

July 2, 2020

Arapahoe County Public Works and Development  
Charles V. Haskins, P.E., CFM  
6924 South lima Street  
Centennial, Colorado 80112

VIA EMAIL

SUBJECT: Comments on Arapahoe County's Proposed Traffic Impact Fee (TIF) Study

**Dear Arapahoe County Staff and Commissioners:**

The American Petroleum Institute - Colorado ("API") appreciates the opportunity to review and comment on Arapahoe County's Proposed Traffic Impact Fee ("TIF"). We appreciate the outreach by the county and its staff, and we look forward to working with the county to ensure the fee is both transparent and conforms with your pro-business mentality.

API is a nationally recognized trade organization that represents all facets of the natural gas and oil industry, including but not limited to natural gas and oil exploration, production, refinement, marketing, transportation, supplying, and end use consumption. API has over 600 members covering the full supply chain of natural gas and oil, ranging from large integrated operators to small independent companies.

We would begin by noting that we acknowledge the county has made adjustments to its initial proposal, and we appreciate the Commissioners intent to ensure the fee imposed is both reasonable and takes into consideration all relevant factors. However, we would like to highlight some of our ongoing concerns that we would like to see addressed prior to the fees implementation.

**A. Application of the TIF**

C.R.S. § 29-20-104.5 provides the statutory basis for the imposition of any impact fee by a local government. The statute states in pertinent part that "Pursuant to the authority granted in section 29-20-104 (1)(g) and as a condition of issuance of a development permit, a local government may impose an impact fee or other similar development charge to fund expenditures by such local government or a fire and emergency services provider that provides fire protection, rescue, and emergency services in the new development on capital facilities needed to serve new development. No impact fee or other similar development charge shall be imposed except pursuant to a schedule that is: Intended to defray the projected impacts on capital facilities caused by proposed development." C.R.S. § 29-20-104.5(1)(c). "A local government shall quantify the reasonable impacts of proposed development on existing capital facilities and establish the impact fee or development charge at a level no greater than necessary to defray such impacts directly related to proposed development. No impact fee or other similar development charge shall be imposed to remedy any deficiency in capital facilities that exists without regard to the proposed development." C.R.S. § 29-20-104.5(2)(a). "Any schedule of impact fees or other similar development charges adopted by a local government pursuant to this section shall include



provisions to ensure that no individual landowner is required to provide any site specific dedication or improvement to meet the same need for capital facilities for which the impact fee or other similar development charge is imposed. C.R.S. § 29-20-104.5(3).

API certainly agrees that the Colorado Statutes allow for the imposition of a TIF. API further agrees that the TIF may be imposed to mitigate the current and ongoing impacts related to oil and gas development. However, we have concerns about the implementation of this fee in conjunction with additional requirements that are going to be imposed on operators.

We would like to initially note that the proposed fee has been termed the “maximum defensible fee.” This is of concern for several reasons. First, as acknowledged by the authors, this fee calculation takes into consideration several assumptions or averages, which may or may not be accurate. As operators submit detailed traffic plans for each proposed development there is verifiable and accurate data that can be used to calculate the impacts from proposed development and the associated costs, as opposed to estimates and averages. With that in mind, we applaud the county and its staff for proposing an option to allow operators to provide independent data that can be reviewed in order to independently calculate a more accurate fee, and we would strongly encourage the county to include language in the proposal that would encourage both operators and staff to make use of that provision.

The second issue we have concern with is the possibility the fee was developed with the possibility of not maintaining the current levels of road maintenance, but rather that the fee may used to instead improve certain capital facilities. Examples would include the creation of new road shoulders or expansion of existing road shoulders to service bicyclists, possible re-pavement of roads, and others. Again, as noted by the applicable statute, the goal of allowing local governments to impose TIF fees it not to improve capital facilities, rather it is to maintain current facilities and defray future costs in order to ensure they remain in the same condition.

Finally, it has come to our attention that the staff intends to impose costs related to specific road damage they can attribute to operators. Our members have always worked in good faith with local governments with respect to specific damage caused by operations. However, our concern is rooted in the specific prohibition on such duplicative costs outlined by C.R.S. § 29-20-104.5(3). The statute is clear, the county may either charge operators for direct costs or impose the relevant TIF fee to defray those costs. We would request the county clarify its policy to ensure it is compliant with both the text and intent of the law.



***B. Taxation***

As the county is aware, operators are required to contribute to the county via local property taxation, known as *ad valorem* taxes. Operators pay ad valorem on both real and personal property. Operators also pays sales tax, and relevant special district taxes. However, the proposed TIF does not seem to account for the taxes that are already paid by the oil and gas industry. As taxpayers, operators would request the county take into consideration that their property taxes, in combination with the proposed TIF and associated intent by the county to assign specific road costs would amount to operators paying three times for the same relevant projects.

***C. Reporting Requirements***

Finally, we would like to note that C.R.S. § 29-20-104.5(5) requires “Any impact fee or other similar development charge shall be collected and accounted for in accordance with part 8 of article 1 of this title.” This requirement means all funds must “clearly identifi[y] the category, account, or fund of capital expenditure for which such charge was imposed. Each such category, account, or fund shall be accounted for separately.” C.R.S. § 29-1-803(1).

Once again, API appreciates the opportunity to comment on the proposed TIF Fee. As we noted, we appreciate the county’s outreach with respect to the development of this fee. However, as we have noted in our comments, we have concerns with this proposal moving forward in its current form.

Thank you for your time and we are looking forward to continuing the stakeholder process. If you have any questions, please do not hesitate to contact me at (720) 878-7688, or [mcgownec@api.org](mailto:mcgownec@api.org).

Sincerely,

Chris McGowne  
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Colorado Petroleum Council