



CANYONLANDS WATERSHED COUNCIL

Chris Baird
Executive Director
PO Box 1024
Moab, UT 84532
(435) 260-1431
chris@farcountry.org

May 7, 2014

Grand County Council
Attention: Public Lands
125 East Center St
Moab, UT 84532

RE: Bishop Public Lands Initiative

Dear Grand County Council Members,

I inadvertently omitted the below section from my comments (forgot to cut & paste). This is therefore presented on May 7, however after the 5pm deadline. I offer it to your discretionary consideration. If not as a part of the public record, then as a letter to the Council.

Assessment Fee for Proposed Use of Haul Route:

In my experience (Chris Baird, 2 years Planning Commission & 4 years Council) I've been under the impression that fees may be assessed respective to services provided. However, if the fee exceeds the cost of the provided service then the legal frame work for the fee becomes very fragile. It seems likely that a fee could be setup to account for the cost of the road and its maintenance, however, expecting more than that may be unrealistic. I am no lawyer however, and this issue can only be resolved with the aid of specific legal counsel.

Pertinent Utah Code: [emphasis added]

11-36a-102. Definitions.

As used in this chapter:

(1) (a) "Affected entity" means each county, municipality, local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Chapter 13, Interlocal Cooperation Act, and specified public utility:



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(i) whose services or facilities are likely to require expansion or significant modification because of the facilities proposed in the proposed impact fee facilities plan; or

(ii) that has filed with the local political subdivision or private entity a copy of the general or long-range plan of the county, municipality, local district, special service district, school district, interlocal cooperation entity, or specified public utility.

(b) "Affected entity" does not include the local political subdivision or private entity that is required under Section [11-36a-501](#) to provide notice.

(2) "Charter school" includes:

(a) an operating charter school;

(b) an applicant for a charter school whose application has been approved by a chartering entity as provided in Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

(c) an entity that is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.

(3) "Development activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land that creates additional demand and need for public facilities.

(4) "Development approval" means:

(a) except as provided in Subsection (4)(b), any written authorization from a local political subdivision that authorizes the commencement of development activity;

(b) development activity, for a public entity that may develop without written authorization from a local political subdivision;

(c) a written authorization from a public water supplier, as defined in Section [73-1-4](#), or a private water company:

(i) to reserve or provide:

(A) a water right;

(B) a system capacity; or

(C) a distribution facility; or



(ii) to deliver for a development activity:

(A) culinary water; or

(B) irrigation water; or

(d) a written authorization from a sanitary sewer authority, as defined in Section [10-9a-103](#):

(i) to reserve or provide:

(A) sewer collection capacity; or

(B) treatment capacity; or

(ii) to provide sewer service for a development activity.

(5) "Enactment" means:

(a) a municipal ordinance, for a municipality;

(b) a county ordinance, for a county; and

(c) a governing board resolution, for a local district, special service district, or private entity.

(6) "Encumber" means:

(a) a pledge to retire a debt; or

(b) an allocation to a current purchase order or contract.

(7) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance to connect to a gas, water, sewer, storm water, power, or other utility system of a municipality, county, local district, special service district, or private entity.

(8) (a) "Impact fee" means a payment of money imposed upon new development activity as a condition of development approval to mitigate the impact of the new development on public infrastructure.

(b) "Impact fee" does not mean a tax, a special assessment, a building permit fee, a hookup fee, a fee for project improvements, or other reasonable permit or application fee.



(9) "Impact fee analysis" means the written analysis of each impact fee required by Section [11-36a-303](#).

(10) "Impact fee facilities plan" means the plan required by Section [11-36a-301](#).

(11) "Level of service" means the defined performance standard or unit of demand for each capital component of a public facility within a service area.

(12) (a) "Local political subdivision" means a county, a municipality, a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special service district under Title 17D, Chapter 1, Special Service District Act.

(b) "Local political subdivision" does not mean a school district, whose impact fee activity is governed by Section [53A-20-100.5](#).

(13) "Private entity" means an entity in private ownership with at least 100 individual shareholders, customers, or connections, that is located in a first, second, third, or fourth class county and provides water to an applicant for development approval who is required to obtain water from the private entity either as a:

(a) specific condition of development approval by a local political subdivision acting pursuant to a prior agreement, whether written or unwritten, with the private entity; or

(b) functional condition of development approval because the private entity:

(i) has no reasonably equivalent competition in the immediate market; and

(ii) is the only realistic source of water for the applicant's development.

(14) (a) "Project improvements" means site improvements and facilities that are:

(i) planned and designed to provide service for development resulting from a development activity;

(ii) necessary for the use and convenience of the occupants or users of development resulting from a development activity; and

(iii) not identified or reimbursed as a system improvement.

(b) "Project improvements" does not mean system improvements.



(15) "Proportionate share" means the cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any development activity.

(16) "Public facilities" means only the following impact fee facilities that have a life expectancy of 10 or more years and are owned or operated by or on behalf of a local political subdivision or private entity:

- (a) water rights and water supply, treatment, storage, and distribution facilities;
- (b) wastewater collection and treatment facilities;
- (c) storm water, drainage, and flood control facilities;
- (d) municipal power facilities;
- (e) roadway facilities;
- (f) parks, recreation facilities, open space, and trails;
- (g) public safety facilities; or
- (h) environmental mitigation as provided in Section [11-36a-205](#).

(17) (a) "Public safety facility" means:

- (i) a building constructed or leased to house police, fire, or other public safety entities; or
- (ii) a fire suppression vehicle costing in excess of \$500,000.

(b) "Public safety facility" does not mean a jail, prison, or other place of involuntary incarceration.

(18) (a) "Roadway facilities" means a street or road that has been designated on an officially adopted subdivision plat, roadway plan, or general plan of a political subdivision, together with all necessary appurtenances.

(b) "Roadway facilities" includes associated improvements to a federal or state roadway only when the associated improvements:

- (i) are necessitated by the new development; and
- (ii) are not funded by the state or federal government.



(c) "Roadway facilities" does not mean federal or state roadways.

(19) (a) "Service area" means a geographic area designated by an entity that imposes an impact fee on the basis of sound planning or engineering principles in which a public facility, or a defined set of public facilities, provides service within the area.

(b) "Service area" may include the entire local political subdivision or an entire area served by a private entity.

(20) "Specified public agency" means:

- (a) the state;
- (b) a school district; or
- (c) a charter school.

(21) (a) "System improvements" means:

(i) existing public facilities that are:

- (A) identified in the impact fee analysis under Section [11-36a-304](#); and
- (B) designed to provide services to service areas within the community at large; and

(ii) future public facilities identified in the impact fee analysis under Section [11-36a-304](#) that are intended to provide services to service areas within the community at large.

(b) "System improvements" does not mean project improvements.

11-36a-201. Impact fees.

(1) A local political subdivision or private entity shall ensure that any imposed impact fees comply with the requirements of this chapter.

(2) A local political subdivision and private entity may establish impact fees only for those public facilities defined in Section [11-36a-102](#).

(3) Nothing in this chapter may be construed to repeal or otherwise eliminate an impact fee in effect on the effective date of this chapter that is pledged as a source of revenues to pay bonded indebtedness that was incurred before the effective date of this chapter.



11-36a-202. Prohibitions on impact fees.

(1) A local political subdivision or private entity may not:

(a) impose an impact fee to:

(i) cure deficiencies in a public facility serving existing development;

(ii) raise the established level of service of a public facility serving existing development;

(iii) recoup more than the local political subdivision's or private entity's costs actually incurred for excess capacity in an existing system improvement; or

(iv) include an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with:

(A) generally accepted cost accounting practices; and

(B) the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement;

(b) delay the construction of a school or charter school because of a dispute with the school or charter school over impact fees; or

(c) impose or charge any other fees as a condition of development approval unless those fees are a reasonable charge for the service provided.

(2) (a) Notwithstanding any other provision of this chapter, a political subdivision or private entity may not impose an impact fee:

(i) on residential components of development to pay for a public safety facility that is a fire suppression vehicle;

(ii) on a school district or charter school for a park, recreation facility, open space, or trail;

(iii) on a school district or charter school unless:

(A) the development resulting from the school district's or charter school's development activity directly results in a need for additional system improvements for which the impact fee is imposed; and



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(B) the impact fee is calculated to cover only the school district's or charter school's proportionate share of the cost of those additional system improvements; or

(iv) to the extent that the impact fee includes a component for a law enforcement facility, on development activity for:

(A) the Utah National Guard;

(B) the Utah Highway Patrol; or

(C) a state institution of higher education that has its own police force.

(b) (i) Notwithstanding any other provision of this chapter, a political subdivision or private entity may not impose an impact fee on development activity that consists of the construction of a school, whether by a school district or a charter school, if:

(A) the school is intended to replace another school, whether on the same or a different parcel;

(B) the new school creates no greater demand or need for public facilities than the school or school facilities, including any portable or modular classrooms that are on the site of the replaced school at the time that the new school is proposed; and

(C) the new school and the school being replaced are both within the boundary of the local political subdivision or the jurisdiction of the private entity.

(ii) If the imposition of an impact fee on a new school is not prohibited under Subsection (2)(b)(i) because the new school creates a greater demand or need for public facilities than the school being replaced, the impact fee shall be based only on the demand or need that the new school creates for public facilities that exceeds the demand or need that the school being replaced creates for those public facilities.

(c) Notwithstanding any other provision of this chapter, a political subdivision or private entity may impose an impact fee for a road facility on the state only if and to the extent that:

(i) the state's development causes an impact on the road facility; and

(ii) the portion of the road facility related to an impact fee is not funded by the state or by the federal government.

(3) Notwithstanding any other provision of this chapter, a local political subdivision may impose and collect impact fees on behalf of a school district if authorized by Section [53A-20-100.5](#).



11-36a-204. Other names for impact fees.

(1) A fee that meets the definition of impact fee under Section [11-36a-102](#) is an impact fee subject to this chapter, regardless of what term the local political subdivision or private entity uses to refer to the fee.

(2) A local political subdivision or private entity may not avoid application of this chapter to a fee that meets the definition of an impact fee under Section [11-36a-102](#) by referring to the fee by another name.

17-36-34. Special assessment.

Money received by the county treasurer from any special assessment shall be applied towards payment of the improvement for which the assessment was approved. Such money shall be used exclusively for the payment of the principal and interest on the bonds or other indebtedness incurred to finance such improvements, except as provided in Section [17-36-29](#).

17-36-29. Special fund ceases -- Transfer.

If the necessity to maintain any special fund ceases and there is a balance in such fund, the governing body shall authorize the transfer of the balance to the fund balance account in the General Fund. Any balance which remains in a special assessment fund and any unrequired balance in a special improvement guaranty fund shall be treated as provided in Subsection [11-42-701\(5\)](#). Any balance which remains in a capital projects fund shall be transferred to the appropriate debt service fund or such other fund as the bond ordinance requires or to the general fund balance account.

Sincerely,

Chris Baird