Revenue Credits: Methodology's Grey Area

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Overview of Revenue Credit Discussion

- **Definition of the Topic**
  - Amounts deducted from impact fees to account for other fees or taxes that will be generated by new development and used to fund the same type of capital facilities as the impact fee
- **Session Idea**
  - Can four impact fee experts agree on the basic principles that should govern the calculation of revenue credits, and how to apply those principles in practice?
- **Panelists**
  - Clancy Mullen, Duncan Associates
  - Steve Tindale, Tindale Oliver
  - Jim Nicholas, Univ. of Florida
  - Jerry Murphy, Murphy Planning

Legal Framework

- **State Enabling Acts**
  - All are extremely vague
- **Case Law Principles**
  - Don’t charge new development for a higher level of service
  - Don’t double-charge through impact fees and other charges
- **Existing Level of Service (LOS)**
  - Conceptualize as capital investment paid for by existing dev’t
- **Avoid Double-Charging**
  - Just another way of expressing the LOS principle?

    “new development pays fees for the existing LOS, and should get credit for other tax revenues that will be used provide the same LOS.”

Implications for Revenue Credits

- **Credit required for outstanding debt on existing facilities**
  - Unless there is excess capacity taken into consideration in setting the existing LOS, and debt does not exceed that value
- **Credit not required for most other revenues**
  - Impact fees maintain existing LOS
  - Other revenues used for capacity increase LOS
  - Everyone pays, and everyone benefits
  - No double-charging for existing LOS

Other Approaches

- **Rely on "State of the Practice"**
  - Many consultants don't have clear grasp of legal principles
  - Consultants often under pressure to calculate lower fees
- **Credit "Dedicated" Funding**
  - Most such funding can be used for capacity or maintenance
  - Dedicated capacity funding will enhance LOS for all
- **Use Litigation-Averse Approach**
  - Credit for any funding partially generated by new development that may be used to fund capacity improvements
  - unless formal policy to fund all capacity projects with impact fees
    - Why not a policy that non-impact fee funding is intended to raise LOS?

Funding for Waivers and Deficiencies

- **Community "buys down" fees for particular uses or areas**
  - New development will pay a portion of the revenue used to fund future reductions
  - Credit should be calculated for reductions built into fee schedule
  - for ad hoc waivers, could specify an annual limit and calculate credit based on that

- **Funding deficiencies over time or with debt**
  - Same rationale as for waivers
  - Credit should be provided for the portion of funding to remedy deficiencies that will be generated by new development

Alternative Way to Calculate Credit

- **Typical approach focuses on avoiding double-charging**
  - Identify revenue streams that deserve credit
  - Determine how much new development will pay in the future
  - Credit = present value of future payments per service unit
- **Alternative focuses on funding the shortfall**
  - Identify future growth costs and available revenues from other sources (may be difficult to do in practice)
  - For example, if a city has historically paid for 50% of capacity expansion with general funds, fees should be reduced by 50%
    - How would a city be able to adopt fees for first time?
    - What if a city wants to increase the level of service, or devote more funding to maintenance?

When is Credit Required?

- Outstanding debt on existing facilities?
- Grant funding for specific growth-related improvements?
- Dedicated local funding earmarked for growth projects?
- Earmarked local funding (e.g., gas tax)?
- All capacity funding?
- Fee waivers?
- Funding used to remedy existing deficiencies?
- Past property tax payments from vacant land?
  - Required by six state enabling acts