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RESOLUTION NO. 10-66

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

Resolution to approve the Interim Unincorporated Countywide Transportation Improvement Fee ("Resolution").

WHEREAS, the Colorado Legislature authorized El Paso County, as a local government, to impose an impact fee or similar development charge to fund expenditures by the County on capital facilities needed to serve new development. Such fee must meet three criteria: it must be legislatively adopted, must be generally applicable to a broad class of property, and must be intended to defray the projected impacts on capital facilities caused by proposed development. § 29-20-104.5(1), C.R.S. Such fee must be no greater than necessary to defray such impacts directly related to proposed development, and shall not be imposed to remedy any deficiency in capital facilities that exists without regard to proposed development. § 29-20-104.5(2), C.R.S. Colorado case law further directs that such fee must be reasonably related to the cost of the County service provided, be fairly calculated, and be rationally based; and

WHEREAS, El Paso County, by and through the Board of County Commissioners of El Paso County, Colorado ("BOCC" or "Board"), has the authority to assess transportation improvement fees pursuant to § 8.7, El Paso County Land Development Code, and other applicable laws; and

WHEREAS, the protection of the health, safety, and general welfare of the citizens of El Paso County require that the transportation system be expanded and improved to meet the demands of new development; and

WHEREAS, this Resolution assists in implementing Policies 6.1.10, 9.4.5, 9.1.1, and Goal 9.4.1 of the El Paso County Policy Plan. These goals and policies ensure that new development will not create a disproportionately high demand on public services, facilities, or funding by implementing a method for contributions to transportation improvements needed to preserve the functional integrity of the road system; and

WHEREAS, the County established the first small area transportation fee for the Falcon small area in 2001 at $116.00 per trip, and has been in the process of updating that study and completing a new study for a second small area entitled the Lorson Ranch/Rolling Hills Ranch Area Transportation Improvement Fee Program (collectively, the "Studies"); and

WHEREAS, the revenue generated by projected new growth and development under the County's existing fiscal structure will not be adequate to fund the required future road capital improvements necessary to accommodate this new growth and development if desired levels of service on the County's transportation system are to be maintained; and

ROBERT C. "BOB" BALINK El Paso County, CO
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WHEREAS, in work sessions on June 16, 2009 and on November 12, 2009, the BOCC was updated on the use of a transportation demand model to establish small area fees. The Housing and Building Association of Colorado Springs ("HBA") and other stakeholders support the establishment of a Countywide fee system rather than reliance on small area transportation improvement fees for future transportation improvements, and also agree to work together with El Paso County to develop a Countywide system for fees, credits and reimbursements. In addition, El Paso County and the HBA will consider the use of a district or districts to help fund improvements; and

WHEREAS, the Interim Countywide Transportation Improvement Fee amount was established by agreement among stakeholders, including the HBA, and El Paso County during stakeholder meetings, and is not in excess of that recommended by the Studies and is consistent with other similar fees being collected locally;; and

WHEREAS, the Interim Countywide Transportation Improvement Fee amount for a given development as established by this Resolution is based on the fee multiplied by number of trips (based on table of standard trips according to land use type) and then that figure is multiplied by the quantity of units in the development; and

WHEREAS, based on the information generated by the Studies, the BOCC has determined that the Interim Countywide Transportation Improvement Fee amount is not greater than that necessary to defray the impacts directly related to anticipated future development in the County and is not being imposed to remedy any past deficiency in transportation improvements within the County; and

WHEREAS, the County will have all interim fees that are collected deposited into a separate account. No payouts will be made with respect to the fees deposited into the account until a Countywide transportation fee program, including a credit and reimbursement program, is established or until otherwise directed by the BOCC, and

WHEREAS, the interim fee replaces previous fees adopted pursuant to the Small Area Traffic Report for the Falcon Area adopted in Resolutions 02-350, 03-500, and 08-297; and

WHEREAS, the fees previously collected under the previously adopted Resolutions 02-350, 03-500, and 08-297 will continue to be held in a separate account pursuant to those resolutions until further action by the BOCC.

WHEREAS, to the extent not inconsistent with any previously entered into agreement between the County and any developer within the boundaries of the area that had been considered for the Lorson Ranch/ Rolling Hills Ranch Area, an interim fee is hereby established and remains in effect until a Countywide transportation improvement fee program is adopted.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of El Paso County, Colorado:

1. The BOCC hereby establishes a Countywide Interim Transportation Improvement Fee ("Interim Fee") as $156.25 per trip, with trip rates to be established from the Trip Table, Attachment A.

2. The implementation of this Interim Fee system shall be the joint responsibility of the El Paso County Public Services Department and Development Services Department.

3. The operational details of this Interim Fee program include, but are not limited to, the following:

a. The Interim Fee per trip is one hundred and fifty six dollars and twenty-five cents ($156.25), and may be updated yearly based on the Colorado Construction Cost Index. The Interim Fee per trip amount of $156.25 would equate to $1,500.00 per residential - single family home. For other land uses, the trip rate can be found in Attachment A. Therefore, the BOCC hereby authorizes the Interim Fee to be administratively adjusted annually by the County Engineer based on annual changes in the Colorado Construction Cost Index with notice to the BOCC prior to enacting such change. The amount of the Interim Fees to be paid is calculated as the number of trips to or from an identified land use multiplied by the cost per trip (the "Calculated Fee"). The expected trips by land use type are listed in Attachment A.

b. Calculated Fee amounts may, at the election of the owner, be paid at the time of recording the final plat, or must be paid at issuance of a building permit.

c. Notwithstanding the provisions of Paragraph 3(b), above or Paragraph 5, below, any final plat within the boundaries of the Falcon Small Area or the proposed, draft Lorson Ranch/Rolling Hills Ranch Small Area that comes for approval or extension before adoption of the Countywide Transportation Improvement Fee Program, and that desires a credit against the Interim Fee, the developer and the Development Services staff shall as part of the credit or the final plat presentation make recommendations to the Board of County Commissioners concerning whether a credit should issue and the amount of such credit.

d. In the event improvements are to be constructed in lieu of payment of the Interim Fee, the implementation system that is to be developed following adoption of this Resolution should consider development of provisions that would issue credits in order to allow Calculated Fees to be deferred until a final accounting is performed, and

provided that adequate security is posted for the improvement and for the estimated amount of the Interim Fee.

e. The following are exempted from the Interim Fee. An exemption must be claimed by the Fee payer at the time of application for a building permit and be based on one of the following three exemptions:

(1) Alterations or expansion of an existing building where no additional dwelling units are created, the use is not changed, and where no additional vehicular trips will be produced over and above those produced by the existing use.

(2) The construction of accessory buildings or structures which will not produce additional vehicular trips over and above those produced by the principal building or use of the land.

(3) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use, provided that no additional trips will be produced over and above those produced by the original use of the land.

d. In the event that a proposed change of land use type, redevelopment, or modification results in a net decrease in the Calculated Fee amount for the new use or development as compared to the previous use or development, there shall be no refund of transportation improvement Interim Fees previously paid.

f. The appeal of any determination related to the Interim Fee shall first be made by the developer and/or applicant to the Director of the Development Services Department. The BOCC is the ultimate interpreter of the meaning and application of the Interim Fee. The developer and/or applicant may appeal the decision of the Director of the Development Services Department to the BOCC using standard County appeals procedures, either independently or in conjunction with the appeal of a related land use application matter. In the event that an appeal is made in conjunction with the appeal of a related land use application matter, all matters being appealed must independently meet time deadlines required for appeal as set forth in the standard County appeals procedures.

g. The County will have all Interim Fees deposited into a separate account. No payouts will be made with respect to the Interim Fees held in the account until a Countywide credit and reimbursement program is established or until otherwise directed by the Board of County Commissioners.

h. Fees previously paid under the existing Small Area Traffic Report for the Falcon Area or paid pursuant to any agreement entered into between the County and any developer in the Lorson Ranch/Rolling Hills Area will continue to be held in that account and not expended pending a decision of the BOCC as to the disposition of those existing fees, such as through completion and adoption of the Countywide study or an agreement among the parties who may currently be entitled to those fees.

4. To the extent that this Resolution conflicts with any prior resolution of the BOCC in regard to fees, the provisions of this Resolution shall control, except in the event of a conflict between this Resolution and any agreement entered into between the County and any developer in the Lorson Ranch/Rolling Hills Ranch Area, then such agreement shall control. Specifically, the Countywide Interim Fee hereby replaces and supersedes previous fees established under the Small Area Traffic Report for the Falcon Area adopted in Resolution Nos. 02-350, 03-500, and 08-297. This Resolution replaces and supersedes any and all prior Resolutions regarding fees under the Falcon Area Transportation Improvement Program, including but not limited to, Resolution Nos. 02-350, 03-500, and 08-297. El Paso County will not pursue the application of small area transportation fees at this time, but will work to establish a countywide transportation fee system. However, in implementing this Countywide transportation fee system and in order to carry out the provisions of this Resolution in regards to creation of a system of credits and reimbursements, the County may have to apply elements of the small area plans in order to avoid conflict with Colorado law as it pertains to traffic impact fees.

5. This Resolution and the Interim Fee set forth herein shall become effective on March 1, 2010 and shall be applicable to all Development (as defined below) in the unincorporated County where a building permit has not been issued as of the date of the adoption of this Resolution. For purposes of this Resolution, "Development" shall mean all property that either receives final plat approval on or after February 11, 2010, either in a public hearing or administratively, or all property that has previously received final plat approval with a condition of approval or resolution of approval that requires participation in a transportation improvement fee program or any final plat approval that is no longer eligible for recording due to the expiration of time and for which the only extension of time arises by approval of the BOCC in an open and public meeting (hereinafter referred to as an "Expired Final Plat"), regardless whether such Expired Final Plat contains a condition of approval or resolution of approval that requires participation in a transportation improvement fee program. It is not the intent of this Resolution to amend or rescind existing subdivision improvement agreements, development agreements or similar agreements, with regard to fees, obligations, conditions, credits and reimbursements for existing transportation improvements or requirements for on-site or off-site transportation improvements.

6. Nothing in this Resolution expresses or implies an amendment, modification, superseding or the creation of a conflict with the El Paso County Land Development Code or the El Paso County Engineering Criteria Manual.

7. In establishing the amount of the Interim Fee the Board of County Commissioners incorporates by reference into the public hearing establishing this Resolution, and as if fully set forth herein, the record of any and all public hearings concerning the Falcon Small Area and the pending Lorson Ranch/Rolling Hills Ranch Area plans, and any and all documents in support thereof, including, but not limited to, the Falcon Small Area plan and the traffic study in support of the un-adopted draft of the Lorson Ranch/Rolling Hills Ranch Area plans. Furthermore, adoption of this Resolution does not express or imply approval of the update to the Falcon Small Area Plan or the un-adopted draft of the Lorson Ranch/Rolling Hills Ranch Small Area Plan.

8. Adjustment to the Interim Fee based on diverted trips for commercial property may be considered by the BOCC.

BE IT FURTHER RESOLVED, that Dennis Hisey, duly elected, qualified member and Chairman of the Board of County Commissioners, or Amy Lathen, duly elected, qualified member and Vice-Chair of the Board of County Commissioners be and is hereby authorized on behalf of the Board to execute any and all documents necessary to carry out the intent of the Board as described herein.

DONE THIS 11th day of February, 2010, at Colorado Springs, Colorado.

ATTEST:

By: _____
County Clerk & Recorder

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: _____
Dennis Hisey, Chair

Attachment A

TABLE 2 – TRIP RATES BY LAND USE CATEGORY

	Land Use	Units	ITE Code	ITE Trip Rate (trip ends per weekday) (1)	Pass-by Rates (2)	Average Trip Length (miles) (3)	Trip Length Factor (3)	Adjusted Fee Program Trip Rates
	Residential							
1	Residential - Single Family	DU	210	9.6	0%	5.7	1.00	9.6
2	Residential - Multi Family	DU	230	5.8	0%	5.7	1.00	5.8
	Industrial							
3	Light Industrial	1,000 sq ft	110	7.0	0%	5.7	1.00	7.0
4	Heavy Industrial	1,000 sq ft	120	1.5	0%	5.7	1.00	1.5
5	Industrial Park	1,000 sq ft	130	7.0	0%	5.7	1.00	7.0
	Commercial - Office							
6	Office	1,000 sq ft	710	11.0	0%	4.9	0.86	9.5
7	Business Park	1,000 sq ft	770	12.8	0%	4.9	0.86	11.0
	Commercial - Retail							
8	Mini Warehouse	1,000 sq ft	151	2.5	0%	4.9	0.86	2.1
9	Neighborhood Commercial/ Retail Specialty (50,000 sq ft)	1,000 sq ft	820	42.9	48%	4.3	0.75	16.8
10	Commercial/Retail (100,000 sq ft)	1,000 sq ft	820	42.9	38%	4.3	0.75	20.1
11	Community Commercial/ Shopping Center (200,000 sq ft)	1,000 sq ft	820	42.9	32%	4.3	0.75	22.0
12	Convenience Market	1,000 sq ft	851	738.0	70%	1.4	0.25	54.4
13	Hardware/Paint Store	1,000 sq ft	816	51.3	30%	4.3	0.75	27.1
14	Home Improvement Superstore	1,000 sq ft	862	29.8	30%	4.3	0.75	15.7
15	Pharmacy	1,000 sq ft	880	90.1	50%	4.3	0.75	34.0
16	Furniture Store	1,000 sq ft	890	5.1	55%	4.3	0.75	1.7
17	Bank	1,000 sq ft	912	148.2	45%	4.3	0.75	61.5
18	Quality Restaurant	1,000 sq ft	931	90.0	45%	3.4	0.60	29.5
19	Restaurant (high turnover, sit down)	1,000 sq ft	932	127.2	45%	3.4	0.60	41.7
20	Fast Food Restaurant	1,000 sq ft	934	496.1	55%	2.8	0.49	109.7
21	Gasoline/Service Station	pumps	944	168.6	40%	2.8	0.49	49.7
22	Gasoline/Service Station with Convenience Market	pumps	945	162.8	55%	2.8	0.49	36.0
23	Discount Superstore	1,000 sq ft	813/815	53.1	25%	4.3	0.75	30.1
24	Supermarket	1,000 sq ft	850/854	102.2	40%	2.8	0.49	30.1
27	Nursery - Garden Center	1,000 sq ft	817	36.1	40%	4.3	0.75	16.3
25	Nursery - Wholesale	acres	818	19.5	40%	4.3	0.75	8.8
26	Health Club, Recreation Center	ksf	492	32.9	50%	4.7	0.82	13.6
27	Commercial - Mixed Use	ksf	n/a	42.9	35%	4.9	0.86	24.0
28	Golf Course	holes	430	35.7	0%	4.7	0.82	29.5

Attachment A (continued)

	Land Use	Units	ITE Code	ITE Trip Rate (trip ends per weekday) (1)	Pass-by Rates (2)	Average Trip Length (miles) (3)	Trip Length Factor (3)	Adjusted Fee Program Trip Rates
	Institutional							
29	Elementary School	students	520	1.3	75%	4.1	0.72	0.2
30	Middle School	students	522	1.6	50%	4.1	0.72	0.6
31	High School	students	530	1.7	25%	4.1	0.72	0.9
32	Church	ksf	560	9.1	0%	4.9	0.86	7.8
33	Park/Open Space	acres	411	1.6	0%	4.7	0.82	1.3
	Hospitality/Lodging							
34	Hotel	rooms	310	8.2	0%	4.9	0.86	7.0
35	Motel	rooms	320	5.6	0%	4.9	0.86	4.8

Notes/Sources:

1. *Source of base trip rates is the ITE Trip Generation Manual (2008).*
2. *The trip rates were adjusted by removing pass-by trips since these trips technically don't create additional roadway impacts. Diverted trips are treated as primary trips (i.e., not removed from trip rates). Pass-by rates were derived from the ITE Trip Generation Handbook (2nd edition). Pass-by rates were estimated where the ITE handbook did not provide specific information.*
3. *The length of a trip is proportional to its impacts (and fair share costs). The trip length factor accounts for the different trip lengths by land use category. Average trip lengths were derived from the PPACG model. In addition, some adjustments were made to specific categories based on professional judgment where the PPACG model did not provide specific information.*