where it will encourage such development.

- **Data and projection methodologies for assessing capital facility capacity needs that are essentially consistent with information provided in the comprehensive plan.**

The population and growth forecasts included in the local comprehensive plan should be used as the basis for determining the projected needs listed in the CIE. The CIE should show how the infrastructure needs of the projected new population will be met. If the community's plan supports a slow growth scenario, while the CIE describes massive

infrastructure improvement projects aimed at fostering rapid growth, this would constitute an unacceptable internal inconsistency between the CIE and the comprehensive plan.

- **Description, in general terms, of infrastructure needs for the entire planning horizon of the comprehensive plan.**

Clearly, project costs and growth projections become more uncertain the further into the future they are forecast; however, the CIE is required to anticipate long-range needs along with short range priorities. Major capital facility needs for the entire planning period should be anticipated, even if they will not be addressed during the five-year period covered in the Schedule of Improvements. While it may not be reasonable to define every project required to meet long range needs, an overview or general indication of major infrastructure investments anticipated should be included in the CIE.

- **A listing of all capital projects that will be required to upgrade service levels for existing development within each service area. These projects must be marked or designated as a part of the CIE.**

DIFA states that, "Development impact fees shall be calculated on the basis of levels of service for public facilities that are adopted in the municipal or county comprehensive plan that are applicable to existing development as well as the new growth and development." Therefore, projects required to raise service levels for existing development must be included in the CIE, even though they cannot be paid for with impact fees under DIFA.

- **Describe any excess service capacity remaining in facilities already completed or under construction at the time of CIE adoption, based on new service levels established in the CIE.**

Establishing quantifiable service levels in the CIE is a critical step in determining whether existing systems have excess capacity. Setting service levels will often involve a trade-off between recovering costs for existing facilities and collection of fees to build new facilities. If a high service level is set for a given category of infrastructure, less excess capacity (eligible for recoupment through impact fees) will remain in existing facilities, and more existing service level deficiencies may have to be made up from non-impact fee revenue sources; however, relatively high impact fees can be collected to serve newly developing areas. If a relatively low service level is chosen, more of the costs of existing facilities can be recaptured, but impact fees collected for future system expansion will be limited to the costs of providing the lower level of service.

- **Indication of whether impact fees will be used to recover the costs of existing capital facilities (with remaining capacity to serve new growth) that were in place prior to implementation of an impact fee system.**

DIFA allows communities to charge new development for a proportionate share of the excess capacity that was built into existing facilities in anticipation of new growth. This practice, often referred to as “recoupment,” is optional under the Act. However, local governments that plan to recover the cost of facilities or infrastructure already in place should state their intention to do so in the CIE. Communities that will use recoupment should be especially careful to document how much remaining service capacity existed for each eligible facility or service at the time of CIE adoption. Recoupment will also require a careful study of all revenue sources used in the original financing for each capital improvement. These sources must be considered in establishing the impact fee structure, so as not to charge new development more than its proportionate share of the total cost.

While not required to meet Development Impact Fee Compliance Requirements, local governments are encouraged to consider the following:

- **The Projection of Facility Needs should consider the timing of major service capacity expansions in light of the five-year projection intervals required in the comprehensive plan.**

To the extent possible, capital improvements programming should be responsive to the growth curve shown in the projections. The CIE should indicate when a community must achieve its short to mid-range goals in order to avoid falling below its established service levels. Timing of proposed system improvements should be roughly consistent with the growth forecasts indicated by the five-year projection intervals required in the comprehensive plan. In other words, if a community states that it expects to gain 10,000 new residents in the next five years, the CIE should indicate how its adopted service levels can be reached for these new residents in that time frame.

- **Ensure that capital improvement projects proposed for each service area are consistent with the comprehensive plan regarding the distribution of future growth or differential rates of growth between service areas.**

¹³ See the “Units of Measure and Criteria for Establishing Service Levels” table in the Appendix.

5. Schedule of Improvements

To meet Development Impact Fee Compliance Requirements, the CIE must consider system improvements for the entire planning horizon of the comprehensive plan, which for most plans will be 20 years. The Schedule of Improvements is only required to list projects (including joint or inter-jurisdictional projects) to be initiated within the first five years after CIE adoption. This means that major long-range projects that will be financed with impact fees; but will not be initiated within five years of CIE adoption, must be identified or described only in general terms.

The specific capital improvement projects and funding sources listed in a Schedule of Improvements are not set in stone. If a given revenue source does not materialize to complete a new facility, or priorities shift within a service area so that different projects take precedence at a later date, these changes can simply be reflected in the annual update of the Schedule of Improvements. On the other hand, changes in service area boundaries or modifications of officially adopted service levels are major policy shifts that would require amendment of the CIE.

In order to assure coordination of community facility development and other local government projects, DCA requires adoption of the CIE Schedule of Improvements as an Addendum to the Short Term Work Program that is included in the local comprehensive plan.

The Schedule of Improvements **must** include:

- **A listing, by year, of all impact fee-related capital improvements to be undertaken over the five-year period after adoption of the CIE, including:**

- 1. A brief (but clear) description of each project.**

This might be as simple as, "Widen Jones Road from two to four lanes from Broad Street to I-75," or, "Add a police precinct station in Service Area One." Or, the project description could involve more detail if the improvement has a more complex technical function.

- 2. Assignment of each project to a specific service area or areas.**

- 3. Implementation time frame (i.e., anticipated start and completion dates).**

- 4. Estimated total project costs for each capital improvement project.**

The CIE should be as accurate as possible in estimating project costs and listing funding sources. Ideally these costs should correspond with those generated in the course of preparing the impact fee schedules. Or, if the impact fee scheduling process has not been initiated at the time of CIE preparation, reasonable estimates of total project costs based on past facility costs, industry standard unit costs, etc. should be used. If project costs

need to be adjusted or financing strategies change, this should be addressed in the required annual update of the Schedule of Improvements.

Some local governments may have difficulty estimating project costs for complex public works projects before completing engineering or feasibility studies. If special studies are required to pinpoint costs, and such studies cannot be conducted prior to the development of the CIE, the studies themselves should be listed as work items in the Schedule of Improvements. Where specific project costs are difficult to determine, it may help to examine cost data for similar recent projects, ask for assistance from knowledgeable experts, or contact other local governments that have installed comparable facilities about costs and financing strategies.

Some impact fee financed projects will likely be collaborations between jurisdictions. These local governments may experience some confusion about how to show the total cost of multi-jurisdictional projects in each local government's CIE. There are several ways to organize the implementation strategy and show costs for multi-jurisdictional projects. One is for a local government to show the entire cost of a joint project in its CIE, and then list the total contribution of other jurisdictions as a single amount, just like any other non-impact fee funding source. Another is for each jurisdiction to list only its own investment in the joint project as a total project cost for the purpose of its individual Schedule of Improvements, backing out the other jurisdiction's contributions. If this last method is used, matching funds, grants and other financing sources provided by the local government should still be identified, along with the percentage of the total project cost stated that will provide new capacity to the particular jurisdiction (see next bullet). Either method is acceptable as long as consistency is maintained throughout the CIE, and it is clear how each project will be financed.

5. Portion of each project's stated total cost that may be paid from impact fees (i.e., portion that is directly attributable to adding capacity to serve new development).¹⁴

It is possible that a project listed in the Schedule of Improvements might include specific items or costs that add no capacity to serve new growth, either: 1) because they are operation, maintenance or replacement costs or 2) because the capacity created is intended to make up service level deficiencies. For example, a road widening for Belk Road that will expand from two to four lanes, the associated Schedule of Improvements might list the cost of a road widening project and include the cost of resurfacing four lanes of roadway, when only the two new lanes would add to system capacity. The total project cost (as drawn from a community's transportation CIP) might be \$200,000; however, only \$150,000 would go to build new lanes. The Schedule of Improvements should then list the total cost of \$200,000, but state that only 75% of the project would add system capacity.

A second example illustrates how a project intended both to provide new capacity and to make up some service level deficiencies would be treated under this requirement.

Suppose a community proposes a new ten acre park (in a service area with a service level established as two acres of park land per 1,000 population) for which 20% of the service capacity is designed to raise service levels for the 1,000 existing residents in the service area, while 80% will serve future development (a projected 4,000 new residents over the planning period). The Schedule of Improvements would show that 80% of the project cost would provide new service capacity.

These Development Impact Fee Compliance Requirements are designed to allow a great deal of flexibility in stating total project costs, with the intention of making the CIE a meaningful tool for local government and making it compatible with other planning documents. The requirement above is intended to establish the portion of the total cost stated that is actually a system improvements cost as defined by DIFA. The portion of the total cost designated as a system improvements cost represents the maximum amount eligible for impact fee financing.

One type of costs -- those for on-site project improvements -- should clearly be excluded from the totals stated in the CIE. DIFA makes an important distinction between “project improvements” and “system improvements.” The Act says that, “if an improvement or facility provides or will provide more than incidental service or facilities capacity to persons other than the users or occupants of a particular project, the improvement shall be considered a system improvement.” DIFA defines “system improvement costs” as “costs incurred to provide additional public facilities capacity needed to serve new growth and development.” DIFA also states that, “Development impact fees shall not be used for any purpose that does not involve system improvements that create additional service available to serve new growth and development.”

In contrast to system improvements, “project improvements” are defined as “site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupant or users.” DIFA further specifies that, “No improvement included in a plan for public facilities approved by the governing body of the municipality or county shall be considered a project improvement.” Therefore, while some costs that are not system improvement costs may be included in CIE total cost figures, “project cost” should definitely be excluded from the CIE.

In reality, it will be unusual for 100% of a capital improvement project's capacity to serve new development, especially for roads, parks and libraries, because these types of capital facilities are often used by people outside their defined service areas. However, for the purposes of developing an impact fee system, the percentage of a proposed capital improvement project's capacity that is allocated to serve the existing population will depend primarily on whether a community is raising service levels (and thus defining current services as deficient) or accepting the service levels that existed at the time of CIE preparation as adequate. If no deficiencies in meeting service levels goals are

indicated, presumably all of the capacity added through new capital facilities or infrastructure will be available to serve new development.

6. A description of proposed sources of funds, in addition to impact fees, that are expected to be used to cover each project's total cost.

Going through the process of identifying funding sources should keep a local government's goals realistic. It also indicates that the local government has planned for necessary matching funds to supplement impact fees.

Funding sources are required to be precisely described in the CIE. For example, instead of saying additional funding will come from grants, the grant source should be specified. Instead of saying funds will come from "local government," the CIE should specify "general revenues," "special option sales tax," "revenue bonds," "private contributions" or whatever the financing mechanism will be.

As stated earlier, capital improvement projects required to upgrade service levels for existing development must be identified in the CIE in order to demonstrate that a local government has planned to meet this provision of DIFA. The Act says that, "development impact fees shall be calculated on the basis of levels of service . . . that are applicable to existing development as well as new growth and development." Thus, in addition to listing projects required to meet service level goals for existing development in the Schedule of Improvements, specific funding sources for such projects must be identified.

¹⁴ DIFA allows local governments to recover the cost of excess capacity remaining in existing infrastructure systems when excess capacity has been planned to serve new development. The present value of such existing a capital improvement should be stated in the CIE as a total project cost. The existing capacity or demand units available to serve new development should be stated in the CIE, rather than (or in addition to) the original capacity of the project, since some of the original capacity will have been absorbed between the time the capital improvement was built and the adoption of the CIE.

Policy Statements

DIFA states that:

. . . a municipality or county development impact fee ordinance may exempt all or part of particular development projects from development impact fees provided that such projects are determined to create extraordinary economic development and employment growth or affordable housing, providing that the public policy which supports the exemption is contained in the municipality's or county's comprehensive plan." (O.C.G.A. 36-71-4(k)).

Therefore, if a **local government plans to allow special exemptions** in its impact fee ordinance, the CIE must include policy statements supporting such exemptions.

Strengthening Legal Support for Impact Fee Systems Through Policy Statements

The following policy statements are not specifically required by DIFA, but could be useful for strengthening the legal foundations of local impact fee systems. Impact fee-related policies should be reviewed by the local government's legal counsel, since unique local situations might make any of the following suggestions inappropriate:

1. State, as a formal policy, that new development will be responsible, by means of an impact fee system, for the financial burdens it will impose on a community.
2. State specific policies in the plan that support the provision of public services in certain geographic areas, differential levels of services in different parts of a jurisdiction, or decisions not to extend services into certain areas. This will provide legal support for adopted service levels and service area boundaries.
3. If public utilities are under the direct control of the local jurisdiction and are not an independent authority with an autonomous board of directors, include a policy statement regarding any administrative, accounting or fee calculation procedures that will be changed to assure consistency with DIFA. If water or wastewater treatment is provided to a community by a utility authority, inter-jurisdictional agreements regarding the collection of hookup fees for system improvements may be required. The CIE should state the community's intention to enter into any such agreements. It should also explain if impact fee credits will be granted for hook-up fees charged by utility authorities.
4. State, as a policy, the intention to bring existing land development regulations and local government administrative procedures into compliance with the Impact Fee Act (if, in the opinion of the local government's legal counsel, changes will be required).
5. Authorize through a policy statement any inter-jurisdictional agreements that may be required for the collection or expenditure of impact fees for joint planning projects.

Conclusion

This guidebook is designed to provide assistance to local governments in understanding how to develop their CIE. The contents focus on developing a CIE that will meet the planning requirements of DIFA.

However, it should be clear from reading the sections on the required content of the CIE that developing a CIE will require close coordination with the team members that develop a local government's impact fee ordinance and fee schedule. As an impact fee system is developed, consultation with these experts will provide much of the information required for the CIE. It is important to understand that the projects listed in the CIE should be the basis for the fee schedule established for each service area in a local government's impact fee ordinance. Thus, it will be impractical for a local government to develop a "generic" CIE just in case the community should someday decide to implement an impact fee system. Preparation of a CIE should only be undertaken when a community is beginning the process of developing an impact fee system.

It is also important for a CIE to be consistent with a community's other capital improvement documents or plans (for example, park master plans, transportation improvement programs, utility authorities' service plans). Such documents should ideally be used in preparing the CIE and, if necessary, updated to reflect the capital improvements defined in the CIE. As this guidebook has emphasized, the CIE is not merely a wish list, but should function as a practical bridge to plan implementation and the use of impact fees.

Appendix

Example Units of Measure and Criteria for Establishing Service Levels

| Type of Capital Improvement | Some Typical Measures of Service Levels | Types of Development Usually Charged / Typical Demand Units |
|--|--|--|
| Water supply | Average gallons of treated water consumed per day; other criteria such as peak usage; line diameter, storage capacity. | Residential: household units: Other land uses often charged by meter Size. |
| Wastewater Treatment | Gallons per day treated; gallons per day permitted for release into surface water or land treatment. | Residential: household units; Other land uses often charged by meter size. |
| Stormwater management, flood control, shore protection | New runoff generated; impervious surface created, grade change, miles of shoreline. | All land uses: total project acres; acres of impermeable surface created: acres of land disturbed. |
| Parks, recreation and open space | acres per 1,000 pop. by park category . (e.g., neighborhood, community, regional, etc.) service radius or design capacity by park category. | Residential: by unit, Commercial: square feet of office space; Commercial and industry often not charged. |
| Roads, streets and bridges | LOS level by functional class of road (e.g., arterial, collector, etc); other criteria such as: volume to capacity ratios; lane miles. | Trips generated by land use, average trip length; Residential: by housing unit; Commercial: by square feet of floor space or # employees Industrial: by # employees |
| Fire protection | # sq. ft. of facility per full time personnel or fire fighting units (might be expressed in facility cost per unit); stored water capacity. | Number of calls for assistance to total population or average calls by type of land use; Residential: by unit; Commercial & industrial: square feet or # of employees. |
| Public Safety Facilities | Patrol vehicles or officers per 1,000 pop. (Impact fees might be translated to facility cost per household unit, since impact fees do not pay for manpower or vehicles.) | Number of calls for assistance to total population or average calls by type of land use; Residential: by unit. |
| Emergency medical services | Vehicles / stations per 1,000 population. | Number of calls for assistance to total population or average calls by type of land use; Residential: by unit; Commercial & industrial: square feet or # of employees. |
| Libraries | Square feet of library facility per 1.000 pop.: Books per capita | Residential by units; commercial and industrial: often not charged. |

Sample Methods of Establishing Service Area Boundaries

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|---|---|
| Capital Improvement | Typical Boundaries Used: |
| Water production, treatment and distribution | Ideally, the entire proposed service area of a public utility; could be defined based on proposed level of service provision; areas with differential cost of service; areas served by specific filtration plants. |
| Wastewater treatment, collection and disposal | Ideally; the entire proposed service area of a public utility; service areas could also be based on relative cost of service, relationships between treatment plants or distribution systems; existing or proposed community improvement districts, special tax districts or enterprise zones. |
| Roads, streets and bridges | Could be entire jurisdiction or multiple jurisdictions through interjurisdictional agreement; where service levels will be planned to vary within a jurisdiction, boundaries may be recommended by a traffic engineer; DOT traffic zone information may be used to determine localized impacts. |
| Stormwater management | Usually based on drainage basins or watersheds, or the portion of a drainage basin or watershed that falls within a jurisdiction. |
| Parks: | Various categories of parks may have different service areas. |
| Neighborhood | Aggregations of subdivisions; elementary school districts. |
| Community | May be the whole jurisdiction for a small to mid-sized city. Community parks generally serve a population of 15,000 to 50,000. Service districts are based on design capacity and user accessibility (distance or travel time). |
| Regional | Ideally, entire jurisdiction or multiple jurisdictions through interjurisdictional agreement. A single regional park district could contain more than one regional facility. |
| Urban open space | Central business districts or within a service radius of development nodes. |
| Natural open space | Ideally, the entire jurisdiction, but could be a neighborhood, community, multijurisdictional or regional service area depending on the total acreage, shape and location, type of recreational uses, and users of the particular open space. |
| Special purpose recreation areas | Could be a neighborhood, community, multijurisdictional or regional service area depending on the total acreage, shape, type of recreation available and users of the open space. Special purpose parks can have regional benefits for tourism (e.g., amusement park, historic district park, zoo or nature center, or lake shore). |
| Emergency medical service | Ideally, the entire jurisdiction, but if emergency medical service to a jurisdiction is divided among several service providers, their territories may make logical service area boundaries. |
| Fire protection services | Ideally, the total service area served by a single fire department (since ISO ratings are based on analysis of the service provider); more than one service area may be called for if subareas are planned to receive different levels of fire projection; consideration should be given to existing special tax districts for fire protection. Differing service areas often related to population density |

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| | or adequacy of water system to support fire hydrants. |
| Police services | Ideally, entire jurisdiction, or multiple jurisdictions if served by a single police department. |
| Libraries | Entire jurisdiction, or regional library service districts defined by the state. |