MEMORANDUM

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Project:	CIP & TIM Fee Update: Western Slope	
Subject:	DRAFT Technical Memorandum 3-1: TIM Fee Program Industry Standards and Current El Dorado County TIM Fee Program Issues	

This memorandum describes professional practices associated with transportation impact fee programs in California, current Traffic Impact Mitigation (TIM) Fee Program practices, and opportunities for the 2015 TIM Fee Program update. Ten topics are discussed in the following order:

1. Measure Y
2. Growth projections
3. Identifying Impacts
4. Cost Allocation
5. Land Use Categories
6. Improvements To Alternative Modes
7. Program Administration Costs
8. Fee Deferral
9. Waiver and Offset Policies
10. Credits and Reimbursements
11. Appeals

The purpose of this memo is to provide suggestions for changes to the TIM Fee Program to be discussed and acted on during the update process.

Measure Y

Many local general plans in California contain policies to support adoption of impact fee programs. The objective is that new development should contribute to the cost of infrastructure needed to accommodate growth.

In 1998 El Dorado County voters enacted Measure Y, the "Control Traffic Congestion Initiative" that added policies to the 1996 County general plan related to mitigation of new development impacts on traffic congestion. The Measure stated that these policies would be in effect for 10 years. The policies were amended and re-adopted in the County's 2004 general plan, and re-approved for another ten years in 2008.

The Measure Y general plan policies require new development to fully mitigate its impacts on traffic congestion, and limit the County's discretion to allow roadways to operate at deficient levels of service. These general plan policies result in a more prescriptive TIM Fee Program in El Dorado County compared to other jurisdictions. The following sections will references the effect of these general plan policies on the TIM Fee Program where appropriate.

GROWTH PROJECTIONS

Growth projections are inputs to a nexus analysis that quantify the amount of new development. The amount of new development determines (in part) the improvements needed to accommodate growth and to be funded by the fee program.

Professional Practice

Transportation impact fees programs often rely on the latest available growth projections used by the local Metropolitan Planning Organization (MPO). An MPO is a federally mandated and federally funded transportation policy-making organization that is made up of representatives from local government and transportation authorities. Use of these growth projections supports consistency between transportation planning for impact fee programs and for programming of state and federal transportation funds by the MPO. The local agency preparing an impact fee program may also use growth projections that vary from those used by the MPO to better reflect local conditions that may not be adequately incorporated into the MPO projections.

Planning horizons should be sufficiently long to plan for and phase in infrastructure needs yet short enough to represent reasonably anticipated growth based on current land use policy. Planning horizons of 20 to 30 years are common because they reflect infrastructure debt financing terms and the practices of most MPOs.

Current Practice and Opportunities

The Sacramento Area Council of Governments (SACOG) is the MPO for the west slope[1] of El Dorado County and five other counties in the Sacramento region. El Dorado County could not use the SACOG growth projections for the unincorporated area due to their inconsistencies with the County's general plan and historic growth trends. The County projects a slightly higher growth rate based on historic trends compared to SACOG's projections, and a different distribution of that growth within the unincorporated area. Consequently the TIM Fee Program uses SACOG projections for incorporated areas within the County as well as areas outside the County, and uses general plan projections for the unincorporated area. This approach represents accepted professional practice.

[1] The West Slope is defined as all areas outside of the Tahoe Basin and west of Echo Summit.

IDENTIFYING IMPACTS

Identifying impacts from new development generates the costs associated with an impact fee program and the fee level necessary to fund those costs. Identifying impacts requires the application of a policy standard to determine when travel demand may exceed a facility's capacity and requires expansion to accommodate growth.

Professional Practice

For transportation impact fee programs associated with suburban and rural development patterns best practices for identifying impacts includes the following:

- Establish a baseline analysis year based on existing traffic counts and professional standards for evaluating roadway capacity to determine existing available capacity on the transportation system and to differentiate impacts between existing and new development (existing versus future roadway deficiencies).
- Use a calibrated and validated four-step transportation model[2] with sufficient zonal detail to capture the impact on the transportation system of development in different parts of the geographic area being analyzed.
- Apply a clearly articulated policy standard, typically related to roadway level of service (LOS)[3], to identify existing and future deficiencies on the transportation system.
- Identify practicable improvements to reduce future deficiencies to a minimum considering the cost and efficacy of each improvement. Some roadways may not be feasibly improved sufficiently to accommodate all new development so some future deficiencies may not be entirely eliminated. Improvements may include new facilities to serve areas with new development.
- Estimate the cost of improvements to be included in the fee program including all hard and soft costs.
- For improvements that mitigate both existing and future deficiency, allocate a fair share of costs to the fee program so that new development is only funding the share of the improvement that benefits growth.
- Development outside the area subject to the fee is often a source of impacts on the roadway network to be improved with the fee program. Professional practice is to allocate the share of improvement costs associated with any growth in trips that start and

[2] This type of model estimates how a given land use pattern will place demands on a transportation network. Land use is grouped into zones and zones are connected with linkages representing the roadway network. The four modeling steps are: (1) *trip generation* of trip origins and destinations for each zone, (2) *trip distribution* that matches origins and destinations within and among zones using a gravity model, (3) *mode choice* for each trip (such as single-occupancy auto, two-person auto, and transit), and (4) *route assignment* that assigns each trip based on origin and destination to the most efficient (quickest) route.

[3] Professionally accepted methods for measuring LOS are provided by the *Highway Capacity Manual* published by the Transportation Research Board. The latest update to the Manual was in 2010.

end outside the area, also known as "pass-through trips" (i.e., external-to-external), to sources other than the fee program.

Current Practice and Opportunities

The transportation modeling and identification of improvements for the TIM Fee Program reflects the professional practices described above. The updated El Dorado Travel Demand Model (TDM) was completed in 2012 and meets all state and federal criteria for the validation of travel demand models. The County's TDM land use inputs reflect the County general plan disaggregated into 576 traffic analysis zones. The TDM also reflects the existing and planned transportation network in the County by functional classification of roadway. LOS is based on General Plan policy TC-Xd. The baseline analysis year for the current TIM Fee Program update is 2015 and relies on current traffic counts to define existing conditions. The cost of improvements allocated to the fee program is reduced for the shares associated with any existing deficiencies and impacts from the growth in pass-through trips. Existing and future deficiencies will be addressed in Technical Memorandum 2-3.

COST ALLOCATION

The cost of improvements identified for inclusion in an impact fee program need to be allocated to new development to prepare the schedule of fees by land use category. Cost allocation has a geographic consideration, that is, whether the area subject to the fee should be divided into sub-areas to reflect different levels of impacts from the same type of development project in different sub-areas. Sub-areas in this case are commonly called "zones". Cost allocation also has land use considerations, that is, reflecting the different level of impacts from different land uses. This latter consideration is discussed separately in the "Land Use Categories" section of this memorandum.

Professional Practice

Professional practice does not clearly identify a best practice for establishment of fee zones within an area subject to the same impact fee program. Most fee programs apply the same fee schedule jurisdiction-wide because the impact of a development project in one sub-area does not vary enough from the impact of the same project in a different sub-area to justify establishment of separate zones. As the geographic area of a fee program increases in size there tends to be more use of zones to reflect varying levels of impact among sub-areas.

If zones are used in a transportation impact fee program, the best practice for allocating costs among zones is to use the transportation model and a method called "select link analysis". For each roadway segment to be improved with the fee program, this analysis identifies the number of trips originating or ending in each zone that travels across that segment. The share of total trip ends (origins or destinations) associated with each zone is used to allocate costs to each zone. In this manner the total cost of an improvement is allocated to each zone based on each zone's share of the total growth in trips that benefits from that improvement. Specifically:

- Trips that start and end within the area subject to the fee are allocated 50 percent to the zone of origin and 50 percent to the zone of destination (internal-to-internal" trips).
- Trips that start or end outside the area are either partially or fully allocated to the internal zone (internal-to-external or external-to-internal trips).
- Pass-through trips that start and end outside the area are not allocated (external-to-external trips) as discussed in the preceding section.

Current Practice and Opportunities

The structure of the TIM Fee is a legacy of the separate implementation of transportation impact fees in El Dorado County. The El Dorado Hills/Salmon Falls Area Road Impact Fee was adopted in 1988. A separate fee program for other areas was developed in 1991 and called the West Slope Area of Benefit Traffic Impact Fee. Finally, a State Traffic Impact Fee focused solely on improvements to Highway 50 was adopted in 1996. Through subsequent updates these three programs have been merged into the TIM Fee with the following structure:

- The fee has two components:
  - A fee component for Highway 50 improvements, including a share of Highway 50 interchange improvement costs.
  - A fee component for local roads, including a share of Highway 50 interchange improvement costs.
- The cost of improvements is allocated to eight zones:
  - The El Dorado Hills zone (Zone 8) that is the same as the original El Dorado Hills/Salmon Falls Area is allocated the cost of all roadway improvements in that zone along with a fair share of Highway 50 improvements based on select link analysis.
  - The remainder of the west slope[4] of the County excluding the City of Placerville is divided into seven zones (Zones 1 to 7) and allocated the cost of Highway 50 and local road improvements, excluding improvements in Zone 8, based on select link analysis.
- Fee revenues are segregated into three funds:
  - El Dorado Hills TIM Fund for all Zone 8 fees[5]
  - TIM Fund for Zones 1-7 fees
  - Highway 50 TIM for all Highway 50 fees.

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[4] The West Slope is defined as all areas outside of the Tahoe Basin and west of Echo Summit.

[5] A portion of all Zone 1 fees are allocated to the Silva Valley Parkway Interchange Set Aside Fund (#7730504) to reimburse a developer for that specific improvement.

This fee structure is a fair representation of best practice. This structure supports two key findings required by the Mitigation Fee Act (MFA)[6] to demonstrate a reasonable relationship between (1) the development project and the need for the improvements funded by the fee, and (2) the development project and the benefit received form the use of fee revenue. Based on best practice it would be unusual to have more zones than the eight currently identified given the extent of the transportation network and development patterns. The program could have fewer zones and still be consistent with best practice.

The primary opportunity for the 2015 TIM Fee Program update is to consider different boundaries for Zones 1 to 7 and to consider consolidation into fewer zones. A different geography would not change the total fee revenue collected, but may change the amount of the fee by zone. The purpose for examining alternative zone geographies is to better reflect perceptions of equity among zones (the amount of the fee by zone versus the amount of impact by zone).

LAND USE CATEGORIES

Land use categories are used in a transportation impact fee nexus analysis for two purposes: (1) to estimate development impacts on the transportation system, and (2) to allocate the cost of those impacts to individual development projects through an impact fee schedule. A specific trip generation rate is assigned to each land use category to reflect the average impact of a unit of development in that category (e.g. trips per residential dwelling unit or trips per 1,000 square feet of nonresidential building space).

Professional Practice

Professional practices with regards to land use categories tend to keep the number of categories to a minimum while still capturing significant differences between projects with different impacts. This approach is consistent with the current state of the art for land use (growth) projections and transportation system modeling. To effectively plan for large-scale transportation infrastructure (highways, major arterials, etc.) the analysis must incorporate long-range planning horizons of 20 to 30 years and large geographic areas including multiple cities and counties. Consequently the level of detail for the land use categories used in this type of analysis is appropriately limited to several high-level categories that can reasonably be projected over these long horizons and large regions.

A common set of land use categories found in transportation system modeling and impact fee schedules include the following two residential categories and three nonresidential categories:

[6] California Government Code Sections 66000 through 660025.

- Residential
  - Single family residential
  - Multi-family residential
- Nonresidential
  - Retail/commercial
  - Office
  - Industrial

These land use categories capture significant distinctions in trip generation rates among different types of development project. These land use categories for transportation impact fee programs meets the requirements of the MFA to demonstrate reasonable relationships between the type of development, the need for transportation facilities, the use of fee revenues, and the impact fee paid be each development project.[7] The five land use categories listed above are the same as those in the TDM used to develop the existing El Dorado County TIM Fee Program.[8]

Although growth projections and transportation system modeling may be limited to approximately the five categories listed above, some fee programs add more detailed categories to the fee schedule. The advantage of adding more detailed land use categories to the fee schedule is a more precise allocation of costs among different types of development projects. A more detailed category in the fee schedule may be appropriate if an agency anticipates a large amount of a specific type of development whose impact varies significantly from the average impact for the more general category. For example, "warehouse" is often separated from "industrial" because of the lower trip generation associated with warehouse uses.

There are disadvantages to using more detailed categories. A key disadvantage is that some development projects may over-pay and some may under-pay because the projected amount of development for two or more detailed categories is far more uncertain compared to development projections for the single related general category. Another disadvantage with regards to nonresidential uses is that use and associated trip generation can change over the life of a building. For example, uses within light industrial spaces can range from warehouse and distribution uses with low trip generation, to research and development uses with high trip generation. Finally, the use of more detailed categories with significantly different fee levels can cause disagreements as County staff and the developer seek to appropriately define uses within a development project.

Finally, best practice may allocate the impact of development based on the source of demand for each trip. For example, trips to local-serving retail uses may be allocated to the residential or other nonresidential land uses that generate the demand for those retail uses.

Current Practice and Opportunities

The existing El Dorado County TIM fee schedule has 14 land use categories, four residential and 10 nonresidential, that are listed in Table 1. This level of detail provides several opportunities to combine land use categories and create new categories more reflective of El

[7] See California Government Code Section 66001.

[8] For nonresidential development the transportation model uses "retail", "service", and "other" categories, similar to the "retail/commercial", "office", and "industrial" categories, respectively, listed in the text.

Dorado County development. These opportunities are discussed below. Any combining of land use categories or creation of new categories would have a neutral impact on TIM Fee revenue. **None of the suggestions discussed below would change the total revenue collected through the TIM Fee.**

Table 1: TIM FEE Land Use Categories

Residential	**Nonresidential (continued)**
Single Family[1]	Industrial
Multi-family[2]	Warehouse
Age-restricted Single Family[3]	Church
Age-restricted Multi-Family[3]	Gas Station
Nonresidential	Golf Course
High Trip Commercial	Campground
General Commercial	Bed & Breakfast
Office	

[1] Includes mobile homes.
[2] Includes secondary units.
[3] As defined in California Civil Code Sections 51.2 and 51.3, and only applicable within community regions that have adequate public infrastructure.

Combine High Trip Commercial, Gas Station, and General Commercial Categories

It is not uncommon for transportation impact fee programs to separate out retail uses into "high" and "low" trip generation, particularly given the high trip generation associated with certain uses. High Trip Commercial in the TIM Fee schedule includes uses such as convenience stores, fast food restaurants (with or without drive-through windows), and drive-through banks.

The High Trip Commercial fee is roughly double the General Commercial fee. Consequently the fee can be a particular disincentive to these types of projects and compromise other economic development policy objectives.

In addition, although high trip generating commercial uses generate more total trips compared to general commercial uses, a higher proportion of these trips are already on the network. The stop at the convenience store or fast food restaurant is more likely to occur between the origin and final destination of the overall trip, so the stop is not a "new" trip for purposes of allocating the impact of development.

Furthermore, the definition of a High Trip Commercial projects can be ambiguous and therefore problematic to implement based on a specific project description. For example, the difference between a fast food restaurant that would be in the High Trip Commercial category and other types of restaurants that would be in the General Commercial category is not necessarily defined by whether the restaurant has a drive up window or not.

Finally, although gas stations are relatively easy uses to determine at the building permit stage, there are unlikely to be few if any gas stations built in El Dorado County in the future. Increasing vehicle mileage per gallon, volatile input prices, and declining profit margins have meant that the industry is at best stable and in some areas contracting with the closure of some stations.

For these reasons the County could consider merging the existing three retail/commercial categories (High Trip Commercial, General Commercial, and Gas Stations) into a single retail/commercial category. The fee would be based on an average trip generation rate across all types of retail/commercial uses.

Combine Industrial and Warehouse Categories

Industrial development projects in El Dorado County are typically "flexible" space that can be adapted to a range of uses. Often the developer constructs a building "shell" and pays the TIM Fee based on the lower rate associated with the Warehouse category. When individual tenants with any type of industrial use apply for building permits to improve their spaces they are often surprised to find out that they have to pay an additional TIM Fee. The additional fee is associated with the difference between the fee for the Industrial category and the fee for the Warehouse category paid by the original developer.

To associate impacts solely with the original developer and avoid pushing costs onto individual tenants, the County may consider combining the Industrial and Warehouse categories into a single Business Park category. The Business Park land use type includes a combination of light industrial and office uses and represents the most common type of industrial development in the County.

Combine or Eliminate Golf Course and Campground Categories

The current TIM Fee schedule has two detailed categories for outdoor recreation, golf course and campground. Since 1999 the County has permitted one golf course and no campgrounds. Given the lack of activity in this general category of outdoor recreation, the County could combine the Golf Course and Campground categories into a new Outdoor Recreation category with a fee based on number of project acres.

Alternately, the TIM Fee schedule could eliminate the golf course and campground categories and simply charge a Per Trip fee (see *Create Per Trip Fee* section, below) for any visitor lodging projects based on a motel trip generation rate.

Convert Bed & Breakfast To Hotel/Motel Category

Some transportation impact fee programs have a separate category for visitor lodging because the trip generation rates tend to be much different (lower) than the average retail/commercial trip rate. The current TIM Fee schedule has a Bed & Breakfast category. The most closely related category for which trip generation data is generally available is for hotels or motels.[9] To clarify the source of the trip generation rate, the County could re-title the category to "Hotel/Motel".

Alternately, the TIM fee schedule could eliminate the Bed & Breakfast category and simply charge a Per Trip fee (see *Create Per Trip Fee* section, below) for any visitor lodging projects based on a motel trip generation rate.

The TIM Fee administrative guidelines could clarify that a bed and breakfast establishment would pay both the single family TIM Fee for one dwelling unit plus the Hotel/Motel TIM Fee based on number of rooms available for rental.

Create Per Trip Fee

Given the comprehensive nature of the land use categories discussed above, very few development projects would not fall into one of the categories listed in the current TIM schedule or as modified based on the discussion in this section. Still, a few projects will likely remain outside the definitions of these categories.

For the few projects that do not fall within listed land use categories, some transportation impact fee programs adopt a Per Trip fee in the fee schedule. The Per Trip fee is simply the cost per trip derived from the nexus analysis and used to calculate the fee for all the other land use categories. For a project that does not fit into one of the listed categories, the County would develop a trip generation rate based on the project's specific characteristics and available industry data.[10] The total fee would be the multiple of the Per Trip fee, the trip generation rate identified for the project, and the size of the project.

The types of development projects that may use a per trip fee combined with a trip generation rate from established sources include:

- Projects that combine commercial and residential uses such as nursing or convalescent homes and bed and breakfast establishments.
- Projects that do not have any significant building square feet relative to their trip generation such as mining and outdoor recreation projects.

Other Land Use Category and Fee Application Issues

County staff raised several minor issues with regards to application of the fee to specific types of projects based on their experience administering the impact fee programs in the County for over 20 years. These fee application issues would be clarified in administrative guidelines to be updated concurrent with the 2015 TIM Fee Program update. These issues include:

- Most covered outdoor dining areas are considered building space for purposes of the Retail/Commercial fee calculation.
- Caretaker houses on commercial property pay the Multi-Family rate.

[9] See Institute of Transportation Engineers, *Trip Generation* manual, 9th Edition.

[10] Ibid.

- Clubhouses serving homeowner associations pay the General Commercial rate.
- Recreational vehicle storage would be charged at the Outdoor Recreation rate.
- Pre-fabricated shipping containers for exclusive use as a storage facility are included in the calculation of building square feet.

In addition to the issues listed above relating to use categories, County staff has also raised the concern related to the building codes used during the permitting process which is then translated into a TIM Fee category. This administrative concern will be further addressed with the Administrative Procedures Manual developed as part of the Major CIP and TIM Fee Update.

IMPROVEMENTS TO ALTERNATIVE MODES

Alternative modes refer to transit, bicycle, and pedestrian facilities. Although most transportation impact fee programs focus on the roadway network and traffic congestion, some programs have begun to incorporate more funding for improvement to these alternative modes because of limits to the build out of the roadway system.

Professional Practice

Transportation impact fee programs justify the inclusion of improvements to alternative modes using one or more of the following methods:

- Locating improvements on or parallel to roadways that will remain operating at a deficient level of service at the planning horizon for the fee program.
- Conducting a separate level of service analysis for the particular mode.
- Using mode share, for example transit trips as a percent of total trips, to allocate that share of the total fee program to transit improvements.
- Focusing bicycle and pedestrian improvements that improve access to transit
- Limiting improvements to those already identified in existing plans, such as a bicycle master plan.

Current Practice and Opportunities

The TIM Fee Program includes about $10 million for transit projects such as bus fleet expansion and park and ride lots. The Program should constrain use of these funds to projects that would relieve congestion on routes that will remain operating at a deficient level of service at the planning horizon. These routes would include, for example, the routes listed in General Plan Table TC-2.

PROGRAM ADMINISTRATION COSTS

Program administration costs associated with an impact fee program may include:

- Preparation of the nexus study and periodic updates
- Costs to administer the revenue collection including accounting for fee revenue, tracking credit and reimbursement agreements, annual reporting (required by the MFA), and annual inflation updates.
- Costs associated with management of the capital improvement plan (CIP) funded by the fee program, including capital project planning and management.

Professional Practice

Professional practices for integrating program administration costs into a fee programs include:

- Add a charge of typically two to five percent to the fee to fund periodic costs of a nexus study and ongoing administration associated with revenue collection. The agency segregates these funds and periodically adjusts the charge percentage to make sure that revenues match actual costs.
- Build capital project planning and management costs into the cost of each capital project funded by the fee program.

Current Practice and Opportunities

The TIM Fee only funds periodic nexus study costs. The TIM Fee does not fund ongoing administration or capital project planning and management. The County could consider including a percentage charge to the fee to fund these costs and adjust the percentage based on actual cost experience.

FEE DEFERRAL

Fee deferral allows a developer to defer payment of impact fees from the time of permit issuance to a later date. The advantage to the applicant is deferment of a project cost until later in the development process when the project can be put into use and revenues can be generated to offset the cost. Fee deferral programs became particularly popular during the recent recession to assist developers in responding to challenging economic conditions. These programs can also support economic development policy objectives by targeting projects that generate jobs and/or tax revenue.

Professional Practice

Professional practices in fee deferral programs include the following components:

- Deferment of only those fees due to the local agency, for example programs exclude school and utility district fees.
- Deferment until final inspection or occupancy permit. Some programs allow deferment beyond occupancy for up to five years with interest charged on the outstanding balance.
- Security for the outstanding fee obligation provided by a lien recorded against the property or other acceptable credit. Some agencies do not require a credit if deferment is only to final inspection/occupancy because use of the property requires payment of all fees.
- Payment of an administrative fee, typically $250 to $400 to cover the local agency's costs of administering the program.

Current Practice and Opportunities

The County of El Dorado has a fee deferral program for the TIM Fee for commercial/industrial projects with a fee obligation of $10,000 or more that requires payment of 20 percent of the fee obligation at time of final/occupancy permit, and monthly payments on the remaining balance over a five-year repayment period with no interest. The fee obligation must be secured by a deed of trust against the property or other form of security acceptable to County Counsel. The applicant pays all title company and recording fees. The County does not charge an administrative fee and there is no pre-payment penalty. For fee obligations of less than $10,000 the developer can defer the fee until final/occupancy permit but no later.

The County had a similar program for single family owner-builders that expired on December 31, 2012.

Compared to other agencies, the County's TIM Fee deferral program generally has more favorable conditions for the developer. The program has one of the longest deferment periods (five years) and there is no administrative fee. Interest is charged on outstanding balances so the TIM Fee Program remains fully funded.

In line with the best practices cited above, the County could consider:

- Re-authorizing the program for the single family developer
- Authorizing the program for the multi-family developer
- Allowing deferment with the entire fee paid at final/occupancy permit without a security requirement.

WAIVER AND OFFSET POLICIES

Transportation impact fee programs often need to balance the level of fees necessary to fully fund improvements needed to accommodate growth, and the need to support other policy objectives such as affordable housing and economic development. Programs may allow partial or full fee waivers to specified types of projects to support other objectives. Programs may offset the lost revenue from fee waivers with an alternative funding source to ensure that the capital improvement program supported by the fee remains fully funded.

To promote more affordable housing the County has a "Traffic Impact Mitigation (TIM) Fee Offset Program For Developments With Affordable Housing Units".[11] Under this program a developer may apply for a partial or full fee offset for a rental or for-sale unit if the unit qualifies as affordable housing. Use of the unit must be deed restricted for a minimum number of years for rental or purchase by individuals or families that have less than a specified income level based on federal standards and local income levels for affordable housing.

The County allocates $1 million annually from state and federal transportation funds to fund (offset) the fee revenue waived through this program. Thus development of affordable housing approved under this program can proceed without paying the TIM Fee, or only paying a partial amount, depending on the length of the deed restriction and the income levels targeted. The transportation funding offset allows the TIM Fee Program to remain fully funded as required by general plan policy TC-Xa, (per Measure Y, the TIM fee must fully fund the cost of transportation improvements needed to offset the impact of each development project).

Professional Practice

Professional practices include:

- Clear definition of the types of projects eligible to receive a waiver.
- The policy objectives supported by the waiver.
- Accounting of revenue lost from waivers.
- Offset of lost revenue with an alternative funding source.

The County's current TIM Fee Offset Program reflects these practices.

[11] County of El Dorado, Policy Number B-14, Traffic Impact Mitigation Fee Offset Program For Developments With Affordable Housing Units, adopted 12/11/2007, revised 12/17/2013.

Current Practice and Opportunities

Secondary Dwelling Units

Secondary dwelling units are specifically identified in the TIM Fee Offset Program as an appropriate use of offset funds. To be eligible the secondary unit must be deed restricted to serve as affordable housing, the unit must not be larger than 30 percent of the floor area of the primary unit on the parcel, and the primary unit must be owner-occupied. Most secondary dwelling units (about 75 percent) are approved under the TIM Fee Offset Program and do not pay the fee.

County staff expressed concern based on their experience with the TIM Fee that the program imposes a particularly significant financial burden on existing single-family homeowners seeking to add a second dwelling unit on the same lot. As a result the homeowner may elect to risk proceeding with construction without a building permit thus increasing public safety concerns associated with the lack of adequate building inspection. This burden is indicated because most (about 75 percent) of secondary units seek approval under the TIM Fee Offset Program in spite of the administrative burden of applying, and in spite of the reduced property value associated with an affordable housing unit.

The County could consider waiving the TIM Fee on all secondary dwelling units, remove the need to deed restrict the unit for affordable housing, and fund the offset with state and federal transportation funds. The advantage would be to remove all incentives for illegal construction of secondary units. The cost of the waiver and offset would be small given that about 75 percent of these units are already approved under the TIM Fee Offset Program. The disadvantage would be the potential loss of some affordable housing because lot owners would no longer need to deed restrict the unit. However, some lot owners would likely continue to use their units for individuals and families that would qualify for affordable housing under the current program.

Economic Development

County staff expressed interest in supporting economic development objectives through the development impact fee program. The County has several options:

- Prioritize capital projects funded by the TIM Fee Program that improve transportation access to job centers with near term potential for growth. The TIM Fee is constrained to funding specific projects needed to accommodate growth, but within these constraints the County retains some flexibility to prioritize projects.
- Adopt a fee waiver process for high priority development projects that would bring economic development benefits. Typically this type of program would establish criteria, such as estimated number of jobs generated, for a project to be eligible for a fee waiver. Given the constraints of General Plan policy TC-Xa the County would need to identify an alternative funding source for a fee waiver program.

CREDITS AND REIMBURSEMENTS

Credit and reimbursement procedures allow the developer to construct an improvement to be funded by the impact fee program and receive credit against their impact fee obligation. If their credit is greater than the amount of their fee obligation then the developer enters into a reimbursement agreement with the local agency. Existing fund balances and future fee revenues from the same fund that issued the credit provide funding for the reimbursement agreement.

Professional Practice

Professional practices for credit and/or reimbursement (CR) agreements are described below.

- **Eligible improvements.** Only improvements that otherwise would have been directly funded by the impact fee, and that are approved by and dedicated to the public agency following construction by the developer, are eligible for a CR agreement.
- **CIP priorities.** CR agreements influence the programming of capital improvements funded by the fee program (the fund's capital improvement plan, or CIP). The more that fund resources are dedicated to CR agreements, the more that the location and timing of development will govern CIP priorities. The more that fund resources are reserved for the agency's CIP priorities, the more that the CIP will influence the timing and location of development. There is no best practice in this regard and most programs strike a balance between these two approaches.
- **Prior approval.** A developer seeking a credit and/or reimbursement for a dedicated improvement must apply to and seek approval from the agency for a CR agreement with specified terms and conditions prior to constructing the improvement. The agency's fee program guidelines identify a senior administrative official or staff committee charged with making approving CR agreements.
- **Amount of credit.** The credit amount equals the lesser of either: (a) the actual cost of the improvement for the developer, or (b) the estimated cost of the improvement used in the nexus study to calculate the impact fee (1) increased for cost inflation incorporated into the fee since the nexus study was adopted and (2) decreased for that share of the improvement cost associated with agency costs to review and accept the improvement. If the agency allows a credit in excess of the nexus study's adjusted estimated cost then the study must be updated immediately to incorporate the higher cost to maintain full funding of the program.
- **Use of credit.** The credit may be used to offset up to 100 percent of the developer's fee obligation. The agency may require partial payment of the fee even if a credit remains if the fee program needs revenue to construct higher priority improvements and/or fund prior CR agreements. For example, credits may be constrained to less than 100 percent of the fee obligation if the improvement is not programmed in the current CIP.
- **Reimbursement funding source.** The only eligible funding source for a reimbursement is the impact fee fund that otherwise would have received the fee

payment and funded the improvement. The reimbursement obligation has no claim against any other agency revenues.

- **Reimbursement schedule.** Reimbursement is based on payment from existing fund balance and/or a specified percent of future fund revenue, until the reimbursement is fully funded. Allocating only a percent and not an absolute amount of future fund revenue allocates the same level of risk to the CR agreement that is shared by the entire fee program and its CIP. The allocation percentage should account for current and anticipated funding needs for higher priority improvements and/or prior CR agreements. For example, as mentioned above, the reimbursement may be constrained if the improvement is not programmed in the current CIP.
- **Overlapping CR agreements.** Anticipating the impact of overlapping CR agreements on fund resources is a critical to managing a fee program. There is uncertainty predicting the location of future development, associated infrastructure needs, and the possibility of future requests for CR agreements. The commitment of fund resources to a new CR agreement must take into account existing and the potential for new obligations. CR agreements maximize allocation of available funding to retire agreements as soon as feasible, given competing funding priorities, and include provisions to reduce funding in the future if higher priorities arise. At the same time, CR agreements should guarantee a minimum percentage of funding from future fee revenue to avoid shifting risk completely to the developer.
- **Interest on outstanding reimbursement obligations.** Interest accrues on outstanding reimbursement obligations at the same rate as any inflation adjustment to the impact fee. Inflation adjustments typically are the only mechanism the fee program has to reflect the time value of money to the developer waiting for reimbursement. Alternately, the fee program could adjust outstanding reimbursement obligations based on an interest rate index, add a cost component to the fee program for interest charges on outstanding CR agreements, and adjust the fee accordingly to reflect changes in the index and the amount of outstanding reimbursement obligations.
- **Reimbursement to community facilities districts.** If a community facilities district is the source of funding for an improvement then reimbursements may be made only to the same district and not to the developer sponsoring the district.

Current Practice and Opportunities

In El Dorado County approval of credit agreements is delegated to the Community Development Agency Director.

Reimbursement agreements are governed by a detailed set of guidelines approved by the Board of Supervisors in 1996: the Department of Transportation Guidelines for Road Impact Fee/Traffic Impact Mitigation Fee Reimbursement Projects ("Guidelines"). Section 7.0 of the Guidelines required reimbursements to be paid over four years (25% per year) beginning within 90 days of the Board's acceptance of the improvement. The Board has amended the Guidelines several times since then as follows:

- In 2003 the Board suspended Section 7.0 of the Guidelines for projects within the El Dorado Hills TIM zone (TIM Zone 8). The suspension was caused by concerns regarding the setting of CIP priorities and the availability of funding for CR agreements.
- In 2008 the Board approved a new reimbursement procedure for TIM Zone 8. The procedure required that:
  - Outstanding reimbursement obligations accrue with no interest.
  - Reimbursements are made over ten years with 10% of the total reimbursement obligation paid per year.
  - The first reimbursement payment is made within 90 days of acceptance of the project or when the project is first available for public use.
  - If annual payments cannot be made due to lack of revenue then the developer could either have the unpaid amount accrue interest at the Treasurer's pooled rate of interest, or could opt to have the insufficiency converted to TIM Fee credits.

Current outstanding reimbursement obligations are shown in Table 2 and currently total $28 million.

Table 2: Current Reimbursement Agreements

Zone / Developer	Improvement	Amount[1]
Zone 8		
K. Hovnanian Forecast Homes	White Rock Road West	$ 504,486
Arrowest Properties, Inc.	Post St. / White Rock Road Signalization	85,000
AKT Development Corp	White Rock Road East (RIA)	37,921
Pulte Homes	Bass Lake Road (SIA)	3,692,152
Green Valley Marketplace	$300,000 cash contribution	300,000
	Subtotal	**$ 4,619,559**
Zone 8 Silva Valley Set Aside		
West Valley, LLC	SVI - Phase1 Developer Advance & Design Costs	**$16,194,966**
Zone 2		
Silver Springs, LLC	SS Parkway & Green Valley / SS Intersect	$ 2,767,549
Silver Springs, LLC	Green Valley / SS Overlay	115,315
Silver Springs, LLC	Green Valley / Deer Valley Intersection	397,693
Silver Springs, LLC	Offsite Silver Springs Parkway	3,889,855
Silver Springs, LLC	Madera Right Turn Lane	125,574
	Subtotal	**$ 7,295,986**
	Total	**$28,110,511**

[1] As of June 30, 2015.

Outstanding reimbursements will be included in the total cost of the 2015 TIM Fee Program update, and included in the TIM Fee in for the appropriate zone. Any change in the zone structure as part of the update will not impair the Program's ability to fund these reimbursements.

The 1996 Guidelines should be updated based on the following considerations:

- A financial analysis of the TIM Fee Program's ability to fund current outstanding and anticipated reimbursements.
- Incorporating General Plan policies TC-X policies (Measure Y)
- Policy direction from the Board regarding the appropriate balance between funding CIP priorities and funding CR agreements.

APPEALS

The MFA provides procedures for the protest of either an action adopting a fee program or the imposition of a fee on a specific development project.[12] Adoption of an appeals process by a local agency allows for an administrative procedure to clarify the process and expedite the resolution of issues that may arise in the application of the fee to a specific development project. Regardless of the local procedure, the project applicant retains all the rights provided by the MFA to protest the local agency's fee in court.

Professional Practice

Professional practice is to adopt an administrative procedure by ordinance for a project applicant to appeal the amount of the fee calculated for a specific development project. Components of the appeal procedure would include:

- Allow for a single appeal to a specified senior administrative official who would have final decision making authority.
- Limit the basis of the appeal to the technical assumptions used to calculate the fee on a project, such as the trip generation rate.
- Allow for the project applicant to submit information supporting the appeal and specify any requirements for such information, such as the need to be signed by a registered civil engineer.

Current Practice and Opportunities

General Plan policy TC-Xa requires that the TIM Fee fully fund the cost of transportation improvements needed to offset the impact of each development project. Furthermore, the MFA prohibits the County's from raising the fee on other development projects to offset fee

[12] See Calif. Govt. Code Sections 66020 through 66025.

reductions on specific projects. Consequently the County does not have the ability to partially reduce or waive the TIM Fee on a development project.

However, the County does have the ability to adjust the amount of the TIM Fee on a development project to reflect the project's estimated impact. Such an adjustment would not affect full funding of the program but instead make sure that each project pays the appropriate amount based on impact.

The current TIM Fee implementing ordinances[13] do not provide for an appeals process. Consequently there is no local legislative authority for the County to address legitimate issues that may arise from application of the TIM Fee to a specific project.

The TIM Fee implementing ordinance and supporting policy and procedure documents should be amended to:

- Allow for appeal of the fee calculated on a specific development project based on a more applicable trip generation rate than assumed in the TIM Fee nexus study and TIM Fee schedule.
- Specify the type of documentation that the project applicant must submit as a basis for a revised trip generation rate. At a minimum the documentation should allow use of the Institute of Transportation Engineers, *Trip Generation* manual or a trip generation analysis submitted by a registered civil or traffic engineer.
- Identify the "cost per trip" that will be used as a basis for calculating the fee based on a revised trip generation rate.
- Specify the senior administrative official to hear and make a final decision on the appeal.

[13] See ordinance 292-2005 for the TIM Fee Program adoption.