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BEFORE THE HEARING EXAMINER
FOR THE CITY OF REDMOND

In the Matter of the Appeal of
RTC 74th Street Property LLC
Of the November 17, 2017 Approval of BLDG-
2016-09558 related to the Redmond Town
Center Apartments project in Redmond, WA

No. _____
**Redmond Town Center
Apartments Impact Fees Appeal**
**APPELLANTS' HEARING
BRIEF**

I. INTRODUCTION

Appellants are the successor owners of Redmond Town Center, including RTC 74th Street Property LLC, the multi-family residential developer who has obtained land use approvals and a building permit for construction of the Redmond Town Center Apartments Project. This 286 unit mixed-use development will be the first residential project constructed at Redmond Town Center. It is a part of the Redmond Town Center mixed use master planned development for which the City has required, and the landowner has provided, extensive mitigation of transportation and park, recreation and open space impacts under SEPA for the full build-out of the Redmond Town Center property.

At issue in this appeal is the City's imposition of more than two million dollars in park, recreation, open space and transportation impact fees paid as a condition of issuing a building permit for the Redmond Town Center Apartments Project. These fees are in addition to and duplicative of the mitigation provided by Redmond Town Center for the same impacts. Where, as here, mitigation of a development impact has been imposed under SEPA, state and local law

1 prohibit cities from imposing a duplicative impact fee to address that same impact. The City’s
2 failure in this case to exempt the development from payment of duplicative impact fees for park
3 and transportation impacts, or to fully credit Appellants for its mitigation of these same impacts,
4 amounts to unlawful “double dipping” that violates RCW 82.02.050-.090, RCW 82.02.100 and
5 RMC 3.10.060. It also violates the proportionality standards of RCW 82.02.020 and constitutes
6 an unconstitutional taking of property.

7 **II. QUESTIONS PRESENTED BY APPEAL**

8 1. Has the City of Redmond acted unlawfully by requiring that more than two
9 million dollars in park, recreation, open space and transportation impact fees be paid as a
10 condition of issuing a building permit for a residential apartment project that is part of a mixed-
11 use, master planned development, where the City previously required that development impacts
12 on parks, recreation, open space and transportation facilities for the full master planned
13 development be mitigated under the State Environmental Policy Act?

14 2. If the apartment project development is not exempt from park and transportation
15 impact fees, must the City apply credits in reduction of the park and transportation impact fees
16 where the apartment project is a phase of a master planned development that was required to
17 dedicate land and construct improvements to mitigate impacts on park, trail and open space
18 facilities and to design and construct transportation facilities and pay a pro-rata share of the cost
19 of planned transportation improvements as conditions of approval of development of the land
20 regulated by the master plan?

21 **III. SUMMARY OF ARGUMENT**

22 A. When mitigation of a development impact has been imposed under SEPA, state
23 law prohibits cities from imposing an impact fee to address that same impact.

24 B. Redmond’s impact fee regulations conform with state law by exempting
25 development from impact fees when SEPA mitigation has been imposed to mitigate impacts on
26 the types of public facilities that would be funded by the impact fees.

1 C. To the extent that the project is not exempt from park and transportation impact
2 fees, credits must be given for the mitigation. The credits exceed the amount of the impact fees
3 and thus the impact fees may not be imposed.

4 D. Requiring duplicative payment of mitigation for the same impacts amounts to
5 payment of a prohibited tax, fee or charge on development that violates the proportionality
6 standards of RCW 82.02.020 and the takings clauses of the state and federal constitutions.

7 IV. FACTS

8 A. Development Approvals and Environmental Review.

9 Over a period of years during the 1980s and 1990s, the City of Redmond amended its
10 land use plans and zoning, annexed land and approved an initial master plan and later a revised
11 master plan, to facilitate development of approximately 119 acres of land known as Redmond
12 Town Center. The boundaries of Redmond Town Center are shown in Appellants' Exhibit 1
13 (Figure 4-1, page 2). The City conducted extensive environmental review of the Redmond Town
14 Center development as originally proposed, and as later modified, including the analysis set out
15 in the following SEPA documents:

- 16 • Maingate Draft and Final EIS 1982
- 17 • Draft and Final EIS for Redmond Town Center 1985
- 18 • Town Center Site Development and City Center Neighborhood Plan Alternatives
19 Draft and Final Environmental EIS 1987
- 20 • First EIS Addendum for Redmond Town Center 1995
- 21 • Second EIS Addendum for Redmond Town Center 1997

22 Additionally, multiple SEPA threshold determinations for various phases of Redmond
23 Town Center development have been issued over the years, including the Declaration of
24 Nonsignificance (DNS) issued for the Redmond Town Center Apartments Project on August 24,
25 2016. A Summary of the major steps in the environmental review process and identification of
26 significant environmental documents is included in the second EIS Addendum issued in 1997

1 (Appellants' Exhibit 13) and in the memorandum from Redmond Senior Planner Gary Lee to the
2 Redmond Planning Commission (Appellants' Exhibit 9).

3 **B. Multifamily Residential Component of Redmond Town Center.**

4 The zoning and land use plans governing development of Redmond Town Center have
5 continued to envision multifamily residential development as a component of mixed-use
6 development on the Redmond Town Center property. The original development proposal
7 featured a mixed-use commercial center including an enclosed regional shopping center, with
8 related office, other retail and multifamily housing. The Redmond Town Center FEIS,
9 November 1985, described the initial proposal:

10 The proponent's preferred course of action is receipt of necessary
11 approvals that would allow development of the 124-acre site as a
12 mixed use commercial center. The center would consist of a
13 regional shopping center, offices, additional retail uses detached
14 from the shopping center, multifamily housing, and public open
15 space.

16 Appellants' Exhibit 1 (Redmond Town Center EIS). In addition to the proposed action, the 1984
17 FEIS analyzed the alternatives of zoning and development of the area as a business park and
18 zoning and developing Redmond Town Center exclusively for multifamily housing. The
19 multifamily housing alternative assumed 2,183 multifamily housing units would be developed on
20 the property. Appellants' Exhibit 1 at page 21.

21 The City approved the proposed mixed-use commercial center proposal, subject to
22 extensive conditions imposed to mitigate environmental impacts. Appellants' Exhibit 2
23 (Ordinance 1416); Appellants' Exhibit 3 (RTC Proposed Zoning Master Plan Conditions of
24 Approval). The City subsequently annexed a major portion of the site, a former golf course, and
25 zoned the entire site for a mix of uses, including retail, office and residential. Appellants'
26 Exhibit 5 (Ordinance 1551).

27 In 1994, after failing to attract sufficient anchor department stores to meet conditions the
City placed on development of the enclosed shopping center, the owner of Redmond Town
Center proposed a modified development concept and master plan that replaced the enclosed

1 shopping center with an open air mixed-use district. The open air mixed-use district concept was
2 approved in 1995 through changes to the City's plans, zoning and adoption of a revised master
3 plan (Master Plan). Appellants' Exhibit 4 (Ordinance 1841); Appellants' Exhibit 7 (Master Plan
4 and Design Guidelines); Appellants' Exhibit 25 (Planning Commission Recommendation);
5 Appellants' Exhibit 6 (RTC Phase I Site Plan and Master Plan Approval). The approvals of the
6 revised Master Plan and zoning retained the mixed-use concept, including multifamily residential
7 development as a permitted use.

8 As part of its approval of the 1995 Master Plan, the City Council amended the Redmond
9 Comprehensive Plan, Chapter 20B of the Redmond Community Development Guide (CDG). In
10 CDG section 20B.130 (90) (e) the Council established the City's policy of encouraging housing
11 on the Redmond Town Center site by allowing maximum residential development capacity to be
12 measured separately from commercial development, with the quantity of one type of
13 development not limiting the other:

14 20B.130 (90) (e) Encourage residential development on the
15 Mixed-Use Center site by providing for housing square footage in
addition to the maximum commercial building area allowed.

16 The City continues to encourage residential development within Redmond Town Center,
17 through its current Comprehensive Plan policies, including Downtown Neighborhood Policy
18 DT-32:

19 Encourage development of residential uses by maintaining the
20 maximum commercial building area for Town Center of 1,490,000
square feet without transfer of development rights (TDRs) or
21 1,800,000 square feet with the use of TDRs.

22 In 1998 the Redmond Town Center owner applied for and subsequently received
23 approval of a mixed use housing development project to be located on Parcel 2C in Redmond
24 Town Center. Appellants' Exhibit 41 (Approval letter, Attachment E to Transportation study).
25 (This approved development was never constructed).

26 In 2001, the Redmond Town Center owner proposed amendments to Redmond Town
27 Center zoning that would raise the maximum limit on commercial development. The Redmond

1 Technical Committee provided a report to the Planning Commission that included a summary of
2 the owner's plans for development of remaining undeveloped parcels, including a plan for
3 residential development of what is now the Redmond Town Center Apartments development site
4 that is the focus of this appeal:

5 The Macerich Company plans to add a two-story department store
6 with 110,000 to approximately 120,000 square feet of gross
7 leasable area on the west half of parcel 5B. A retail/commercial
8 use of this size is currently allowed under the existing 1.49 million
9 square feet floor area limit. The east half of this parcel is
10 envisioned by the owner to eventually include mid-rise residential
11 use with ground floor commercial.

12

13 Residential uses within the sub-district (Town Center) are not
14 bound by the commercial floor area limit. In addition to the
15 potential 250 unit mixed-use residential structure on the east half
16 of parcel 5B, existing regulations allow several hundred more
17 residential units, which could be constructed on vacant parcels or
18 over the existing surface parking lots within Town Center.
19 Residential additions would be bound by height limits and design
20 standards, as in other districts.

21 Appellants' Exhibit 39 (Memorandum to Planning Commission from Technical Committee);
22 Appellants' Exhibit 46 (Aerial Photo showing Redmond Town Center Apartments Project site).
23 The Technical Committee memorandum to the Planning Commission regarding the 2001
24 proposed amendments addressed traffic generated by the then existing Redmond Town Center
25 development, and future development anticipated to occur under the proposed amendments:

26 The City's traffic consultant prepared an updated trip generation
27 analysis (see Exhibit F) indicating that the site has produced far
28 less peak hour traffic than predicted, and that the addition of a
29 hotel, plus already allowed retail and residential, will not increase
30 peak trips above what has already been prepared for.

31 Appellants' Exhibit 39 at page 7. The additional future development analyzed by the traffic
32 study included 500 residential units. Appellants' Exhibit 41. The traffic analysis was
33 accompanied by a SEPA notice of Determination of Nonsignificance and Adoption of Existing
34 Environmental Document finding no probable significant environmental impact would result
35 from the Redmond Town Center owner's proposal. Appellants' Exhibit 41. The proposed

1 increase in the maximum amount of commercial development was approved, together with an
2 increase in the height limit for mixed retail/residential structures by adoption of Ordinance 1992,
3 Appellants' Exhibit 42.

4 **C. SEPA Mitigation of impacts of full development of Redmond Town Center.**

5 As a condition of its approval of the Master Plan in 1995, the City required the Redmond
6 Town Center property owner to mitigate impacts identified in the environmental documents as
7 likely to be caused by full development of the property. In most cases, the mitigation was
8 required to be fully performed prior to occupancy of the first phase of the master planned
9 development. Appellants' Exhibits 6, 15 and 28.

10 **1. Construction of transportation facilities and dedication of land.**

11 The City required that extensive street, intersection, signalization, lighting, sidewalk and
12 related transportation improvements be provided by the Redmond Town Center owner as
13 mitigation of impacts upon public transportation facilities, including dedication of land for
14 rights-of-way and conveyance of easements. Approximately 6,000 lineal feet of bike trails were
15 required to be added to the City and regional bike trail system. The cost of the transportation
16 mitigation was very significant. In its recommendation to the City Council for approval of the
17 1995 Master Plan and zoning actions, the Planning Commission identified the total cost to be
18 incurred by Redmond Town Center for off-site transportation improvements as \$16,519,000,
19 comprised of \$7,856,000 for the value of land required to be dedicated for off-site street
20 improvements and \$7,416,000 as the costs for design and construction of the off-site
21 transportation improvements. Appellants' Exhibit 25. In a presentation to the City Council
22 regarding transportation mitigation as recorded in the minutes of the special meeting of the
23 Redmond City Council held on June 27th, 1995, Don Cairns, Redmond Transportation Division
24 Manager, "stated that the value of dedicated right-of-way combined with the cost of
25 engineering/construction total approximately \$15.3 million". Appellants' Exhibit 26 at page 226
26 of the minutes.

1 Many of the required transportation improvements were identified as needed future
2 improvements by the City's transportation capital facility plans. The Transportation Facilities
3 Program (TFP), identified TFP projects including those added to by adoption of Ordinance 1847
4 on July 18, 1995, (Appellants' Exhibit 19, Exhibit A, page A-2-3) and those identified in the
5 Traffic Impact Analysis Report (1995 Traffic Impact Analysis) prepared to evaluate traffic
6 impacts of full development of the site under the 1995 Master Plan and zoning. The 1995 Traffic
7 Impact Analysis was included in the April, 1995 EIS Addendum issued in connection with the
8 1995 Redmond Town Center approvals, as Appendix C. Appellants' Exhibit 12.

9 The Six-Year Transportation Improvement Program adopted by City Council Resolution
10 No. 1023 on June 18, 1996 listed "Town Center Improvements" as Project No. 37, with the total
11 cost in the amount of \$14,400,000 listed as funded, with the funding source identified as
12 "DEVLPR.". Appellants' Exhibit 30. A list titled "CURRENT TOWN CENTER
13 IMPROVEMENTS" appears on the last two pages of Exhibit 30.

14 **2. Payment of a SEPA pro rata transportation fee.**

15 In addition to being required to mitigate impacts on public transportation facilities under
16 SEPA through (1) dedication of land for new and expanded transportation facilities and (2) by
17 designing and construction transportation facilities, the City also required the owner to (3) pay
18 transportation impact fees pursuant to the City's "pro-rata share" (pre-GMA) SEPA
19 transportation impact mitigation fee system. Appellants' Exhibit 4 (Ord. 1841); Appellants'
20 Exhibit 6 (Phase I Site Plan Review and Master Plan Approval); Appellants' Exhibit 28
21 (Transportation Mitigation Agreement). The methodology used to quantify the short and long
22 term impacts of full development of Redmond Town Center, including the pro rata share system,
23 was described in the 1995 Traffic Impact Analysis:

24 **DETERMINATION OF IMPACT**

25 **Methodology**

26 Short-term Analysis. The analysis of traffic impacts for this
27 project was evaluated for the short-term (1997) and the long-term
(2010). For the short-term, the City requires individual

1 intersection LOS analysis to determine if short-term mitigation is
required.

2 Appellants' Exhibit 12 at page 8 of the Analysis.

3 In addition, long-term impact is determined by the pro rata share
4 methodology. Based on this process, trips are generated for a new
development and assigned to the long-term roadway network using
5 the City of Redmond's traffic forecasting model. Impacts to the
planned long-term roadway improvements are identified at
6 locations where the new development will generate ten or more
p.m. peak-hour trips. These long term road improvements are
7 identified in Redmond's Transportation Facilities Plan (TFP).

8 **Long-term Mitigation**

9 Appendix C provides a breakdown of the project list and pro rata
costs for Redmond Town Center. Based on current projected
10 construction and right-of-way costs associated with each project,
the proportionate share cost for the project trips under Alternative
11 1 totals \$5,531,973 and is summarized as follows:

12 Project	Pro rata Cost in 1995 Dollars
13 Redmond TFP	\$5,395,298
14 WSDOT/Redmond Interlocal (SR 520/SR 202)	136,675
15 Total	\$5,531,973

16 Appellants' Exhibit 12 at page 42 of the Analysis. (Table format added).

17 A detailed Mitigation Table prepared as part of the analysis of Redmond Town Center
18 transportation mitigation provides an itemization of the TFP projects and mitigation fee amounts,
19 showing the same total fee of \$5,531,973. Appellants' Exhibit 29. Many of the transportation
20 facilities that were required to be constructed as a condition of approval of the 1995 Redmond
21 Town Center Master Plan were identified as system improvements on the TFP. The City
22 reduced the pro-rata fees by crediting a portion of the costs of construction of the required TFP
23 improvements as reflected in the correspondence between Redmond Transportation Division
24 Manager, Don Cairns, and Redmond Town Center ownership representatives included in
25 Appellants' Exhibit 31. The net amount of the cash fees that remained owing as a condition of
26
27

1 issuance of the building permit for phase I of Redmond Town Center is reflected in the Redmond
2 Town Center Traffic Mitigation Agreement dated March 8, 1996. Appellants' Exhibit 28.

3 **3. Mitigation of impacts on Public Park, recreation and open space**
4 **facilities.**

5 The City required that the impact of full development of the Redmond Town Center
6 property on public park, recreation and open space facilities be mitigated under SEPA by
7 requiring the owner of Redmond Town Center to provide 56 acres of open space—
8 approximately 47% of the site—with 44 acres of land dedicated to public open space use.
9 Requirements were imposed to construct public trails and other facilities in the public open space
10 areas. Appellants believe this to be the largest land area devoted to mitigation of development
11 impacts on parks, recreation and open space facilities in the history of the City. Ordinance 1841,
12 Exhibit B, at page 11; Appellants' Exhibit 11 (Technical Committee Report to Planning
13 Commission) at page 10 and Exhibit F to the report; Appellants' Exhibit 6.

14 The Redmond Town Center public access open space was identified on the City's Capital
15 Improvement Program element on page 68 of the City's Parks, Recreation and Open Space Plan
16 2000 (PRO Plan 2000), as attached to Ordinance 1800. Appellants' Exhibit 18 (incorrectly
17 identified as Exhibit 15 on Addendum to Application for Appeal). The land devoted to public
18 use is depicted on multiple City documents, including the diagrams of open space areas and
19 improvement plans contained in Appellants' Exhibit 20; and the Redmond Downtown Park
20 Vicinity Map (Appellants' Exhibit 16) and the park and trails facilities map included in
21 Redmond's Current Comprehensive Plan at pages 10-13.

22 The right of the public to perpetual use of the open space land was conveyed to the City
23 through the recorded public Access Open Space Agreements entered into as of
24 September 17, 1996 and September 24 1996. Appellants' Exhibits 21, 22 and 24. The
25 significant public benefits derived by the public from dedication of the land to public open space
26 use are identified in Resolution 1095 forwarding the City's recommendation to King County for
27 classification of the property as open space for taxation purposes. Appellants' Exhibit 17. The

1 value of the land devoted to public open space based on the assessed land value was identified as
2 \$7,927,900 in the Open Space Taxation Agreement between the property owners and King
3 County, received by the County on August 19, 1999. Appellants' Exhibit 23.

4 **D. The required SEPA mitigation on public transportation facilities and public**
5 **parks, recreation and open space facilities has fully mitigated all impacts of**
6 **development of Redmond Town Center on these public facilities.**

7 The required mitigation has proven to be more than adequate. The Redmond Technical
8 Committee described the results of the transportation mitigation imposed on Redmond Town
9 Center in its September 12, 2001 report to the Planning Commission on a proposal to increase
10 the amount of allowed commercial development:

11 The mixed-use portion of City Center is more restricted than any
12 other portion of downtown, with allowed FARs less than half of
13 what the other districts are allowed, and no current potential to take
14 advantage of TDRs. This limitation stems from the timing of the
15 proposal, first coming forward in the early 1980s, when no other
16 project of this size existed within the city. Since the first zoning
17 was adopted in 1988, the limit has been raised, but with caution, to
18 avoid development which might proceed too quickly and
19 overwhelm the downtown transportation system. The experience
20 with Town Center has been positive, adding evening uses and
21 pedestrians to the downtown, and producing much less traffic than
22 studies in 1988, 1993 and 1997 have predicted.

23

24 The traffic study prepared in 1997 estimated that the Town Center
25 site with 1.49 million square feet would attract a total of 3,336
26 peak hour trips, which included 2,367 trips that would be drawn to
27 the site because of the uses, as well as 969 trips already passing by
the site that would now enter. This number was determined using
conservative estimates provided in the ITE (Institute of
Transportation Engineers) Trip Generation Manual. The updated
analysis checked actual driveway trip counts at the center,
compared to the forecast. Below is a summary of the updated trip
generation analysis. The analysis indicates that total trips,
including destination and pass by, average 2,492 at peak hour.

Appellants' Exhibit 39 at pages 6 and 7 of the memorandum; Appellants' Exhibit 43.

The actual driveway trip counts as referenced in the Technical Committee memorandum
have been updated. At the request of the Appellants', TENW, the same traffic engineering firm
that provided the driveway counts referenced by the Technical Committee, performed updated

1 traffic counts in September, 2017. Current, actual traffic, plus increased trips attributable to
 2 vacancy in tenant space at the time of the counts, and plus additional trips that will result from
 3 ongoing and permitted future development within Redmond Town Center (including the
 4 Redmond Apartment Project) is less than the traffic volume that was used as the basis for full
 5 build out of Redmond Town Center—the volume upon which the City based its required
 6 transportation mitigation. Appellants’ Exhibit 44.

7 The City required that a Phase I and Phase II traffic impact analysis of the transportation
 8 impacts of the Redmond Town Center Apartments Project be performed. The Phase I analysis is
 9 summarized in the Phase II Traffic Impact Analysis dated July 11, 2016. Appellants’ Exhibit 45.
 10 The Phase II analysis concludes that the traffic generated by the Redmond Town Center
 11 Apartments Project is “not expected to result in any significant adverse traffic operational
 12 impacts or increase in average vehicle delay at any of the signalized or unsignalized study
 13 intersections per the detailed traffic operational impact analysis”. Appellants’ Exhibit 45 at
 14 page 11 of the report.

15 Redmond fully mitigated the impacts of full development of the Redmond Town Center
 16 property on park, recreation, trails and open space facilities. The capital facility service
 17 standards for these facilities at the time of approval of Redmond Town Center was set forth in
 18 the City’s Comprehensive Plan capital facilities provisions:

- 19 Parks and recreational facilities: Shall be based on the following ratios:
- 20 Neighborhood parks: 1.0 acres per 1,000 population
- 21 Community parks: 3.0 acres per 1,000 population
- 22 Resource parks: 2.5 acres per 1,000 population
- 23 Trails: 0.25 miles per 1,000 population

24 Current city standards are identified in park impact fee worksheets dated 12/21/2016:

25 **TABLE 2. Park Standards (Current City Standards)**

	Neighborhood Park	Community Park	Resource Park	Trails	Total
Total acres/trail miles needed	19.66	58.98	49.15	0.12	
Acres per park - average	8.50	32.50	n/a	n/a	
Parks needed	2.3	1.8	1.0	n/a	
Total parks needed					5.13
Total park area (acres) needed					127.79
Total trails (miles) needed					0.12

1 Appellants' Exhibit 19, page A-1-8; Appellants' Exhibit 60; Appellants' Exhibit 6; Appellants'
2 Exhibit 11; Appellants' Exhibit 17; Appellants' Exhibit 27; Appellants' Exhibit 42.

3 **V. LAW AND ARGUMENT**

4 **A. THE STANDARD OF REVIEW ON APPEAL IS FAIRNESS**

5 The Hearing Examiner's authority on appeal of the imposition of GMA impact fees is
6 very broad. The Hearing Examiner is authorized to modify the City's action based on principles
7 of fairness.

8 RCW 82.02.070. Impact fees—Retained in special accounts—
9 Limitations on use—Administrative appeals.

10

11 (5) Each county, city, or town that imposes impact fees shall
12 provide for an administrative appeals process for the appeal of an
13 impact fee; the process may follow the appeal process for the
14 underlying development approval or the county, city, or town may
15 establish a separate appeals process. The impact fee may be
16 modified upon a determination that it is proper to do so based on
17 principles of fairness. The county, city, or town may provide for
18 the resolution of disputes regarding impact fees by arbitration.
19 [Emphasis added].

20 RCW 82.02.060. Impact fees—Local ordinances—Required
21 provisions.

22 The local ordinance by which impact fees are imposed:

23

24 (5) Shall allow the county, city, or town imposing the impact fees
25 to adjust the standard impact fee at the time the fee is imposed to
26 consider unusual circumstances in specific cases to ensure that
27 impact fees are imposed fairly.

These standards of fairness dictate approval of this appeal where, as here, the City seeks
to impose duplicative fees for the same impacts.

1 **B. When Mitigation of a Development Impact Has Been Imposed Under SEPA,
2 State Law Prohibits Cities From Imposing an Impact Fee to Address that
3 Same Impact.**

4 **1. Redmond GMA impact fees must be consistent with state law.**

5 The State of Washington has preempted the authority of cities to impose fees or charges
6 on development of land or buildings. RCW 82.02.020. This “preemption statute” provides:

7 RCW 82.02.020. State preempts certain tax fields—Fees
8 prohibited for the development of land or buildings—Voluntary
9 payments by developers authorized—Limitations—Exceptions.

10 Except as provided in RCW ...82.02.050 through 82.02.090, no
11 county, city, town, or other municipal corporation shall impose any
12 tax, fee, or charge, either direct or indirect, on the construction or
13 reconstruction of residential buildings, commercial buildings,
14 industrial buildings, or on any other building or building space or
15 appurtenance thereto, or on the development, subdivision,
16 classification, or reclassification of land.

17 In *Isla Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 755 (2002), the
18 Washington Supreme Court ruled that RCW 82.02.020 must be strictly construed and that, to be
19 valid, an impact fee must comply with an exception in the statute:

20 RCW 82.02.020 requires strict compliance with its terms. *Trimen*
21 *Dev. Co. v. King County*, 124 Wn.2d 261, 270, 877 P.2d 187
22 (1994); *R/L Assocs., Inc. v. City of Seattle*, 113 Wn.2d 402, 409,
23 780 P.2d 838 (1989). A tax, fee, or charge, either direct or
24 indirect, imposed on development is invalid unless it falls within
25 one of the exceptions specified in the statute. *Henderson Homes,*
26 *Inc. v. City of Bothell*, 124 Wn.2d 240, 247, 877 P.2d 176 (1994)
27 (citing *R/L Assocs.*, 113 Wn.2d at 409, 780 P.2d 838).

 In this case, the City is relying on an exception in RCW 82.02 which authorizes cities
subject to the Growth Management Act (“GMA”) to impose impact fees on development to
finance public facilities. See RCW 82.02.050-.090. However, such authority is subject to
certain limitations and requirements in RCW 82.02 that cities must comply with, including
provisions that prohibit imposition of duplicative impact fees that address the same impacts.
See, e.g., RCW 82.02.100(1). In this case, the City’s imposition of duplicative fees for the same
impacts in this case are inconsistent with this statute, including limitations therein on imposition
of fees that are not proportional to the impact of the development.

1 **2. When it authorized GMA Impact Fees, the State Legislature stated its**
2 **intent to preclude duplicative mitigation for the same impact.**

3 When the Legislature authorized local governments subject to the Growth Management
4 Act to collect impact fees (GMA Impact Fees) it expressly stated its intent that development
5 projects not be subjected to duplicative mitigation for the same impact:

6 RCW 82.02.050. Impact fees—Intent—Limitations.

7 (1) It is the intent of the legislature:

8 (a) To ensure that adequate facilities are available to serve new
9 growth and development;

10 (b) To promote orderly growth and development by establishing
11 standards by which counties, cities, and towns may require, by
12 ordinance, that new growth and development pay a proportionate
13 share of the cost of new facilities needed to serve new growth and
14 development; and

15 (c) To ensure that impact fees are imposed through established
16 procedures and criteria so that specific developments do not pay
17 arbitrary fees or duplicative fees for the same impact. [Emphasis
18 added].

19 In this case, the City of Redmond evaluated the impacts of full development of Redmond
20 Town Center under SEPA and required mitigation of impacts of development on public
21 transportation facilities and public park, recreation and open space facilities. Redmond Town
22 Center Apartments will be constructed on an undeveloped parcel of land within Redmond Town
23 Center. The impacts of Redmond Town Center Apartments on public transportation facilities
24 and park and recreation facilities were included when Redmond imposed mitigation for the full
25 build-out of the Redmond Town Center property. The City is precluded from double dipping by
26 now imposing transportation impact fees and park impact fees in addition to the SEPA
27 mitigation. This violates both the express intent and substantive provisions of RCW 82.02.

3 **3. The Legislature expressly prohibited duplicative mitigation for the**
4 **same impact through legislation codified in RCW 82.02.100 and RCW**
5 **43.21C.065.**

6 In 1992, by unanimous vote of the House of Representatives and the Senate, the
7 Legislature prohibited what is commonly referred to as “double dipping” by enacting ESHB

1 2842. Appellants' Exhibit No. 54. This legislation added fundamental restrictions on the
2 authority of cities to impose impact fees:

3 RCW 82.02.100(1). A person required to pay a fee pursuant to
4 RCW 43.21C.060 [SEPA authority to condition or deny approvals]
5 for system improvements shall not be required to pay an impact fee
6 under RCW 82.02.050 through 82.02.090 [GMA Impact Fees] for
7 those same system improvements.

8 (Language in brackets added).

9 RCW 43.21C.065. A person required to pay an impact fee for
10 system improvements pursuant to RCW 82.02.050 through
11 82.02.090 shall not be required to pay a fee pursuant to RCW
12 43.21C.060 for those same system improvements.

13 These absolute legislative prohibitions are specifically addressed to mitigation of impacts
14 under SEPA. They prohibit duplicate mitigation of impacts by imposition of impact fees. A
15 local jurisdiction may mitigate an impact on public facilities under SEPA, or through imposition
16 of GMA Impact Fees, but it is unlawful for it to do both.

17 SEPA requires that governmental actions such as approval of private development
18 projects be considered in light of the impacts of the project on the environment and SEPA
19 authorizes governments to impose conditions on development approvals to mitigate development
20 impacts on the environment. "Environment" as defined by SEPA includes both the natural and
21 built environment, including "Transportation systems" (WAC 197-11-444(2) (c) (i)) and "Parks
22 or other recreational facilities" (WAC 197-11-444 (2) (d) (iv)). Redmond mitigated the impacts
23 of full build-out of Redmond Town Center on public transportation systems and parks and other
24 recreation facilities as authorized by SEPA. By requiring that an impact fee be paid to pay for
25 transportation systems and parks, recreation and open space, the City clearly has violated the
26 Legislature's intent that impact fees not be charged for the same impacts that have been fully
27 mitigated through SEPA.

As applied to the facts of this case, RCW 82.02.100 prohibits Redmond from requiring
payment of a transportation impact fee or a park impact fee as a condition of issuing a building
permit for the Redmond Town Center Apartments Project because the impacts of development of

1 Redmond Town Center on City transportation facilities and on park facilities have already been
2 mitigated through SEPA.

3 **a. As used in RCW 82.02.100, the term “required to pay a fee”**
4 **includes required non-cash mitigation such as dedications of**
5 **land and construction of improvements.**

6 The prohibition in RCW 82.02.100 on duplicative payment of fees includes non-cash
7 mitigation. In this regard, there is no legal basis to distinguish between SEPA mitigation
8 imposed by Redmond in the form of requirements to pay fees and SEPA mitigation imposed in
9 the form of requirements to dedicate land and construct public improvements. All such
10 mitigation, when imposed for the purpose of mitigating impacts on public facilities for which
11 impact fees are imposed, triggers the prohibition on double dipping imposed by RCW 82.02.100.
12 The prohibition on double dipping imposed by RCW 82.02.100 applies in this case to preclude
13 transportation impact fees and park impact fees.

14 Through exercise of SEPA authority, the City mitigated impacts of development of
15 Redmond Town Center on transportation facilities by requiring payment of cash “pro-rata share”
16 transportation fees, as well as by requiring expenditures of money to construct public
17 improvements and to set aside private property for public use for transportation rights-of-way.
18 Appellants’ Exhibit 28. The City’s park impact mitigation consisted of requirements to devote 56
19 acres of land to open space, including 44 acres private land that was required to be dedicated for
20 use by the Public. Park mitigation also included requirements to design and construct public
21 trails and related facilities. Appellants’ Exhibit 6. Both the transportation impact mitigation and
22 the park impact mitigation are governed by RCW 82.02.100 because requirements to mitigate
23 impacts of development by dedicating land and constructing public improvements as a condition
24 of development approval are logically and legally the equivalents of requirements to mitigate
25 development impacts by paying cash fees as a condition of development approval. This
26 equivalence is well established in Washington law
27

1 *In Isla Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 755 (2002), the
2 Washington Supreme Court characterized requirements to dedicate land and construct
3 improvements as “in kind” fees:

4 Further, this court has recognized that for purposes of RCW
5 82.02.020 a tax, fee, or charge can be in kind as well as in dollars.
6 *San Telmo Assocs. v. City of Seattle*, 108 Wn.2d 20, 24, 735 P.2d
7 673 (1987) (requirements that owners of low income rental units
8 provide relocation notice and assistance, and replacement of a
9 specified percentage of the low income housing with other suitable
10 housing or contributing to the low income housing replacement
11 fund in lieu thereof, when residential units are demolished or
12 redeveloped to other use violated RCW 82.02.020 as indirect
13 charge on development).

14 The open space condition here is comparable to conditions in a
15 number of cases analyzed under RCW 82.02.020. *E.g., Vintage*
16 *Constr. Co. v. City of Bothell*, 135 Wn.2d 833, 959 P.2d 1090
17 (1998) (RCW 82.02.020 applicable where ordinance required
18 dedication of five percent of land for parks or payment of \$400 per
19 lot in lieu thereof; developer entered a “voluntary agreement” to
20 pay in lieu fees) (adopting opinion of the Court of Appeals in
21 *Vintage Constr. Co. v. City of Bothell*, 83 Wash.App. 605, 922
22 P.2d 828 (1996)); *Trimen*, 124 Wn.2d 261, 877 P.2d 187 (RCW
23 82.02.020 applicable where ordinance required dedication of land
24 for open space or payment of fee in lieu thereof; developer paid in
25 lieu fees under voluntary agreement); *Henderson Homes*, 124
26 Wn.2d 240, 877 P.2d 176 (RCW 82.02.020 applicable where
27 condition required payment of \$400 per lot park mitigation fee);
United Dev. Corp. v. City of Mill Creek, 106 Wn.App. 681, 698-
99, 26 P.3d 943 (RCW 82.02.020 applicable where condition
required frontage improvements for drainage along adjacent
boulevard) review denied, 145 Wn.2d 1002, 35 P.3d 380 (2001);
Castle Homes & Dev., Inc. v. City of Brier, 76 Wn.App. 95, 882
P.2d 1172 (1994) (RCW 82.02.020 applicable where voluntary
agreement required payment of \$3,000 per lot or provision of
offsite traffic improvements); *View Ridge Park Assocs. v. City of*
Mountlake Terrace, 67 Wn.App. 588, 839 P.2d 343 (1992) (RCW
82.02.020 applicable where ordinance required developers to
construct onsite recreational facilities or pay a fee in lieu thereof).
Indeed, the Camas ordinance authorizing the set aside condition is
quite similar to the ordinance at issue in *Trimen*, which required a
dedication or reservation of open space, or a fee in lieu thereof.

24 Consequently, the Court in *Isla Verde* held that a condition of development approval that
25 required that portions of the development site be set aside as open space violated RCW
26 82.02.020:

1 We conclude that the open space set aside condition is an in kind
2 indirect “tax, fee, or charge” on new development.

3 Similarly, the U.S. Supreme Court recognized the equivalence of conditions imposed on
4 real property development approvals that require conveyances of land and those that require
5 payment of money in *Koontz v. St. Johns River Water Management District*, 570 U.S. ____; 133
6 S. Ct. 2586 (2013). The Court held that, like conditions that require conveyance of an interest in
7 real property, monetary exactions imposed as conditions of development approval must also
8 satisfy the nexus and rough proportionality requirements established by the Court’s holdings in
9 *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512
10 U.S. 374 (1994).

11 For purposes of application of the prohibition in RCW 82.02.100 on duplication of
12 payment of fees to mitigate the same impact, there is no distinction under this statute between
13 payment of fees, dedication of land, or construction of improvements to mitigate the impact. All
14 are considered fees for purposes of RCW 82.02.100. GMA impact fees may not be imposed to
15 mitigate the same impacts that were mitigated by these requirements.

16 **b. The term “same system improvements” as used in RCW**
17 **82.02.100 refers to the same type of public facilities for which**
18 **impact fees may be imposed—streets or parks or schools or**
19 **fire protection.**

20 RCW 82.02.090 defines the terms “public facilities” and “system improvements” as
21 follows:

22 (7) "Public facilities" means the following capital facilities owned
23 or operated by government entities: (a) Public streets and roads; (b)
24 publicly owned parks, open space, and recreation facilities; (c)
25 school facilities; and (d) fire protection “

26 (9) "System improvements" mean public facilities that are included
27 in the capital facilities plan and are designed to provide service to
service areas within the community at large, in contrast to project
improvements.

“System improvements” as used in RCW 82.02.100 thus refers to a subset of all public
facilities. The further qualification of system improvements made by using the word “same” in
the term “same system improvements” narrows the reference further by restricting the scope of

1 the prohibition on double dipping according to the type of public facility for which impact fees
2 are imposed. If a city has required that the impact upon a particular type of public facility be
3 mitigated under SEPA, the city is prohibited from imposing an impact fee to fund improvements
4 to the same type of public facilities. SEPA mitigation for (1) streets and roads; (2) parks, open
5 space and recreation facilities, (3) school facilities and (4) fire protection facilities precludes
6 assessment of an impact fee for the same category of public improvements. For example, the
7 requirement under SEPA to provide mitigation of an impact on streets and roads precludes
8 imposition of impact fees to fund the “same system improvements”—i.e. street and road
9 facilities—but does not preclude imposition of an impact fee to fund school or fire facilities.

10 Such an interpretation is also consistent with the intent and limitations on the City’s
11 imposition of impacts fees under RCW 82.02.050(1)(c), which provides that the “intent of the
12 Legislature is to ensure the impact fees are imposed through established procedures and criteria
13 so that specific developments do not pay arbitrary or duplicative fees for the same impacts.”
14 (emphasis added). It’s the duplication of the amounts paid for the same impacts to system
15 improvements as a whole that is prohibited, not the impacts to any one capital facility. *See, City*
16 *of Olympia v. Drebeck*, 156 Wn.2d 289, 296 (2006) (“the legislature authorized local
17 governments to calculate the fees by tying the particular development to the service area’s
18 improvements as a whole, not to particular system improvements within the service area.”).

19 This does not mean, nor are we arguing, that the exemption should apply to new or
20 additional impacts of a development. In this case, however, there are no new or additional
21 impacts to transportation or parks and open space that were not adequately addressed and
22 mitigated under SEPA. Thus, in this case, the impact fees violate RCW 82.02.100 because they
23 require Appellant to make duplicate payments for the same impacts.

1 The exemption from impact fees set out in CDG 20C.110.050 A. (5) closely tracks the
2 facts of this case. The term “development activity” is defined by RCW 82.02.090 to mean:

3 (1) "Development activity" means any construction or expansion
4 of a building, structure, or use, any change in use of a building or
5 structure, or any changes in the use of land, that creates additional
6 demand and need for public facilities. "Development activity" does
7 not include buildings or structures constructed by a regional transit
8 authority.

9 By adopting Ordinance 1913, Redmond complied with RCW 82.02.100 as applied to the
10 facts of this case because the effect of the code was to exempt all phases of Redmond Town
11 Center development from transportation and park impact fees—fees that would be duplicative of
12 the SEPA mitigation that was imposed on approval of the full build-out of Redmond Town
13 Center pursuant to the Master Plan. The effect of the exemption contained in CDG
14 20C.110.050 A. (5) can be understood in the context of the proposed Redmond Town Center
15 Apartments project: Appellant RTC 74th Street Property LLC submitted its application to
16 develop Revised Parcel 5-B within Redmond Town Center. That application sought approval
17 from the City for a “development activity”—construction of a building— on property that is
18 “part of a development activity which mitigated its impacts on the same system improvements
19 under the State Environmental Policy Act (SEPA)”—the Redmond Town Center Master Planned
20 Development.

21 SEPA provides that, whenever possible, mitigation should be provided before the impact
22 to which it is directed occurs. This is the mitigation sequence that Redmond followed when it
23 required that the impacts of its approvals of the full development of Redmond Town Center be
24 mitigated prior to occupancy of the first phase of Redmond Town Center Development. CDG
25 20C.110.050 (a) (5) as adopted by Ordinance 1913 complied with RCW 82.02.100, and as
26 applied to Redmond Town Center and the Redmond Town Center Apartments project, also
27 complied with RCW 82.02.100 by exempting phases of development of Redmond Town Center
such as the Redmond Town Center Apartments from transportation impact fees and parks,
recreation and open space impact fees because impacts on these facilities had been mitigated

1 prior to occurrence of the impacts that would come with each of the eventual phases of
2 development of the Redmond Town Center property.

3 “Same system improvements” as used in RCW 82.02.100 does not refer to the same
4 specific public facilities—impact fees are imposed to fund the cumulative costs of a slate of
5 public improvements that changes over time. This is reflected in the language of
6 CDG.20C.110.050(5), which provides that “[t]o be exempt for a fee from any of the system
7 types, a development activity shall have mitigated its system improvement impacts for that
8 system type.”

9 This is precisely what has occurred here: all impacts to the transportation system and
10 public open space were fully mitigated under SEPA. In fact, no one has suggested otherwise, or
11 even that the impacts from the Redmond Town Center Apartment Project are not the same or
12 have increased. Thus, as required by RCW 82.02.100, the City cannot required payment of
13 additional fees for the same system improvements—i.e., for the same impacts that were
14 mitigated under authority of SEPA.

15 SEPA authorizes governments to impose conditions on development approvals to
16 mitigate development impacts on the environment. “Environment” as defined by SEPA includes
17 both the natural and built environment, including “Transportation systems” (WAC 197-11-
18 444(2) (c) (i)) and “Parks or other recreational facilities” (WAC 197-11-444 (2) (d) (iv)).
19 Redmond mitigated the impacts of full build-out of Redmond Town Center on public
20 transportation systems and parks and other recreation facilities as authorized by SEPA. By
21 requiring that an impact fee be paid to pay for transportation systems and parks, recreation and
22 open space, the City clearly has violated the Legislature’s intent that impact fees not be charged
23 for the same impacts that have been fully mitigated through SEPA and the express prohibition of
24 such duplicative mitigation in RCW 82.02.100.

1 **C. Redmond’s Current Impact Fee Regulations Exempt Development from**
2 **Impact Fees When SEPA Mitigation Has Been Imposed to Mitigate Impacts**
3 **on that Same Facility Type.**

4 **1. RMC 3.10.060 conforms with RCW 82.02.100 by providing an**
5 **exemption from impact fees.**

6 CDG 20C.110.050 (A) (5) remained in effect until the City reorganized and revised the
7 Community Development Guide in April 2011. As part of that code revision process, the City
8 recodified its impact fee provisions as RMC Chapter 3.10. Ordinance 2587. RMC 3.10.060 (6)
9 is the exemption section that corresponds to the prior CDG exemption section, CDG
10 20C.110.050 (A) (5). . The new exemption section ,which remains in effect today, reads:

11 **3.10.060 Exemptions from the requirement to pay impact fees.**

12 (A) The following development activities are exempt from the
13 requirement to pay some or all of the fire, park, school, and
14 transportation impact fees required by this chapter:

15

16 (6) Where a fee has previously been paid for the development
17 activity under the State Environmental Policy Act (SEPA) for all
18 of the system improvements for which impact fees are imposed by
19 this chapter, the development activity shall be exempt from the
20 payment of all impact fees pursuant to RCW 82.02.100. Where a
21 fee previously paid for the development activity under SEPA does
22 not cover all system improvements for which an impact fee is
23 imposed under this chapter, an impact fee credit shall be given to
24 ensure that the City is not collecting both SEPA and impact fees
25 for the same system improvements.

26 The intent of this current code language is the same as the precursor CDG provision.
27 When a fee has been imposed under SEPA to mitigate impacts on one or more of the system
improvement types, but not all, then the City is required to take action “to ensure that the City is
not collecting both SEPA and impact fees for the same system improvements.” The action in
this case is specified as giving of an “impact fee credit”. To be consistent with the required
result, “impact fee credit” must be interpreted to mean a credit in the amount of the impact fee or
fees that would have been imposed but for the prior SEPA mitigation. This meaning is consistent
RCW 82.02.100, and renders the Code provision valid.

1 The language of the new Code exemption provision is similar to the prior CDG
2 exemption language. RMC 3.10.060 continues to be titled: “Exemptions from the requirements
3 to pay impact fees”. Like its counterpart in the prior CDG, the recodified regulation continues to
4 exempt development activities from “some or all” of the impact fees required by “this chapter”.
5 The new code section continues to implement the requirements of RCW 82.02.100 by
6 prohibiting the city from “collecting both SEPA fees and impact fees for the same system
7 improvements”. RMC 3.10.060) (A)(6). The intent of this modified code provision is to
8 continue to provide for a “partial exemption”-- i.e., to exempt a development that has mitigated
9 its impacts on one or more types of system improvements subject to impact fees, but not all,
10 from being charged an impact fee to fund the same types of system improvements for which the
11 SEPA mitigation was required. This result is achieved by the straightforward method of
12 crediting the amount of the impact fee or fees which the City is prohibited from charging when a
13 determination of the amount of impact fees owing as a condition of issuance of a building permit
14 for the development is made.

15 If not read in context, it could be assumed that “impact fee credit” refers to credits as
16 provided for in RMC 3.10.130. However, this reading would not ensure that the exemption from
17 impact fees mandated by RCW 82.02.100 and the required result specified in the Code—
18 ensuring “that the City is not collecting both SEPA and impact fees for the same system
19 improvements”—would be achieved. And more fundamentally, this reading would not ensure
20 that the exemption from impact fees mandated by RCW 82.02.100 and the required result
21 specified in the Code-- ensuring “that the City is not collecting both SEPA and impact fees for
22 the same system improvements”--would be achieved. For example, if the cost of a SEPA pro
23 rata fee for transportation improvements, or a requirement to actually construct the transportation
24 improvements, required a developer to pay a smaller dollar cost than the GMA transportation
25 impact fee calculated pursuant to RMC 3.10, a credit in the amount of the cost of the mitigation
26 pursuant to RMC 3.10.130 would reduce the amount of the impact fee, but would leave the
27 excess amount of the impact fee remaining due. RCW 82.02.100 prohibits this as does RMC

1 3.10.060(A)(6) because the express mandate of both the State statute and the Code language is
2 that the City is not permitted to collect SEPA fees and impact fees for the same system
3 improvement. A reduced fee is not consistent with a prohibition on imposing any fee and to
4 interpret “impact fee credit” this way would be incorrect because the interpretation would
5 conflict with the objective of the Code section and it would render the Code invalid because it
6 would be inconsistent with State law.

7 RMC 3.10.050(A) (5) can be given a reasonable interpretation such that it complies with
8 RCW 82.02.100. When interpreted properly, Redmond’s current impact fee regulations continue
9 to comply with RCW 82.02.100 by continuing to prohibit double dipping. RMC 3.10.060 (A)(6)
10 continues to exempt Redmond Town Center Apartments from payment of transportation and
11 park impact fees as applied to the facts of this case.

12 **2. Redmond has exempted prior phases of Redmond Town Center from**
13 **transportation and park impact fees.**

14 Again, in 2002 the City issued a SEPA DNS and Notice of Adoption of SEPA documents
15 in connection with approvals for construction of a 110,000 square foot two-story department
16 store initially occupied by the Bon Marche, and currently by Macy’s. Appellants’ Exhibit 40.
17 The store is located in Redmond Town Center, immediately adjacent on the west to the Redmond
18 Town Center Apartments development site. The City recognized that the Bon Marche building
19 project was exempt from paying transportation and park impact fees. A note provided by the
20 City of Redmond Public Records Clerk from Jim Roberts, Assistant Director of Planning and
21 Community Development, to Carol “Anderson” [Carol Osborne, former Director of Public
22 Works?] in an email dated September 23, 2002 confirmed that “Because of traffic system
23 improvements previously made by Town Center, transportation impact fees will not be required
24 for the Bon Marche building permit. Also, because of the valuation of the open space dedication
25 at Town Center, Pak impact fees will not be required. Fire impact Fees are required for this
26 project”. Appellants’ Exhibit 55. The City of Redmond Impact Fee Calculation Form prepared
27

1 in connection with issuance of building permit number B020301 for the Bon Marche project
2 shows no fees were charged for transportation or park impact fees. Appellants' Exhibit 56.

3 On April 3, 1998, the City recognized that a subsequent phase of development of
4 Redmond Town Center was exempt from the requirement to pay a transportation impact fee or a
5 park impact fee when it issued a building permit for a construction of a two-story, 34,900 square
6 foot retail building to be occupied by REI. Appellants' Exhibit 57. The building permit includes
7 an itemized list of charges, but shown no fee was imposed for "TRANSPORTATION IMPACT
8 FEES" or "PARK IMPACT FEES".

9 As it did with these prior phases of development, the City should exempt payment of
10 impact fees for the Redmond Town Center Apartments Project since, like these prior phases of
11 development, the impacts to the transportation system and parks, trails and open space facilities
12 were fully mitigated under SEPA and thus RMC 3.10.060(A)(6) and RCW 82.02.100 apply to
13 prohibit payment of impact fees for these same impacts.

14 **3. Redmond's interpretation of system improvements conflicts with**
15 **RCW 82.02.100 by allowing impact fees to be charged for the same**
16 **impact that has been mitigated under SEPA.**

17 In the context of communicating why the City decided that transportation impact fee
18 credits do not apply in the case of the Redmond Town Center Apartments Project, Redmond City
19 Attorney Jim Haney explained how the City interprets the term "system improvements" as used
20 in the impact fee statutes and Redmond's impact fee code provisions:

21 [o]nly "system improvements" qualify for impact fee credits under
22 RCW 82.02.060 and RMC 3.10.130 and the improvements
23 constructed by Town Center do not qualify as system
24 improvements because they are not included in the City's capital
25 facilities plan at the time the impact fees are being imposed today
26 and have not been included in the City's capital facilities plan
27 since they were completed many years ago.

24 Letter from James E. Haney to Larry Martin, Attachment C to Application for Appeal. Mr.
25 Haney did not address RCW 82.02.100, but this interpretation of "system improvement" would
26 necessarily come into play in applying this statute as well. As applied to the facts of this case,
27 this interpretation conflicts with RCW 82.02.100 and 82.02.050. Defining system improvements

1 this way results in arbitrary and duplicative impact fees. This definition would always deny
2 credit to long-term, phased developments where a requirement to construct or pay the complete
3 cost of public improvements is imposed under SEPA at the outset of the development. These
4 facilities would drop off the capital facilities plan upon completion, and thereafter not be the
5 basis for exemption from duplicative impact fees. The correct interpretation is that to qualify as
6 system improvements, public facilities must be identified on the capital facility plan that is in
7 place as of the time the facilities are required and funded or constructed.

8 Impact fees are authorized to fund needed new facilities. RCW 82.02.050. When a
9 public facility listed on a capital facility plan has been constructed, it ceases to be a needed new
10 facility. As noted by Mr. Haney, when constructed, the facilities will be eliminated from the
11 City's list of needed new capital facilities. This deletion from the list will occur on whatever
12 date the City happens to update its capital facility plan. According to the City's interpretation, at
13 the point in time the completed facility is deleted from the capital facility plan, the public
14 facilities for which the prior SEPA mitigation was imposed will no longer be classified as system
15 improvements.

16 This amounts to a retroactive recharacterization of the SEPA mitigation. Per the City's
17 interpretation, the costs incurred by the property owner for the improvements would no longer be
18 relevant to determining the City's authority to again require mitigation in the form of impact fees
19 to address the same impact of the development upon the same types of public facilities for which
20 the mitigation was imposed. This results in arbitrary impact fees based on the random point in
21 time that a facility is removed from the capital facilities plan. It results in duplicative impact fees
22 charged for the same impact for which SEPA mitigation has previously been required and paid to
23 fully mitigate the impacts to the transportation system. These results violate the express intent of
24 the Legislature in authorizing GMA impact fees as a limited exception to its preemption in RCW
25 82.02.020 of local governmental authority to impose charges on development of land and
26 buildings.

1 **4. When the term “system improvements” is correctly defined, RCW**
2 **82.02.100 and RMC 3.10.060(A)(6) guarantee that a phased, master**
3 **planned development such as the Redmond Town Center will not be**
4 **subjected to arbitrary or duplicative impact fees.**

5 The Redmond Town Center property owner was required to pay SEPA-based
6 transportation fees, dedicate land for right-of-way, and design and construct transportation
7 facilities that were then listed on Redmond’s Transportation Facilities Plan (TFP) when the
8 Master Plan was approved and when the mitigation was provided. The TIP is the component of
9 Redmond’s capital facilities plan in which the City identifies needed new transportation facilities
10 that were subject to its pre-GMA pro rata share impact fee as described above in Section IV D.
11 Exhibit 12.

12 Pursuant to SEPA, the Redmond Town Center Property owner was also required to
13 dedicate 44 acres of its land to public open space. That land was then identified on the Redmond
14 Capital Facility element of its Parks Recreation and Open Space Plan as “Town Center Open
15 Space”. (Technical Committee Report to Planning Commission) at page 10 and Exhibit F to the
16 report: Appellants’ Exhibit 6. This capital facilities plan is the component of Redmond’s capital
17 facilities plan in which the City then identified needed new parks, recreation and open space
18 facilities. Appellants’ Exhibit 18. Thus, this land was identified as a system improvement
19 needed to serve future City growth. This SEPA mitigation precludes the City from now charging
20 an impact fee to fund park, recreation and open space facilities because it results in SEPA
21 mitigation and GMA impact fees being charged for the same impact—the development impact
22 on public park, recreation and open space facilities. This is prohibited by RCW 82.02.100 and
23 RMC 3.10.060) (A)(6).

24 The transportation facilities and parks, recreation and open space facilities for which
25 SEPA mitigation was imposed were system improvements as defined by RCW 82.02.090(9) at
26 the time the mitigation was imposed by the City:

27 (9) “System improvements” mean public facilities that are included
 in the capital facilities plan and are designed to provide service to
 service areas within the community at large, in contrast to project
 improvements.

1 When that mitigation was imposed, RCW 43.21C.060 precluded the City from
2 subsequently imposing a GMA impact fee to fund the same types of system improvements:

3 RCW 82.02.100(1) A person required to pay a fee pursuant to
4 RCW 43.21C.060 for system improvements shall not be required
5 to pay an impact fee under RCW 82.02.050 through 82.02.090 for
6 those same system improvements.

7 The City's interpretation of system improvements would render this a temporary
8 protection from arbitrary and duplicative impact fees because the system improvements would be
9 retroactively transformed into non-system improvements when the City got around to deleting
10 them from its capital facility plans. Such an arbitrary result conflicts with RCW 82.02.100. If
11 applied to its impact fee regulations, this interpretation would invalidate Redmond's impact fee
12 system.

13 **D. To the Extent That the Project Is Not Exempt From Park and
14 Transportation Impact Fees, Credits Must Be Given for the SEPA
15 Mitigation. The Credits Exceed the Amount of the Impact Fees and Thus the
16 Impact Fees May Not Be Imposed**

17 RCW 82.02.060 (4) provides:

18 The local ordinance by which impact fees are imposed:

19

20 (4) Shall provide a credit for the value of any dedication of land
21 for, improvement to, or new construction of any system
22 improvements provided by the developer, to facilities that are
23 identified in the capital facilities plan and that are required by the
24 county, city, or town as a condition of approving the development
25 activity;

26 Redmond's impact fee regulations include provisions for credits for dedications,
27 improvements and new construction required as conditions of development approval in
RMC 3.10.130.

(1) Credit for Conveyance of Land for and/or Construction of
Improvements. Whenever a development approval is conditioned
upon a developer's conveyance of land for and/or construction of
specified system improvements, the developer shall be entitled to a
credit against the impact fee that would be imposed for the value of
the land or property interest conveyed and/or the actual cost of
construction.

1 This section appears to be intended to implement the requirement of RCW 82.02.060 (4).
2 However, these credit provisions hinge on the definition of “system improvements”. However,
3 as discussed above, Redmond’s interpretation of RCW 82.02.060 and RMC 3.10.130 would
4 render this a temporary protection from arbitrary and duplicative impact fees because the system
5 improvements would be retroactively transformed into non-system improvements when the City
6 deleted them from its Transportation Facility Program. Such an arbitrary result conflicts with
7 RCW 82.02.100. If applied to its impact fee regulations, this interpretation would invalidate
8 Redmond’s impact fee system.

9 To be valid as applied to the facts of his appeal, RCW 82.02.130 would need to provide
10 credit for the cost of system improvements that were required to be funded and constructed, and
11 for the value of land dedicated for system improvements as defined with reference to those
12 public facilities identified on the City’s Transportation Improvement Program and the Capital
13 Facilities element of the Redmond Parks and Recreation Plan when the mitigation was
14 performed. When properly implemented, RCW 82.02.130 requires that credits in reduction of
15 the transportation and park impact fees be provided.

16 As shown by Appellants Exhibit 23, and as will be demonstrated by evidence presented
17 at the hearing, the value of the land that the City required be devoted to public open space as
18 identified on the Capital Facilities element of the City Parks and Recreation Plan, and for
19 transportation improvements identified on the City Transportation Improvement Program, and
20 the cost of the improvements required to be constructed in the public open space and the cost of
21 the required transportation improvements, is far in excess of the amount of the transportation and
22 park impact fees imposed by the City on the Redmond Town Center Apartments Project.

23 **E. Requiring Payment of Duplicative Fees for the Same Impacts Constitutes a**
24 **Prohibited Tax, Fee or Charge on Development That Violates RCW**
25 **82.02.020 and Constitutes an Unconstitutional Taking of Property.**

26 In order to avoid the prohibition in RCW 82.02.020 on a city’s imposition of any “tax,
27 fee or charge, either direct or indirect,” on development activities, the impact fees at issue in this
appeal must satisfy one of the statute’s enumerated exceptions. In this case they do not.

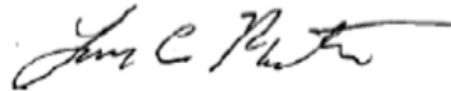
1 Imposing duplicative fees to address the same impacts does not meet any of the statute's
2 exceptions. *See* RCW 82.02.050-.090 and RCW 82.02.100. Nor does it satisfy the
3 proportionality standards of RCW 82.02.020 or the nexus and rough proportionality standards of
4 for unconstitutional takings. *See* RCW 82.02.020 (Any dedication of land or fee in lieu of
5 dedication must be "reasonably necessary as a direct result of the proposed development."); *see,*
6 *also, Koontz v. St. Johns River Water Management District, 570 U.S. 595; 133 S. Ct. 2586*
7 (2013) (monetary exactions imposed as conditions of development approval must also satisfy
8 the nexus and rough proportionality requirements established by the Court's holdings in *Nollan*
9 *v. California Coastal Commission, 483 U.S. 825 (1987)* and *Dolan v. City of Tigard, 512 U.S.*
10 *374 (1994)*). Imposition of the impact fees subject to the appeal violates RCW 82.02.020 and
11 constitutes a taking under the state and federal constitutions.

12 **VI. CONCLUSION**

13 For the reasons set forth herein, and to be established at the hearing, Appellants' appeal
14 should be granted and the City should be required to refund the impacts fees paid for open space
15 and transportation impacts.

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17 DATED this 5th day of February, 2018.

18 Davis Wright Tremaine LLP
19 Attorneys for Appellants

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