

Larimer County, Colorado

DRAFT

**Transportation Capital Expansion
2005 Fee Update**

Policy Framework Memorandum

Prepared by:

Clarion Associates

Denver, Colorado
Fort Collins, Colorado
Chapel Hill, North Carolina

and

Felsburg Holt & Ullevig

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I. INTRODUCTION

A. *Background*

1) **General Background of the Transportation Capital Expansion Fee System**

Larimer County's current transportation impact fee system was adopted in October 1998. It includes (1) a County Transportation Capital Expansion Fee and (2) a Regional Transportation Capital Expansion Fee. The parameters and details of the system were considered and developed by county officials over a two year period, beginning in 1996. The system was developed primarily in response to the rapid rate of growth expected to occur in the county between 1998 and 2018, coupled with the fact that the county's fiscal structure existing at the time would not be adequate to fund the road capital improvements needed to accommodate this expected growth and development if the county's roads were to be maintained. The system was categorized into two components – a County Road program and a Regional Road program – due to the nature of development patterns, political jurisdictions, and travel demand characteristics in the county at the time.

The County Road component established a system for the imposition of transportation fees on new development in the unincorporated county to assist in funding the shortfall of new capital road improvements on county-maintained arterial and collector roads. The traffic analysis used to support the program demonstrated that the demand or need to expand these county roads in the future would come primarily from new growth and development in the unincorporated county.

The Regional Road component recognized that in addition to the demand placed on the County Road System by new growth and development in the unincorporated area, there were five County Road facilities that would be impacted by new growth and development throughout the county – in other words, new growth and development from Fort Collins, Loveland, Berthoud, and the unincorporated county. These "regional" roads included:

- CR 17 between Loveland and Fort Collins and Loveland and Berthoud;
- CR 18 from I-25 to the Weld County line;
- CR 19 between Loveland and Fort Collins;
- CR 32 between I-25 and US 287; and
- CR 38 from I-25 to the Weld County line.

The Regional Road expansion fee was developed to fairly allocate the costs the county would incur to fund the needed capital road improvements on these "regional" roads from the demands placed by new growth and development *throughout the county*. This program was designed for full regional participation between Larimer County, Fort Collins, Loveland and other municipalities within the county. To date, only the county and Fort Collins have participated in the program.

With respect to both programs, the fees are structured to ensure that new development is only asked to contribute its "proportionate share" of the cost the county will incur in providing the needed road capital improvements on the county-maintained arterial and

collector road system and on the regional road system. Neither component included the cost of rights-of-way for necessary expansions of capacity; acquisition or dedication of rights-of-way was handled outside the Capital Expansion Fee system.

2) Collections under the Transportation Capital Expansion Fee Program

Since adoption of the fee system in 1998 and the initiation of fee collections in March 1999 through 2004, Larimer County has collected approximately \$6,793,000 for road capital improvement funding on the County’s Road System and on the regional roads. Over the past several years the county has collected an average of just over \$1 million per year in transportation Capital Expansion Fees. Of this amount, approximately \$930,000 per year is for improvements to the County Road system, and \$100,000 per year in collections is related to the Regional Road System. Table 1 describes these collections in more detail.

TABLE 1: TRANSPORTATION FEES COLLECTED, LARIMER COUNTY, 1998-2004			
YEAR	COUNTY SYSTEM	REGIONAL SYSTEM	TOTAL
1998			
1999	888,967	78,406	697,373
2000	1,507,532	152,883	1,660,415
2001	1,212,718	139,077	1,351,795
2002	988,258	108,578	1,096,836
2003	984,602	112,099	1,096,701
2004 approx	780,000	110,000	890,000

These funds have been used to help construct road capital improvements including, but not limited to, the following:

- CR 23 at CR 12 and CR 14 intersections – turn lanes
- CR 5 – north of CR 32E - pave
- CR 52E – pave
- CR 64 from CR 9 to CR 15 – pave
- CR 21/CR 46E intersection – turn lanes and traffic signal
- CR 7 from CR 36 north ½ mile – pave
- CR 5 from CR 36 to CR 38 – pave

3) Changes since Adoption of Transportation Capital Expansion Fee Program

Since the adoption of the current transportation Capital Expansion Fee program in 1998, at least five changes have occurred that affect the assumptions and calculations underlying that program. Perhaps most importantly, though understandably, the costs to construct roads have increased significantly. As a result, collections under the current program are not adequate to fund capital road improvements even if all other factors remain constant.

Second, Larimer County has continued to grow in population, but the distribution of development in the county caused by these additional residents may not be wholly consistent with the assumptions and distribution of growth used in the transportation analysis conducted in the original support study for the program. This needs to be re-evaluated because it affects travel demand, road capital improvement needs, and potentially the fee amount.

Third, the travel characteristics between Fort Collins, Loveland, Bethoud, and the unincorporated areas of the county have become more complex and interrelated. These travel characteristics need to be re-evaluated to ensure the framework for the Regional Road fee system is still appropriate, and to be consistent with the county's and cities' goals for the effort.

Fourth, the county has had six years of experience administering the current fee program. This experience has informed county officials about refinements to existing practices and clarifications that would make administration clearer, more efficient, and more equitable.

Fifth, in 2001, the Colorado General Assembly enacted Senate Bill 15, which gives Colorado counties explicit authority to collect and administer development impact fees for a wide variety of facilities, including roads. When the county's transportation Capital Expansion Fees were adopted in 1998, there was no express enabling legislation. Senate Bill 15 includes several requirements for counties that choose to exercise these powers, including the following.

- Impact fees must be legislatively adopted and apply to a broad class of properties;
- Impact fees must be directly related to the impacts of the proposed development;
- Impact fees may only be used to fund capital facilities, meaning facilities with a useful life of five years or longer, that are required by local ordinance or policy;
- Impact fees may only be used to fund existing and future capital improvements;
- Developers may not be charged impact fees to fund facilities to which they have already contributed fees through another mechanism (unless a credit is given for any duplicate costs);
- The accounting for impact fees must be the same as for all other development charges (i.e., they must comply with the requirements of C.R.S. 29-1-801 through 804.)¹
- Impact fees may be waived for affordable housing or employee housing developments.
- Any impact fee program that existed prior to Senate Bill 15 can continue in effect so long as its provisions are not contrary to any of the provisions set out in Senate Bill 15. Although it is not completely clear how this provision will be applied to revisions of pre-existing programs, the legal efficacy of the Larimer County update might be improved by checking for compliance with Senate Bill 15.

¹ Since Larimer County is already complying with this provision, there is no need for change as a part of this update.

It is important that the provisions of Senate Bill 15 are reflected in the updated Larimer County transportation impact fee program.

4) Need for Update to the Capital Expansion Fee Program

For all of the reasons set forth above, it is important – and timely – that the existing transportation Capital Expansion Fee program be reviewed, revised, and updated. The update will require a reconsideration of the basic assumptions of the fee system, a re-evaluation of which local governments want or need to participate in the system, an updating of the types of roads covered by the system, a review of the transportation planning standards to be applied, and a recalculation of the fees themselves. While most local governments that adopt impact fee systems intend to conduct periodic updates of the fees, many do not complete those updates, so Larimer County is to be applauded for taking this important step to ensure its fees remain equitable, effective, easy to administer, and legally defensible.

B. Goals for Project

At the outset of this project, it is important to clarify exactly what the county intends to achieve through the update effort. In many cases, legal requirements embodied in statutes or case decisions will govern what must be done, but in many other instances, the local government retains significant flexibility to design an impact fee program that meets its own planning, development, and growth management goals. In this case, both legal considerations and the county's own planning, development, and growth management goals can be considered. The goals of the effort inform the choices and general direction of the program, and ensure the technical work of fee calculation and administration does not lose sight of the "big picture". Based on meetings with Larimer County staff and discussions of the strengths and weaknesses of the existing system, we believe this update process should focus on five goals. This will be confirmed during the workshops and meetings on this Policy Framework Memorandum.

1) Strengthen the Regional Transportation Fee Program

It is increasingly clear that the county's transportation system is integrated with those of the municipalities within its borders. A large share of the trips (in some cases more than half) begin in unincorporated areas and end in cities, or vice versa, or go from one city to another, or from one unincorporated area to another on a route that passes through a city. Although Fort Collins has participated in the current impact fee system, the other Larimer County municipalities have not. One of the goals of the update is to gain full municipal participation in the regional transportation fee program to create a stronger regional system of funding for "regional" roads. This may happen through the use of a Regional Transportation Authority, which is currently under discussion; but in order to cover the possibility that an RTA is not approved, the transportation impact fee update study should continue and expand the Regional Road System in the current regulations. Further, discussions of the new Regional Road System should be as consistent as possible with the networks under discussion for inclusion in the proposed RTA, so as to produce funding options as similar as possible to an RTA approach.

2) Update the Travel Demand Characteristics and Other Data Relevant to the Program

Travel patterns and volumes change over time, particularly as new areas of the county and its municipalities are developed. A second goal is to ensure the traffic data and travel demand characteristics on which the fees are based are as accurate as possible.

3) Improve Upon the Administration of the Program

Once an impact fee program is up and running, staff sometimes discover questions that have not been answered and areas of judgment that need to be clarified. Over time, they also find ways in which administration of the program could be streamlined in order to save time and effort for those who pay the fees, as well as for the staff who administer it. A third goal is to update the administration of the fees to be more efficient and predictable, and to be more equitable, if possible. In order to promote ease of administration, the county staff prefer that the current separation between (a) road improvement construction costs (which are included in the calculation of the impact fees) and (b) right-of-way costs (which are not included) should be continued in the new system.

4) Review Compliance with Senate Bill 15 and Federal Law

A fourth goal is to ensure the fee program complies with Colorado's new legislation, SB 15. In addition, there is a growing body of law – both in Colorado and nationally – outlining what to do (and what not to do) in order to define a fair and defensible impact fee system. We need to ensure Larimer County's transportation impact fee program continues to meet both state and federal law requirements.

5) Make the Impact Fee Program Easier to Understand and Explain

The calculation of proportionate and defensible impact fees is sometimes complex, but the parameters, assumptions, and calculations made to support the program should be explained in a transparent way and should be understandable to staff, review board members, elected officials, and the public. Experience throughout Colorado suggests that political support for infrastructure finance programs depends heavily on whether stakeholders and the public understand how they operate. A fifth goal is to make the underpinnings of the transportation impact fee program more understandable to all concerned stakeholders and the general public.

II. POLICY CONSIDERATIONS FOR UPDATED TRANSPORTATION CAPITAL EXPANSION FEES

All impact fee programs require elected officials to make a wide variety of policy decisions that affect how the program is designed and how the system works. As noted above, both Colorado and federal law allow local governments substantial flexibility to make those policy choices, as long as the result meets some basic tests for fairness and accountability. The purpose of this Policy Framework Memorandum is to highlight some of the important policy choices that need to be made, and the consequences of different choices, early in the update process. By raising and resolving these issues at the start of the update, we should be able to simplify the process

(and the job of actually calculating the fees later), more effectively achieve the county's goals in the refinements made during the update process, and build in appropriate legal and procedural safeguards (where they are necessary).

The remainder of this Section II of the Policy Framework Memorandum outlines the policy issues that need to be considered and decided during this update. The consideration of these policy issues also needs to include a discussion of the consequences (where appropriate) that flow from different choices. After this Memorandum is circulated, the consultant team will meet with Larimer County's appointed and elected officials to review and receive direction on each of these policy issues.

A. Regional Transportation Fee

As is discussed earlier, the county's current transportation impact fee program includes both a Regional Transportation Fee component and a County Transportation Fee component. In general, the Regional Transportation Fee component is designed to provide intergovernmental funding through a regional transportation impact fee for Regional Roads. Regional Roads are roads that are being impacted by new development from the local government jurisdictions participating in the program. This is measured in the existing program by estimating which roads will be receiving a certain level of new travel (trips) from new development in the participating local jurisdictions.

Although fees collected under the Regional component have been relatively small, there appear to be an increasing number of roads impacted by new development from the different jurisdictions throughout the county. For this reason, the county should consider expanding the Regional Road System that makes up the Regional component, both in terms of participation and the number of roads it includes. Three examples illustrate why this is the case.

Example 1: Expansion of Municipal Participation. Fort Collins currently participates in the Regional Road component, but Loveland, Berthoud, and Windsor do not. Analysis of travel characteristics in Larimer County indicates that, due to the location and nature of the development patterns in the county, new development in all the county's municipalities, but in particular new development in Loveland and Fort Collins significantly impact a discrete number of roads. These roads know no political boundaries; some of their segments are in the unincorporated county; other portions are in the municipalities.

Example 2: Expansion of the Regional Road System into Participating Municipalities. In the current system, the Regional Road System used to calculate the Regional transportation expansion fees includes five roads, but the system only includes the portions of those roads in the unincorporated areas. Clearly, many "regional" trips that start on these roads continue on into the municipalities (or start in the municipalities and use these roads to travel outward to unincorporated areas). Expanding the Regional Road System into the participating municipalities allows for a fairer and more realistic assessment of the true costs of the impact new development has on the Regional Road System, and can also assist the municipalities in funding road improvements on these Regional Roads required to serve by new development outside the municipality.

Example 3: Inclusion of State Roads onto Regional Road System. There are a handful of instances in the county where capacity constraints at the interface of State Roads with the Regional Road System create significant traffic congestion on the Regional Road System. Examples of this condition may occur at interchanges between Regional Roads and I-25.

1) Municipal Participation

(a) Municipal Participation is Desirable

The most fundamental policy decision regarding the Regional component is the issue of municipal participation. As noted above, Fort Collins currently participates, but Loveland, Berthoud, and Windsor do not. We suggest if the county wants to develop a truly regional impact fee program for roads, it is important Loveland participate, due to the “regional” travel patterns between Fort Collins, Loveland, and unincorporated county lands.

Today, Loveland represents approximately 20 percent of the county population, and three of the roads on the Regional Road System traverse the city. Felsburg Holt & Ullevig recently completed select link analyses for the roadway links on the Regional Road System using the North Front Range 2030 travel demand model. As shown on Table 2, travel generated by unincorporated Larimer County accounts for only 16% of the total demand on the Regional Road System. Thus, approximately 30% of the traffic on the Regional Road System has a trip end (either an origin or destination) in unincorporated Larimer County. Year 2030 estimates indicate development from within Loveland will generate approximately 22% of the travel on the Regional Road System, and Fort Collins will generate approximately 31%. If the Regional Road System were expanded to include roadway sections within the municipal boundaries, it is likely that a similar select link analysis would result in a significant proportion of the travel demand being generated from outside of the subject municipality.

TABLE 2: DISTRIBUTION OF 2030 FORECASTED TRIP ENDS ON REGIONAL ROAD SYSTEM							
ORIGINS AND DESTINATIONS	CR 17 between Berthoud and Loveland	CR 17 between Loveland and Fort Collins	CR 19 between Loveland and Fort Collins	CR 18 between I-25 and Weld County Line	CR 32 between I-25 and US 287	CR 38 between I-25 and Weld County Line	Total
Unincorporated Larimer County within NFR Model Area	18%	7%	18%	16%	16%	8%	14%
Larimer County West of NFR Model Area	5%	0%	3%	1%	0%	0%	2%
Fort Collins	7%	51%	39%	4%	38%	47%	31%
Loveland	24%	33%	32%	21%	27%	0%	22%
Berthoud	15%	1%	1%	1%	0%	0%	3%
Windsor	0%	1%	0%	2%	8%	12%	4%
Other	30%	6%	7%	54%	11%	33%	24%
Total	100%	100%	100%	100%	100%	100%	100%

If Loveland participates in the county's Regional transportation fee component, the transportation analysis to support the Regional Road System would take into account capacity improvements to the Regional Roads in Loveland, in the unincorporated county, and in other municipalities where there are Regional Roads. Regional Road impact fee monies will be spent on roads within the regional system in need of capacity improvements. What this means is that Regional Roads within Loveland would be receiving monies from the Regional Road component to assist in expansion of Regional Roads within the city, on an as-needed basis. The same would be the case for Regional Roads within the county, Fort Collins, and other participating municipalities.

If Loveland participates in the Regional Road component, its present structure can be maintained, and probably expanded due to a more broad-based travel demand on the road system. Full municipal participation within the county would be ideal since it would allow for the most comprehensive Regional Road System approach.

(b) Adjustments Needed if Municipalities Do Not Participate

Many county impact fee programs (and updates) begin with the intention of including all municipalities in the system – but that is easier said than done. For a variety of reasons, municipalities drop out or are not included in the system. For this reason, it is important to identify how the county should respond if this occurs during the current study.

If Loveland or another municipality does not participate in the Regional Road component, the Regional Road System will need to be structured so that it only includes roads impacted by development within participating local governments. Additionally, Regional Road impact fee revenues will not be spent on roads within Loveland or any other non-participating municipality.

Because almost all of the fee analysis and calculations flow from the definition of the Regional Road and County Road Systems, it is important that the participation of Loveland and the other municipalities be determined as early as possible in this effort. While it is possible to design the systems and make the calculations based on assumptions of which municipalities will participate, a later decision to “opt in” or “opt out” could require a significant portion of the work to be redone – at significant expense.

In order to minimize the costs of re-calculating the impact fees if a municipality drops out late in the study process, staff recommends, and we concur, that the preliminary calculations should include transportation demand from (a) all municipalities with which Larimer County already has an intergovernmental agreement governing proposed growth areas, and for which it has adopted an Overlay Zone reflecting a defined and acknowledged growth area, and (b) those municipalities with which it is very likely the County will be able to enter into an intergovernmental agreement resulting in an Overlay Zone in the near future. Under this approach, the preliminary list of municipalities whose traffic demands and capital expansion needs would be included in the study would include Fort Collins, Loveland, Windsor, and Berthoud.

Because the adoption of an urban renewal district prevents Larimer County from collecting increased property taxes necessary to fund the increased costs of road maintenance as development occurs in the future, the county does not anticipate entering into intergovernmental agreements or adopting growth management overlay zones with any municipality that has adopted an urban renewal area covering all or most of its territory. The list of participating municipalities would therefore not include the municipality of Timnath.

2) Expansion of Regional Road System

This transportation fee update gives Larimer County a chance to review the defined Regional Road System, and to refine it if necessary. In general, the Regional Road System is designed to provide intergovernmental funding through a road impact fee for roads within the county that are being impacted by new development from all the local government jurisdictions participating in the program. In contrast, the County Road System is defined to provide impact fee funding to publicly-maintained roads within the unincorporated area of the county that will be impacted largely by new development in the unincorporated county.

At present, the Regional Road System is defined to include the following roads.

- CR 17 between Loveland and Fort Collins and Loveland and Berthoud;
- CR 18 from I-25 to the Weld County line;
- CR 19 between Loveland and Fort Collins;
- CR 32 between I-25 and US 287; and
- CR 38 from I-25 to the Weld County line.

Expansion of the Regional Road System should consider at least two factors. First, if the county wants to develop a truly regional system, it is necessary to expand the Regional Road System into participating municipalities – i.e. the estimates of traffic generation and road costs should include road segments inside the boundaries of those municipalities. Second, additional road segments outside the municipal boundaries, but impacted by new development within the participating municipalities, may need to be included in the list of Regional Roads. As mentioned earlier, we recommend that the starting point for this analysis should be the list of roads under discussion for inclusion in the proposed Regional Transportation Authority between Larimer County, Fort Collins, and Loveland. Because the County already has an intergovernmental agreement with Fort Collins, the analysis should also include the costs of growth-related capacity improvements within the boundaries of that municipality.

3) Including State Road Intersections on the Regional Road System

As is discussed above, there are a handful of instances where capacity constraints at the interface of State Roads and the Regional Road System create significant traffic congestion on the Regional Roads.² While most local officials want to limit the use of locally-raised revenues used to improve roads or intersections that are the state's responsibility, they sometimes agree to do so in certain circumstances. In particular, sections of State Roads (generally involving interchanges or intersections where those

² We will need to perform additional research to confirm the County's legal authority to spend impact fees on State Road intersections.

roads meet Regional Roads) are sometimes included if capacity improvements along those stretches have a high priority for the functioning of the county system, but have a lower priority for the (generally under funded) state highway system. Faced with the possibility of waiting years for the state to improve a particular section or road or intersection, some local governments have included these selected State Roads in their systems to allow impact fees to be spent to make the improvements sooner rather than later or to provide seed money to encourage state and regional investment.

B. County Transportation Fee

Since the inception of the current Larimer County Transportation Capital Expansion Fee system, the bulk of the funds have been collected and spent on the County Road System, rather than the Regional system. While the administration of the County Road component is easier in some ways (i.e., it does not involve intergovernmental cooperation) it is also more difficult in that the road system is much larger and the competition for funds is correspondingly larger. This update process provides a good opportunity to re-examine the County Road System, to answer many questions about what is included in the system, and to add more flexibility into the administration of the system. Two examples of why refinements to the County Road System are advisable are set forth below.

Example 1: Fort Collins and Loveland both have defined Growth Management Areas (GMAs) acknowledged by Larimer County. At the present time, transportation fees are collected by the county from unincorporated lands within the Loveland GMA, but there is little coordination between the county and Loveland on how those monies are spent in order to provide the greatest transportation benefit.

Example 2: Similarly, the county collects impact fees from unincorporated lands within the Fort Collins GMA, but the fees collected are based on the cost of rural level roads, while Fort Collins is generally requiring roads in the GMA to be built to urban standards. Better coordination would allow collection of fees adequate to build the types of roads that need to be built in these urbanizing areas.

1) The County Road System

The current County Road fee component is based on the premise that Larimer County is planning for and will provide adequate transportation facilities for the County Road System to accommodate anticipated new growth and development³ The County Road System is defined as the existing and planned county-maintained arterial and collector roads (excluding roads on the Regional Road System), as designated on the county's current Transportation Plan. As part of the effort to assure adequate transportation facilities will be available, the county also undertook transportation modeling and analysis to determine what additional transportation improvements would be needed over a 20 year period to accommodate new growth and development, and the costs of these improvements. These road improvements were included in the Major Road CIP.⁴

³ Defined as Major Road System in the County transportation capital expansion fee.

⁴ The Major Road CIP is the list of the highest priority road capital improvements that are expected to be needed to the County Road System to accommodate new growth and development over 20 years.

The Current Transportation Capital Expansion Fees are calculated based on the costs to provide this list of improvements identified in the Major Road CIP. Additionally, the current County fee regulation requires that expansion fee monies can only be expended on transportation capital facilities identified on the Major Road CIP that are also on the County's Road System, and that credits can only be provided for transportation capital facilities identified on the Major Road CIP that are also on the County Road System.

Although this is a way that some local governments structure their transportation fee systems, and the system has the benefit of specificity, it has proven to be under-inclusive in practice. It is under-inclusive in that there are many roads that are not designated as arterials or collectors, but have required improvements to accommodate new development (sometimes enough development to require them to function as arterials or collectors to serve the anticipated development). For these reasons, this approach to defining the County Road System has proven too inflexible for Larimer County.

To address this problem, county staff suggests and we concur, that the County Road System be re-defined to include all (or a large majority) of the county-maintained numbered County Roads (other than the Regional Roads). This can be done through a broadened definition of arterial and collector roads. This broadened definition would increase the number of county-maintained roads on which transportation impact fees can be spent for potential capacity enhancing capital improvements, and would provide the county more flexibility to react to changing conditions so that transportation expansion fee funds can be expended where they are needed most.⁵

In addition, and to add increased flexibility in the administration of the County Road System fee, we also recommend that the provision in the regulation stating where fee monies can be spent be broadened to allow monies to be spent for improvements on the Major Roads CIP list, or for a similar capacity improvement.

2) Credits

In addition to refining the definition of the County Road System and how and where fees can be spent, the update should also ensure that provisions for the granting of credits against impact fees are consistent with the revised definitions of the Regional and County Road Systems. More specifically, the credit provisions should state that credits against fees due will be granted only when the applicant has constructed improvements for items on the Major Roads CIP list, or for a similar capacity improvement on the County Road System with prior approval of the county. Construction of improvements (a) that are not on the Major Road CIP list, or (b) that the county determines do not provide a similar capacity improvement to the County Road System, or (c) that were constructed without prior approval of the county to grant a credit, would not result in credits against the fees. Since the costs of land for rights-of-way will not be included in the calculation of the County Road Impact Fee, developers who dedicate off-site rights-of-way would not receive a credit against the County Road Impact Fee. If a developer has to acquire off-site right-of-way, any reimbursement would be from the general fund to the extent funds for such reimbursement are available.⁶

⁵ Any benefit concerns that might occur from this expanded definition can be addressed through the "benefit districts." See discussion in Section 2.B.8 of this Memorandum.

⁶ Full credits may not be available for costs incurred in constructing interim improvements – as opposed to permanent improvements. See discussion in Section 2.B.11 of this Memorandum.

3) Level of Service Standard

One key parameter of transportation planning, as well as the design of an impact fee system is the selection of a Level of Service (LOS) standard. The current impact fee system is based on a standard to prevent the Regional and County Road Systems from falling below LOS D in urban areas and LOS C in rural areas. After discussion with county staff, we recommend that this standard be retained during the update, with the following refinements.

During the preparation of the new transportation plan update, the consulting team should work with staff to review information about the capacity of different types of roads. As traffic volumes have increased, local governments have become increasingly adept at designing system improvements that allow existing roads to carry more traffic safely, and may also have identified cases in which some types of roads cannot carry their stated design volumes of traffic. These lessons should be reflected in the LOS included as the basis for the update. Where possible, we will try to simplify the current road classifications in order to simplify later calculations and administration of the system. Also, the capacity thresholds that require paving of gravel roads will be re-examined.

4) Peak Hour Transportation Modeling

The current transportation Capital Expansion Fees were calculated based on an “average daily trip” (ADT) methodology, but staff has suggested, and we concur, that the update should be based on “peak hour trip” methodology. In most cases, the true capacity needs of a roadway segment to preserve a given Level of Service are more closely related to peak hour capacity demand than to average daily demand. Also, the use of a peak hour modeling methodology tends to narrow the range of impact fees between housing, office, and retail land uses (and in some cases results in lower fees for retail development), which would be consistent with adopted county economic development policy. The definition of peak hour generally refers to the morning and late afternoon peak hours for a typical weekday. This definition may need to be altered in special cases, for example to account for recreational areas that have atypical daily or seasonal peaking characteristics.

5) County Roads in GMAs

Fort Collins, Loveland, and Windsor have defined Growth Management Areas (GMAs) that have been acknowledged by Larimer County through the adoption of a growth management overlay zone. Today, the county collects impact fees from unincorporated lands within the Fort Collins GMA, but the fees collected are based on the cost of rural level roads, while Fort Collins and Loveland are generally requiring roads in the GMA to be built to urban standards. Better coordination would allow collection of fees adequate to build the types of roads that need to be built in these urbanizing areas.

The update should be refined to better support the system of acknowledged GMAs surrounding Fort Collins, Loveland, and Windsor. Where a road on the County Road System is located within an acknowledged municipal GMA, and the county has adopted a corresponding growth management overlay zone, the LOS for road improvements in the GMA should acknowledge and be based on the road standards required by the local government for the GMA.

In addition to using municipal LOS standards for portions of County Roads located within GMAs, the transportation plan and impact fee updates should reflect the types of

improvements required by municipalities when capacity is expanded. Under the current system, the “triggers” for capacity expansion, as well as the required lane widths and cross-sections, turn lanes, safety improvements, and engineering standards for these improvements are all based on the county’s adopted standards, regardless of whether the road segment is located inside or outside a GMA. In those cases where Larimer County has executed an intergovernmental agreement regarding growth areas, and has adopted a growth management overlay zone to implement that intergovernmental agreement, the triggers, design requirements, and financing should instead be based on the true costs of building capacity improvements in these areas to urban standards.

6) Road Improvements that Can be Funded by Fees

One of the confusing areas of impact fee design involves what types of improvements can be included in an impact fee program. As stated above, the keystone of an impact fee program is that it must be used to provide new capital facilities (or capacity expansions to existing capital facilities) that will benefit those who paid the fee. In contrast, impact fees cannot be used to fund capacity improvements that address pre-existing deficiencies in the County or Regional Road System. Although Senate Bill 15 does not state this explicitly, it is generally agreed that impact fees cannot be used to fund safety or engineering improvements, unless they provide new capacity to serve new development. The theory is that, in many cases, the new development did not “cause” the need for the safety or engineering improvements, while it is easier to understand that new development does create a demand for new roads to serve the additional traffic.

However, the line between capacity improvements and safety/engineering improvements is not at all clear-cut. In fact, it is usually blurry. Capacity improvements often involve re-engineering of the pre-existing road cross-section, or the addition of safety features, and it would be inefficient to not do all the work at the same time. Similarly, engineering and safety improvements to an existing road cross-section can sometimes increase capacity of the road (or the ability to carry more traffic safely). Put another way, engineering and safety improvements will often allow a road to carry the same amount of traffic more safely, or to carry more traffic at the same level of safety, or some combination of the two.

Because of confusion on these points, the update should clarify that the county’s intent is to use (a) property tax revenues and the local share of fuel tax revenues to maintain the road system and to fix existing road system deficiencies, and (b) impact fee revenues to fund capacity improvements. In addition, the update should clarify that impact fee revenues can be used to fund the following types of improvements (among others).

- Signal improvements and turn lanes, as long as they add capacity to the road system;
- Re-configuration of segments and intersections, as long as they are needed to add capacity in a safe way; and
- Incremental capacity improvements, or interim phased improvements. (For example, in some cases the most efficient use of current dollars is to construct a temporary solution (i.e. a road section not built to full engineering standards or its full design width), in order to allow the system to carry more capacity, even though those improvements will later need to be revised when growth has

reached the point where a “final” or larger road needs to be built.) The update will clarify that impact fees can be spent for that purpose.

7) Build More Flexibility into the System

County staff who have administered the current transportation impact fee system believe that there are some refinements that could be made to make the program less rigid and more flexible in several ways. We agree there are several changes in the area of fee administration that would increase the flexibility of the program without violating the principle that fee payers cannot be overcharged and must receive a capital facility benefit in return for the fees paid.

In addition to expanding the definition of the County Road System, as discussed above, a second way to improve flexibility is to allow impact fee revenues to be spent on similar capacity improvements to those identified on the county’s Major Roads CIP. Instead of targeting only specific improvements that are anticipated to be needed based on a periodic snapshot, this revised approach allows the County to identify the most pressing capacity improvements on an ongoing basis, and to use impact fees to help pay for them.

A third way to improve the flexibility of the system (which is already reflected in the current regulation) is to allow new growth to satisfy its obligations through (a) payment of impact fees, (b) construction of improvements of the type that would otherwise be funded through impact fees, or (c) a combination of those two approaches. We suggest, however, that the existing credit provision would work better if it specified who has the choice of deciding how the impact fee obligations are addressed -- the applicant, the county, or through negotiation between the two. While it is generally helpful to allow applicants to make this choice, there are some situations where it may be preferable to have the applicant pay a fee that can fund more crucial capacity improvements than to have the applicant chose to build much lower priority capacity improvements closer to the front door of the applicant’s proposed development. In either case, the regulation should provide for a combination of paying fees and constructing improvements.⁷

A fourth way to increase flexibility is to have the transportation capacity expansion fees increase automatically (administratively), on an annual basis, as increases in the construction cost index occur. The county’s existing regulation allows such an increase, but only if the proposed increase is approved by the Board of County Commissioners at a public hearing. The County might want to consider making such increases in cost automatic, annually, based on a construction cost index. Either way, keeping the fees in line with the construction costs of projects they are intended to fund is one way to maintain flexibility in the system.

8) Geographically Based Benefit Districts

One tool some local governments use in the design of their impact fee systems, primarily to address growth management objectives (e.g., encouraging compact development) or to promote equity, is the use of geographically-based benefit districts with fee amounts that vary from district to district due to the different travel characteristics or road needs of

⁷ In cases where the county has required specific capacity improvements to be made pursuant to Adequate Public Facility (APF) standards, the option to pay a fee would not be available. See the discussion of APF regulations in Section 3 of this Memorandum.

the districts. This is a tool that was considered in the design of the original Larimer County system, but rejected due to the travel patterns and road needs of the system, since there was a lack of evidence that there were significant variations in travel demand and road costs from one geographic area of the county to another.

If used, benefit districts with varying fee schedules might be defined to coincide (at least roughly) with travelsheds identified during the transportation plan update. While the creation of such benefit districts does add some complexity to the system, it can also make the system more equitable for development in different parts of the county. It is recommended that the final decision on whether or not to implement multiple benefit districts be deferred until more information is obtained on travel patterns in the county and on road standards and associated unit costs in different parts of the county. We will not be able to recommend whether geographic benefit districts should be established for the calculation of differential impact fees until transportation modeling has been completed. That modeling will determine whether there are logical "travelsheds" that can be distinguished within the revised County Road System, and whether the definition of distinct geographic benefit districts would result in significantly different fees in different areas. If the differences are small, then the value of administering a more complex system may not be justified. Our recommendation on this topic will be included in the transmittal of the revised Transportation Plan and Capital Expansion Fee Study following the completion of that modeling.

What the transportation impact fee system does today, and we recommend it continue to do, is use geographic benefit districts for the purpose of limiting where impact fees can be spent, to ensure fee payers receive sufficient benefit for fees paid. Generally, the existing County transportation Capital Expansion Fee regulation applies one fee schedule to all new development within the county, but requires that fee monies collected from new development must be spent (except in several specific circumstances where benefit can be demonstrated) within the benefit district where the new development paying the fee is located. The county is divided into four benefit districts including two in the plains (divided at CR 32) and two in the mountains (divided at SH 14). By using benefit districts in this way, the county can avoid a scenario in which impact fees paid by new development in the far southeast corner of the county are used to pay for capital expansion of the County Road System in the foothills near the Wyoming border.

9) Updating and Refining Fee Schedule

Any transportation impact fee update includes a re-calibration of travel and road cost data and a re-calculation of the impact fee schedule. Importantly, this effort should include an update of transportation demand data based on more recent modeling in use in the North Front Range. In light of the high levels of growth experienced in Larimer County over the past few years, it will also be particularly important to update road construction cost estimates based on the best available data. In the process of this basic update, we will make the fee calculation formulas more "transparent" and understandable to the public. Staff indicate they have a difficult time explaining the current formulas, and the distinctions between different uses embedded in them, to the public. This part of the impact fee equation needs to be more transparent.

10) Independent Calculation Studies

The current Larimer County transportation impact fee system, like most systems, allows an applicant to conduct an Independent Fee Calculation Study rather than paying those fees set forth in the impact fee schedule. However, the current regulation gives very little guidance on how an Independent Calculation Study should be prepared, or how the county should evaluate and approve or deny those studies. In addition to using a more transparent and intuitive formula, the update should provide more detail about data and methods to use in an Independent Calculation Study. For example, the regulation should specify that such studies must use an average cost (rather than a marginal cost) methodology, should prohibit the use of cost estimates lower than documented actual costs for road construction of the same type, and must use traffic generation rates or methodologies endorsed by the Institute of Transportation Engineers (ITE).

11) Credits for Voluntary Improvements

Whenever a developer voluntarily chooses to construct an improvement on the Regional Road System or the County Road System rather than paying the fee in cash, the developer needs to receive a credit equal to the reasonable costs spent on that construction.⁸ Impact fee law requires this result, since otherwise the developer would be charged for his proportionate share of a transportation system when he or she had already built a part of that system.

(a) Interim Improvements

Complexity arises, however, when a developer chooses to construct an “interim” improvement to the Regional Road or County Road System (i.e., one that solves the immediate capacity problem, but will eventually have to be reconstructed when traffic increases – possibly at a greater cost than if a permanent improvement were made in the first place). The current regulation does not clarify how much credit should be awarded in this case, and the new regulation should address this issue. One approach would be to grant credits only for permanent improvements (on the grounds that the developer had voluntarily chosen to spend funds in a way that does not provide permanent capacity improvement). A second approach would be to grant only a partial credit for interim improvements (based on the fact that developer funds spent on interim improvement do not reduce the county’s costs of funding a permanent improvement by an equal amount).

(b) Improvements Exceeding Impact Fee

In some cases, the value of the improvements voluntarily constructed by the developer will exceed the Regional Road or County Road impact fees that would have been charged for the development. This sometimes results in a developer request that the county agree to repay the excess value from impact fees received from other developers in the same benefit area who will benefit from the improvements constructed. In other words, the developer asks that future impact fees be diverted to repay his or her excess costs instead of being used for other projects (some of which might provide capacity improvements that the county feels are more important). Any obligation to give a credit

⁸ This Section 2.B.11 addresses “credits” that should be given when a developer voluntarily offers to build an improvement instead of paying one of the impact fees. In some cases, the county may require that the developer build improvements necessary for public health and safety through Adequate Public Facility (APF) requirements, and credits due for this type of mandatory construction are discussed in Section 3 of this Memorandum.

or reimbursement in an amount higher than the fee due from the developer puts the first developer in the position of deciding where county impact fee funds paid by other developers will be spent. This can have adverse consequences for the entire impact fee system, and should be avoided.

We believe that the better practice is the one that is currently reflected in the Capital Expansion Fee regulation – i.e. that the county retain the right – but not the obligation – to reimburse a developer for the value or a portion of the value of improvements in excess of required fees. However, this power should be limited by three conditions.

- First, any such reimbursement should require the execution of a “front-ending” development agreement (i.e. no construction of excess improvements would create an “automatic” call on impact fees paid by others).
- Second, the improvement constructed by the developer requesting reimbursement must be a high priority for the county – for example, that it be one of the top five or ten priority capacity enhancement projects identified on the Major Road CIP. This is necessary to avoid having to use future impact fees to repay Developer A for a low-priority project when the fees could have been better used (and added more capacity) if they were available for use on a higher priority project.
- Third, the county may pledge only a portion (not all) of the future stream of impact fees in the benefit district to repay the requesting developer. Again, this is necessary to preserve a stream of impact fees that is able to be spent on the most pressing capacity improvements at any given time.

Where these conditions are not met, the county would refuse to make reimbursements of excess improvement costs from impact fee funds. The developer could still decide to make the excess improvements for business reasons (i.e. that the excess improvements would increase the value of the development by more than their costs), but there would be no reimbursements from impact fee funds.

In addition, since later developers would be paying impact fees for improvements on the same Regional and County Road Systems, it would be inequitable to both charge them impact fees and to have them reimburse the first developer for the excess costs of their voluntary improvements. Therefore, where the county has decided that a development agreement to reimburse the first developer from impact fee funds is not warranted, the county should also refuse to enter into a “front-ending” agreement to help the first developer recoup those excess costs from later developers outside the impact fee system. Any reimbursement of excess costs incurred on a voluntary construction project would be made through a development agreement between the developer and county and would be paid from the relevant impact fee fund – they would not be made through a “front-ending” agreement to be funded outside the impact fee system or to be funded by giving later developers an alternative to paying impact fees.⁹ (See Sec. 3.C of this Memorandum for a more complete discussion of “front-ending” agreements in the context of APF requirements).

12) Land Uses in the Fee Schedule

As Larimer County staff has administered the current transportation impact fee program, they have identified a number of land uses that are not listed in the current fee schedule, as well as variations on the listed uses that need to be addressed. The list of “hard-to-categorize” uses includes, but is not limited to, the following:

- Cabins (as opposed to residential dwellings. The issue is whether cabins should pay the full residential fee if they could be used year-round, since the county has no way of knowing when a “seasonal” cabin will be converted to full time use.)
- Cabin rentals.
- Guest quarters. (The issues are similar to those for cabins.)
- Extended family dwellings. (Should there be a change to the current practice of charging 3/20 of the normal fee, since the permits are for a three year period.)
- Employee housing.
- Gravel mining. (The issue is whether the fee should be based on volume of material extracted, tonnage carried on the roads, trips, or some combination of those factors. In addition, consideration should be made of whether “truck equivalents” should be included in the calculation of the fee.)
- Indoor entertainment buildings. (The issue is that the combined fees applicable to the individual uses that can occur inside (weddings, paintball, social gatherings etc.) can be quite large.)
- Pony club
- Dog daycare and kennel
- Corn maze or crop maze
- Agricultural and forestry uses
- Storage rental units (which could include boat storage at a marina or at a remote location).
- Tenant finish projects in commercial buildings (i.e. should there be a change to the current practice of charging the applicant who constructs the building shell the “warehouse” rate, and then charging the applicant for the tenant the difference between the warehouse rate and the rate applicable to the proposed use).
- Tenant finish projects for commercial uses that may change over time. The standard practice is to require each tenant to pay the difference between the use that previously occupied the site and the new use. If the traffic generation of the new use is lower, fees are generally not rebated.
- Leases of governmental property owned by a tax exempt entity (such as CSU) to a private entity. Again, since the fee is calculated based on the use of the building, not its ownership, the standard practice is to require private lessees to pay the fee, even if the lessor would not have to.
- Temporary or special event uses.

The approach to handling land use classification issues highlighted above needs to be refined and clarified in the update. As this is done, we will keep in mind that while it is important to ensure all traffic generating uses are identified, it is also important to keep the use list fairly simple in order to promote efficient administration. In general, the national trend is towards having a fairly limited number of use categories in the fee schedule, while making sure that all traffic-generating uses are clearly assigned or

assignable to one of the categories or to specify an approach to calculating trip generation of uses that do not have a reasonable match to an schedule uses.

13) Exemptions for Public Facilities

The county's current practice is to exempt public facilities built in response to growth (such as fire stations, police stations, etc.) from payment of the transportation impact fees, on a case-by-case basis. In some instances, the public facility has received a partial reduction in fees rather than a full waiver. Any decision to exempt some land uses from transportation impact fees is (implicitly) a decision to make up those revenues from some other revenue source. The substitute revenue source needs to be one that was not funded by the same development that is paying its proportionate share through the impact fees, or that new development is being (indirectly) overcharged. If the county continues its current case-by-case practice in this area, we recommend that efforts be made to identify potential sources of revenue to be used to make up any shortfalls over time.

14) Administrative Costs

The operation of the transportation impact fee has administrative costs, which should be integrated into the calculation of the impact fees. While Senate Bill 35 is silent on the issue of administrative cost recovery, it does not prohibit such recovery, and administrative costs are included in many impact fees throughout the country.

III. ADEQUATE PUBLIC FACILITY STANDARDS

While the primary goal of this effort is to update Larimer County's transportation impact fee system, that work requires some consideration and refinement of related regulations addressing "Adequate Public Facility" standards for roads. In short, the county's transportation expansion fee program and road APF programs need to "fit together," so that they are mutually supportive of each other, and to avoid overcharging developers. This requires consideration of several important policy issues.

A. The Difference Between Capital Expansion Fees and APF Regulations

At the start, it is helpful to understand the difference between the Capital Expansion Fee System and the Adequate Public Facility regulations.

1) Capital Expansion Fees

The Capital Expansion Fee System (discussed in Section 2 above) collects proportionate fees to fund needed capacity improvements to the Regional Road and the County Road Systems, but leaves the county in charge of deciding where to spend the collected fees. It offers developers the option of building a needed improvement to the Regional Road or County Road System in return for an offsetting credit against the applicable impact fee, but it never requires the developer to build anything. The only duty is to pay the fee.

Capital Expansion Fees answer the question “How do we collect the revenues necessary to offset the road capacity construction costs imposed on the county by new growth?”

2) Adequate Public Facility Regulations

The Adequate Public Facilities standards address situations where a portion of the Regional Road or County Road System simply does not have enough capacity to accommodate traffic from proposed development, and the county is not in the process of building the required improvements (either because it does not have adequate impact fee revenues to do so, or because the capacity improvements needed for the proposed development are a low priority for the county as a whole). In that case, APF regulations establish a standard that the road be brought up to safe conditions before the development is approved, so that no unsafe or inadequate road conditions will occur. This is a condition of receiving development approvals.

The issue in this case is not collection of revenues for an overall transportation system, but avoiding public health, safety and welfare issues that will occur if too many cars are put on an inadequate road. In this circumstance, the county is always authorized to deny development approvals, because approval would endanger public health, safety or welfare -- but many local governments prefer to offer the developer the option of fixing the public health, safety or welfare problem as a way to allow the proposed development to move forward. Since a danger to public health, safety or welfare is involved, the developer is not permitted to pay a fee for a proportionate share of that improvement, because payment of a fee to fix the developers’ “fair share” of the problem generally produces too little money to fix the entire public health, safety or welfare problem. When APF standards identify a public health, safety or welfare issue, and the county offers the developer the option to build required improvements, the developer must actually build the improvements.

Adequate Public Facility Regulations answer the question “How do we avoid endangering the public health, safety and welfare when an existing road is inadequate to handle proposed traffic, and the new development will put more traffic on roadways that cannot accommodate the increase in traffic?”

Larimer County’s Adequate Public Facility Standards are contained in Section 8.1.5 C.1 of the Land Use Code, which requires improvement of unpaved gravel roads in both urban areas (GMA districts and other areas designated by the county master plan as urban areas) and rural areas (areas outside the rural areas), if new development causes the capacity of the road to exceed the following standards:

”The capacity of an untreated gravel road is defined as an ADT of 150 vehicles per day in an urban area or an ADT of 200 vehicles per day in a rural area at the time of full build-out of the development. The capacity of a treated gravel road (treated with chemicals to control dust) is defined as an ADT of 300 vehicles per day in urban or mountain areas or an ADT of 400 vehicles per day in rural, non-mountain areas. Paving is required when cumulative traffic volumes exceed these capacities and must consist of asphaltic concrete or Portland cement concrete, base course material and subbase material (if required) placed on compacted subgrade.

Additional APF standards address the need for improvements to already-paved roads (for example, when design, surface materials, lane widths, or other factors make them inadequate for existing capacities.¹⁰)

B. Coordinating Capital Expansion Fees and APF Standards

In a growing jurisdiction like Larimer County, both Capital Expansion Fees and APF standards are often needed. The question is how to coordinate the two so that they are understandable to the public, able to be administered consistently by staff, and do not overcharge developers.

Under the current regulation, the county has found the administration of this portion of its road APF standards directed at unpaved roads particularly problematic. More specifically, the APF standards can create a perceived hardship when landowners request development approvals for small or moderate-sized developments generating over 200 ADT on gravel roads where the property is located a significant distance from a paved road, and the cost of paving the intervening road is high. Another difficult situation is where a paved road exists, but the quality of that road will not accommodate the proposed traffic, and the long distance between the proposed development and adequate roads will make the reconstruction of existing roads expensive.

If the County Road System is expanded to cover virtually all publicly-maintained numbered county roads (as recommended in Section 2 of this Memorandum), then the roads outside each development boundary are very likely to be roads that are on the County Road System. As a result, APF regulations could be applied to require improvements on the same road system that the developer is helping fund through the Capital Expansion Fee System. As part of Senate Bill 15, C.R.S. 29-20-104.5(3) provides that:

“Any schedule of impact fees or other similar development charges adopted by a local government pursuant to this section shall include a provision 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.”

To date, this requirement has not been interpreted by the courts. It could mean that the APF standards may never be applied to “require” improvements to the County Road System.¹¹ In that case, Larimer County would have to choose between (a) dropping APF requirements altogether (which could endanger public health, safety and welfare), or (b) defining the County Road System more narrowly than is discussed in Section 2 above, so that APF standards could

¹⁰ Note that APF standards are not the same as a requirement to build internal subdivision roads. The developer is always required to build all internal improvements required to provide adequate access to the buildable lots that are being created, or for the increased development activity that is being proposed. APF regulations address roads that are not internal to the development – they apply when the roads outside the proposed development boundaries are inadequate to carry the new traffic to a road that does have adequate capacity.

¹¹ Technically, APF standards never “require” that improvements be made, since the developer can always downsize or delay the development to avoid putting too much traffic on the roads. However, some courts treat conditions on development approval as “requirements” and the county should take this possibility into account during the update process.

still be applied to numbered county roads that are not on the County Road System, or (c) keeping the full system of County Roads discussed in Section 2 and adopting a policy denying any proposed development that is inadequate under APF standards (i.e. removing the current option of allowing the developer to “build himself out” of a public health, safety or welfare problem).

In the alternative, it may be that the requirements of Senate Bill 15 can be met by ensuring that any developer who is required to build improvements under APF standards receives an offsetting credit against the applicable impact fee. Under this interpretation of SB 15, the developer is not being “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”, because the impact fee has been adjusted downward to avoid any overlap. The developer is being offered an opportunity to provide an improvement to address a public health, safety and welfare issue in order to avoid project denial, and will be charged a smaller fee (or no fee) to cover improvements to the remainder of the County Road System generated by the proposed development. If the county chooses to proceed under this interpretation of SB 15, the APF regulation should be revised to clarify when a credit against the applicable impact fee will be given.

In addition, the APF regulations should address how credits will be treated in cases of “interim” improvements. One option is for the APF regulation to prohibit interim improvements (which would place a greater burden on developers than the current system). A second option would be for the regulation to provide that only permanent improvements are eligible for credits. As a practical matter, this might need to be structured as a waiver – i.e. the developer is obligated to build permanent improvements and to receive an offsetting credit, but the developer will accept temporary improvements in return for a waiver of the developer’s right to an impact fee credit. A third option would be to grant a partial credit, on the grounds that the construction of interim improvements results in a partial reduction of the costs of providing a permanent solution – but does not reduce that cost to zero. Finally, the county could grant full credits for interim improvements, knowing that it will result in underfunding the Regional Road or County Road System, and then periodically update the transportation study and impact fee study to take into account the costs of moving from interim improvements to permanent improvements.

C. Reimbursements for Excess Capacity

In some cases, a developer whose proposed development triggers APF standards and who chooses to build the required improvements to a Regional or County Road in order to get a development approval points out that the improvements will be of benefit to future development along the road. For example, APF standards may require the paving of one travel lane in each direction, but that work may create a road with more capacity than is needed to accommodate the first developer’s project. As a result, the developer requests the county enter into a “front-ending” agreement to reimburse the portion of the construction costs that reflect excess capacity.¹² In principle, the county has four options available to it.

¹² Reimbursements related to voluntary construction of improvements under the impact fee system are discussed in Section 2.B.12 above.

1) Option 1: Credits Against Impact Fees -- But No Front-Ending Agreements

One option would be for the county to credit the cost of constructing “excess” capacity against impact fees due, but to decline to reimburse costs above that amount. In other words, the total costs of the developer improvements required to meet APF standards reduced by (a) the costs of fixing existing road deficiencies that do not add capacity to the road, (b) costs of adding the capacity required to serve the developer’s proposed development. The resulting figure would represent the costs of (unintentionally) providing additional capacity to the Regional or County Road Systems. The developer would then receive a credit against road impact fees in the amount of the excess capacity costs. If the excess capacity costs exceed the impact fees due for the proposed development, however, the county would not enter into a front-ending agreement to repay the difference.

Those Colorado local governments that have a policy against front-ending agreements generally cite the fact that they create significant administrative problems – including the need to address what happens if no future development occurs within five or ten years, and what to do if the fees paid by later developers are needed for other (more important) capacity improvements related to their developments. In addition, some local governments feel that front-ending agreements can also tend to undercut one possible purpose of APF requirements, which is to discourage premature development of lands far-removed from the existing improved road system. Stated another way, an applicant intending to develop very remote lands might be discouraged from doing so by the cost of meeting the APF requirements for connecting roads, but the disincentive would be weakened if those costs could be shared with other landowners. A front-ending agreement would make the county a party to reducing those disincentives.

In spite of these drawbacks, we understand that some flexibility to execute front-ending agreements may be necessary in Larimer County in order to address the perceived hardships of the APF requirements. In addition, as noted above, if the County Road System is expanded to all numbered roads, SB 15 may create an obligation to credit or reimburse the developer for the costs of such improvements. For these reasons, we suspect that this first option will not be acceptable to the county.

2) Option 2: Waiver and Reimbursement from County Funds

Second, the county could offer credits against impact fees, and also agree to enter into front-ending agreements to be paid by county funds. In other words, the county could treat the creation of excess capacity under the APF standards the same way it treats voluntary creation of excess capacity under the impact fee system – through an agreement to reimburse the costs of that excess capacity. The reimbursement could come from impact fee funds (since the improvements will be to Regional or County roads included in the impact fee system) or from other county funds. Although the current APF regulation does not currently authorize development agreements for reimbursement of expenses related to APF requirements, the new regulation could do so.

3) Option 3: Waiver and Reimbursement from County Funds – But Only for Major CIP Roads

One variation on this option would be for the county to offer front-ending agreements only when the developer's improvements are made to roads listed on the Major Road CIP. In other words, if the road in question was a high priority for the county, and the county would be likely to have spent impact fee funds on similar capacity improvements in the near future, then the county would waive impact fees and then enter into a front-ending agreement to repay the remaining excess capacity costs from county funds. However, if the developer's road improvements were to a road that is not on the Major Road CIP, the county would waive impact fees but would not use public funds to reimburse the excess costs. County staff recommend this option, and we concur that it strikes a good balance between the desire to offer those credits that may be required by SB 15 while limiting a developer's ability to divert impact fee funds.

4) Option 4: Front-Ending Agreements With Private Funds

Fourth, the county could enter into front-ending agreements that do not call on county funds, but that obligate the county to attempt to collect reimbursement from other private developers who develop along the road and will use up the excess capacity in the future. Today, there are no provisions in either the county transportation capital expansion fee regulations or other regulations that authorize such action by the county. All of the administrative difficulties mentioned above apply here – in particular the need to clarify how long the county will be obligated to try to obtain reimbursement and what will happen if no development occurs along the road during that period. This option also raises potential legal questions regarding the county's authority to use money paid by a later developer to reimburse an earlier developer who built road improvements. In some cases, such as *Douglas County v. Bainbridge*, 929 P.2d 691, the Colorado Supreme Court has taken a narrow view of county authority to transfer money to other public entities, and transfers to private entities without fairly specific statutory authority may be equally (or more) suspect. In this context, front-ending agreements effectively put the county in the position of a collection agent for one private party for the benefit of another, which is not at the core of the county's responsibilities. The county is currently involved in a dispute involving the Willowwood development that raises some of these issues, and would like to avoid that type of litigation in the future.

For all of these reasons, we recommend that the county not enter into front-ending agreements obligating the county to try to obtain reimbursements from later developers outside the impact fee system, or through credits against the impact fee system.

D. Fees-in-Lieu Program for Roads Subject to APF

Some Larimer County staff have recommended the county institute a fee-in-lieu system for required APF improvements. As a practical matter, the expansion of the County Road System to all numbered roads should virtually eliminate cases where APF requirements are applied to roads that are not on the County Road System. The system of impact fees, credits against fees, and reimbursement agreements outlined above would apply in almost all cases where APF standards are applied.

However, in those cases where APF standards require the construction of road improvements, the rationale is grounded in public health, safety and welfare, and we do not believe the

developer should be allowed to “buy himself out” of the issue through the payment of an additional fee. In other words, if an expensive road segment is required by the APF standards, the developer should be required to build that road segment and to obtain credits and reimbursements from the county as discussed above – instead of being allowed to just pay the cash value of the needed improvements into the impact fee fund – because the payment of the fees alone will not solve the public health, safety or welfare problem. An exception could be made where the county was ready and willing to use such funds to make the required improvements (i.e. the developer asks the county to construct the APF improvements, provides the funds to pay for them, and the county is ready and willing to complete that construction). For all of the above reasons, we do not recommend the county initiate a fee-in-lieu of APF system.

IV. PRELIMINARY RECOMMENDATIONS AND POLICY CHOICES

Throughout the earlier sections of this Policy Framework Memorandum, we have made preliminary recommendations as to how each issue might be addressed. Those preliminary recommendations are consolidated below. We emphasize that these preliminary recommendations may be revised based on (a) discussions with stakeholders or appointed or elected officials, or (b) further analysis of the administration of the transportation expansion fee system, or (c) review of future transportation modeling and travel demand characteristics. We will need the concurrence of the Board of County Commissioners – or in some cases a choice between various Policy Options – before proceeding to Phase 2 of the update, which includes the preparation of the Transportation Plan and updated impact fee study and regulations.

A. *The Regional Transportation Fee Component*

- Clarify whether Fort Collins, Loveland, Berthoud, Windsor, and other Larimer County municipalities will be participating in the Regional Road impact fee system – as soon as possible. Delays in making these key decisions, or a reversal of the decision later in the process, could significantly complicate calculation of the various fees, and could significantly delay the update process.
- **Policy Choice:** Should the updated transportation impact fee system be designed to incorporate traffic demands and roadway capacity improvement needs from unincorporated Larimer County and (a) all municipalities with which the county has executed an IGA and for which the county has adopted a growth management overlay zone, and (b) those municipalities with which it is very likely that the county will execute such an IGA in the future? That list would currently include Fort Collins, Loveland, Windsor, and Berthoud. If not, what alternative design should be used?
- Base the revised Regional Road System to match the roadway network being considered for the proposed Regional Transportation Authority if possible. This will reduce the need for adjustments later if the RTA is approved, and may allow the RTA network to be funded in a different way if the RTA is not approved.

- Using updated travel demand characteristics and updated lists of participating municipalities, determine whether the Regional Road System should be expanded to include new road segments. Only roads impacted by new development within local governments participating in the Regional Road transportation fee program should be included.
- In those cases where Larimer County has executed an intergovernmental agreement regarding growth areas, and has adopted a growth management overlay zone to implement that intergovernmental agreement, calculate the costs of needed improvements to Regional Roads within GMAs based on the urban road standards applied by the municipality (rather than county road standards), and pursuant to the Level of Service (LOS) standards applied by those municipalities.

B. The County Transportation Fee Component

- **Policy Choice:** Should the County Road System be expanded to include most or all numbered county roads, through revisions to the definitions of arterial and collector roads? This would significantly increase the county's flexibility to use impact fee funds where they are most needed, but may also required the county to provide credits or reimbursements when the APF standards are applied to those roads.
- Permit County Road Fees to be spent on any road capacity improvement listed in the Major Roads CIP, or on other improvements to the County Road System creating similar capacity improvements.
- Defer a decision on whether to establish geographically based benefit districts until additional transportation modeling is completed in Phase 2 of the update.

C. Both Impact Fee Components

- Authorize the Regional and County Road fee systems to include improvements to the intersections between State Roads and Regional Roads (including segments technically located on State Roads) where that would contribute the most to the capacity of the Regional Road System.
- Base the revised Regional and County Road fee components on peak hour travel demands, rather than average daily trip calculations, since the former is more directly related to capacity constraints.
- Clarify that transportation impact fee funds can be used to pay for signal improvements, turn lanes, reconfiguration of road segments and intersections, and incremental or interim phased improvements, provided that any such improvements increase the capacity of the Regional or County Road System (as applicable).
- Clarify that impact fee obligations can be met through payment of the fee, construction of improvements, or any combination of the two.

- Permit credits against impact fees only for the construction of road improvements listed in the Major Roads CIP, or other improvements to the County Road System creating similar capacity improvements, provided that the developer has previously obtained the written approval of the county.
- Revise the current regulation to clarify that Larimer County has the authority, but not the obligation, to enter into front-ending agreements for improvements to the Regional or County Road Systems, but that such agreements will be limited to improvements to road improvements listed as high priorities in the Major Roads CIP, and that only a portion of future impact fees may be devoted to repayments.
- **Policy Choice:** When a developer voluntarily offers to construct an interim improvement (rather than a permanent capacity improvement) as an alternative to paying required impact fees, clarify whether the developer should receive no credit, partial credit, or full credit for the cost of such improvements.
- **Policy Choice:** Should public land uses and facilities continue to be exempt from payments of transportation impact fees? [Let's discuss]

D. Administration of the Transportation Fee System

- Include an escalator provision that permits fees to increase with the cost of constructing roads, by indexing them to a construction cost index.
- Update the transportation fee schedules (for both Regional and County Road Systems) to include hard-to-categorize land uses identified by staff.
- Clarify how Independent Calculation Studies may be prepared, and the standards the County will use to review and approve such studies.
- Include the administrative costs of operating the impact fee system in the calculation of the costs of the Regional and County Road Systems.

E. Adequate Public Facilities Regulations

- **Policy Choice:** Should we proceed on the basis that an impact fee system and an Adequate Public Facility (APF) system can be applied to the same roads? This is an untested area in Colorado law since the passage of SB 15. At a minimum, reconciling the requirements of the two systems will probably require that the system of credits and reimbursements available to the developer be expanded?
- **Policy Choice:** Should the county be willing to enter into front-ending agreements to be paid with public funds where APF standards impose a duty to improve segments of the Regional or County Road Systems, and the value of those required improvements exceed the applicable impact fees that may be due. If the county intends to offer front-ending agreements, should the use of

front-ending agreements be limited to cases where the APF road improvements are made to a road on the Major Road CIP.

- Adopt a policy that the county will not enter into front-ending agreements to be fulfilled by third party (private) funds – (i.e., the county will not be obligated to try to have later benefiting developers to reimburse an earlier developer who constructed excess transportation capacity).
- **Policy Choice:** Should public land uses and facilities continue to be exempt from road APF standards?
- Adopt a policy clarifying that the county will not accept fees-in-lieu of road construction required by the APF requirements. Fees will be only accepted as part of the Regional and County Road fee systems; roads built pursuant to the road APF requirements must be constructed by the applicant or a third party.