November 18, 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 Colorado Petroleum Council (CPC) appreciates the opportunity to review and comment on Arapahoe County's Proposed Traffic Impact Fee (TIF) Study. We appreciate your belief that a robust stakeholder process is vitally important to identifying and resolving highly technical and complex issues in cases such as this.

CPC is a division of the American Petroleum Institute (API) and represents all facets of the oil and natural gas industry in Colorado. CPC and its member companies are committed to ensuring a strong, viable oil and natural gas industry capable of meeting the energy needs of Colorado in a safe and environmentally responsible manner. We hope you will view us as a resource as this stakeholder process moves forward.

While we are continuing an in-depth analysis of the study through engagement with our members, this letter outlines our initial concerns that we have identified. We anticipate providing additional comments as this process proceeds forward.

As a general statement, CPC and its members recognize that oil and gas development, where concentrated, has the potential to accelerate the deterioration of existing roadway surfaces due to the increased truck traffic associated with oil and gas development. It is our hope that through this stakeholder process and the outlining of our initial comments we are able to move forward in a direction that is transparent, fair and that adequately answers the question for the county on potential impacts directly related to new oil and gas development.

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 "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: (c) Intended to defray the projected impacts on capital facilities caused by proposed development." Colo. Rev. Stat. Ann. § 29-20-104.5(1)(c) (West). The statute further provides that "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." Colo. Rev. Stat. Ann. § 29-20-104.5(2)(a) (West).

CPC certainly agrees that the Colorado Statutes allow for the imposition of a TIF. CPC further agrees that the TIF may be imposed to mitigate the current and ongoing impacts related to oil and gas development. Thus, the only question CPC poses with respect to the imposition of the fee is the manner in which the fee will be utilized. If the TIF is to be implemented, there needs to be a safeguard or a commitment that the funds will be appropriated and implemented for the timely maintenance or improvement of the specific roads that are subject to increased truck traffic as a result of oil and gas development. There is concern that if the monies collected from the TIF are funneled into a general transportation fund, there will be no obligation that those monies will be used to maintain or improve roads that have been adversely impacted by increased oil and gas-related truck traffic. For example, the Arapahoe County staff report dated September 26, 2016, indicated that the proposed oil and gas transportation fee could be used to fund "roadway improvements" due to the new growth projected in the County. The study further looked to evaluate road shoulder sufficiency. While perhaps laudable goals, CPC feels that the current study as proposed will place the burden of proposed road improvements, as opposed to only road maintenance, on a single industry without adequate consideration of other relevant factors.

Thus, CPC certainly appreciates the need for the County to commission a study to quantify the impacts of the industry on Arapahoe County roads. However, based on the parameters outlined in the prior staff report dated September 16, 2016 and presented before the board in a study session dated September 28, 2016, in addition to the stakeholder meeting recently held on December 13, 2018, CPC would like to offer the following suggestions and comments regarding the proposed study and its possible outcomes.

a. <u>Assessed Impact of Exploration Phase</u>

CPC would like to start by acknowledging that the drilling and completion phase of oil and gas exploration is certainly an industrial operation. Indeed, we further acknowledge that the initial phases of oil and gas production should certainly be considered when calculating impacts on existing current facilities. However, our concern arises with the possible disparity in the calculation of those impacts and the resulting outcome of the fee as opposed to other industries or development. For example, the DRAFT Transportation Impact Fee Study dated 9/16/16 and disclosed within the packet for the study session dated September 26, 2016 indicates that the impact fee for residential and commercial zones(?) is based upon a fully finished and occupied structure. In other words, some of the most significant impacts for constructing a home or commercial building occur during the construction phase, which is not taken into consideration for those assessed fees.

Further, the proposed TIF study does not appear to account for oil and gas development that occurs simultaneously within the same general vicinity where increased truck traffic would share the same roadways. If a road is in need of repair and two operators are utilizing it at the same time, the road should only need to be repaired once after concentrated development activities are completed; however, if both operators are charged a TIF while development occurs simultaneously, we would like to ask how the full TIF fee will be allocated regarding the multiple operators using the same roads. CPC believes that imposing multiple fees to cover the costs to repair one set of roads when one TIF is sufficient would lead to duplicative taxation. This creates the notion of double dipping and raises red flags for CPC. In addition, what if there is a large residential project or aggregate operations occurring simultaneously as oil and gas development?

Finally, as noted in the presentation given during the December 13th stakeholder meeting, it was indicated that a "specialized truck" had approximately 15,000-46,000 times the impact of a regular car. CPC would respectfully request clarification of that number, and its utilization within the study. For example, if that number refers to a drilling rig during the initial phases of development, that particular impact is limited to only one round trip, not an aggregate of several trips.

Further, CPC is concerned about the use of an overly conservative assumption for the Resilient Modulus value (3,500 psi) in the proposed equations to evaluate the required overlay thickness in the Asphalt Overlay method. While CPC generally agrees that his methodology may be a fair and proportional way of evaluating the anticipated impact of industry traffic, CPC would argue that the 3,500-psi assumption is indeed much too conservative to accurately calculate the industry's impact. By way of example, a recent project in Arapahoe County illustrated that a value from approximately 7,500 to 16,000 psi would be a more appropriate and accurate M_R value. CPC would suggest that at a minimum the County utilize a 10,000-psi number, which would represent both a more accurate assessment value as well as a compromise position for all parties involved.

b. Use of Existing County Approved Traffic Studies

As required under the Arapahoe County Code Sec. 12-1905.05.04, each applicant must submit a Truck Traffic Report, which is required to be prepared in accordance with the latest version of the Arapahoe County Infrastructure Design and Construction Standards for Traffic Impact Studies. Thus, as a requirement of each permit submittal, operators are required to submit data that is extremely relevant to the proposed study and should be utilized by the study's authors. This data includes analysis regarding numbers of trips, types of vehicles to be used, and actual roadway distance traveled. These studies have the benefit of providing a more detailed picture of the traffic impacts, as opposed to the use of more generalized numbers that may or may not bear a significant resemblance to the actual number of trips made by operators or the distance and road usage each trip entails. Further, in the instance the study does not take these specific reports into consideration, it is CPC's expectation that these traffic reports either be no longer required as part of the submittal process based on redundancy arguments, or in the alternative be allowed to qualify under the proposal as an independent study which would provide for an independent fee calculation.

c. __Consideration of Current Maintenance__

CPC would respectfully request that the current maintenance practices of operators be considered when conducting the traffic impact study. For example, at least one operator has a policy of addressing road maintenance issues as they are communicated by the County. Further, at least one operator is currently paying a voluntary fee of $7,500 per well, in addition to voluntarily mitigating road impacts as they are discovered during drilling and completion phases. Thus, the current maintenance and fee policies undertaken by the operators should be included within the study with respect to any discussion of the current condition of the roads. These policies are also relevant to the discussion on page 15 of the staff report regarding a "roadway deterioration fee," which was implemented in Boulder and Adams Counties.

d. __Proposed Pipeline Discounting__

CPC respectfully requests a future stakeholder process regarding the proposed discounts in the instance of future pipeline use and installation. The staff report, 2016 study, and December 13th stakeholder meeting all indicated that discounts related to pipeline use and installation would be applied to any proposed TIF. CPC sincerely appreciates the County's consideration of this important aspect of development, as well as your support our industry's innovative approach to development. However, due to the highly complex nature of pipeline development, CPC and its members would like to sincerely request a stakeholder engagement process to further develop any concepts regarding TIF discounting and future pipeline development. As the County is aware, pipeline infrastructure has many detailed aspects, and must be economically feasible and commercially reasonable before it can be implemented. Thus, in order to accurately assess any discount or apply any future predictions, CPC would respectfully encourage the County to engage in further stakeholder discussions.

e. *__Consideration of Existing Taxes Paid by Operators__*

CPC recognizes that the proposed TIF study will provide the basis for estimating the adverse impacts to existing roadways from truck traffic associated with oil and gas development and the costs to mitigate such impacts through the imposition of a per pad and per well fee to generate funds allocated to maintain or improve County roadways impacted by oil and gas-related truck traffic. However, the proposed TIF Study does not seem to account for the taxes and fees that are already paid by the oil and gas industry related to development and production that are or can be appropriated to maintain/improve County roads.

The Colorado Department of Transportation (CDOT) issued a report in November 2015 entitled "Oil and Gas Impacts on Transportation", which was prepared in part by Felsburg Holt and Ullevig and can be found at https://www.codot.gov/programs/research/pdfs/2015-research-reports/oil-and-gas-impacts-on-tranportation/oil-and-gas-impacts-on-transportation. In Section 6 of this CDOT report provides a description of cost-recovery instruments in various oil and gas producing states, including Colorado. However, this analysis focuses only on Severance Tax revenue as a State funding mechanism and fails to identify State Fuel Use Taxes, or County Ad Valorem Taxes that may include special district mill levies established for road and bridge construction and maintenance.

The CDOT Report indicates that the Colorado Department of Local Affairs (DOLA) receives half of collected severance taxes in a given year. DOLA then allocates that money to local governments who have been "socially or economically impacted by the mineral extraction industry." Seventy percent of those dollars "must be used for the planning, construction, and maintenance of public facilities, and for the provision of public services."

In addition to severance taxes, the industry pays ad valorem taxes. These ad valorem taxes are levied by local governments to ensure that revenue stays within the county or city or municipality that the mineral extraction is occurring in. This money can then be appropriated as the local government sees fit. While it has been noted that Arapahoe County has not seen a significant bump in ad valorem taxes from oil and gas development, this is due in part to payment of taxes being two years in the arrears, and partially due to the fact that development has only recently begun to increase, which ultimately will result in higher tax revenue.

Further, CPC believes another source of funding is not identified in the TIF Study or the CDOT Report. Specifically, Fuel Use Tax, established by statute§ 43-4-204 of the CRS, states "All moneys in the highway users tax fund are appropriated for the acquisition of rights-of-way for, and the construction, engineering, safety, reconstruction, improvement, repair, maintenance, and administration of, the state highway system, the county highway systems, the city street systems…"

CPC believes State fuel excise taxes should be considered as a source of funding to construct, maintain or improve roadways in Adams County as some of the revenue generated by the fuel usage tax is distributed to local governments. If oil and gas development results in increased truck traffic, then this increased activity results in increased fuel consumption, which generates increased fuel excise tax revenue. Currently in Colorado, the State excise tax for diesel fuel is $0.21 per gallon. The amount of fuel excise tax is substantial. For example, during the month of January 2017, a total of $9.2 MM in State excise tax was collected from the sale of 41.2 MM gallons of highway diesel fuel.

Finally, CPC would respectfully suggest that the not insignificant increase in sales tax revenues from increased oil and gas development be considered as part of the industry's overall financial contribution to the County; and would note that the industry has voluntarily contributed over $750,000 to Arapahoe County road maintenance to mitigate impacts since 2012. CPC feels it is important to note these financial contributions in order to ensure the study's authors fully analyze all relevant factors when developing their conclusions.

f. Proposed Timeframe

CPC would suggest that the proposed timeframe for the study is inadequate to fully capture the life cycle of an oil and gas well. The presentation at the stakeholder meeting indicated a ten (10) year timeframe would be utilized as the study's lookout period. Most oil and gas wells have a lifespan of between 15 and 30 years, which includes a declining production curve. CPC would suggest that the substantial reduction in traffic during the later years of a well's life cycle be considered. CPC would suggest a minimum outlook period of fifteen (15) years.

B. Double Taxation

Of note, we would like to commend the County on ensuring that the application of the TIF will be limited solely to County roads. We truly appreciate the County's taking into consideration the fact that operators often pay fees in underlying municipal governments. Thus, we want to express our gratitude to the County for both being prudent in their implementation area, as well as their intention to implement safeguards in order to ensure operators are not subjected to the same impact fee in overlapping jurisdictions.

Once again, CPC appreciates the opportunity to comment on the proposed TIF Study, and the willingness of the County to engage in a meaningful stakeholder process. While much of what is outlined above are concerns regarding the proposed study, we would also like the County to understand our desire to provide suggestions on how to move forward. CPC encourages the County to host another stakeholder meeting with operators and their trade associations to further discuss the technical and economic aspects of this study as the basis for establishing a TIF. We would be happy to engage our members and assist in facilitating this conversation.

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.**

Sincerely,

Chris McGowne
Associate Director
Colorado Petroleum Council