

**Resolution #TC-2043**

**BE IT HEREBY RESOLVED, the Transportation Commission's Special and Regular Meeting Minutes for November 16 & 17, 2011 are hereby approved as published in the official agenda of the December 14 & 15, 2011 Meeting.**

**Transportation Commission of Colorado  
Regular Meeting Minutes  
November 17, 2011**

**Chairman Steve Parker convened the meeting at 9:33 a.m. in the auditorium of the headquarters building in Denver Colorado.**

PRESENT WERE: Steve Parker, Chairman, District 8  
Gary Reiff, Vice Chairman, District 3  
Ed Peterson, District 2  
Heather Barry, District 4  
Kathy Gilliland, District 5  
Kathy Connell, District 6  
Doug Aden, District 7  
Les Gruen, District 9  
Gilbert Ortiz, Sr., District 10  
Kimbra L. Killin, District 11

EXCUSED: Trey Rogers, District 1

ALSO PRESENT: Don Hunt, Executive Director  
Ben Stein, CFO  
Tim Harris, Chief Engineer  
Heidi Bimmerle, Director of Admin & Human Resources  
Mark Imhoff, Division of Transit and Rail Director  
Mike Cheroutes, HPTE Director  
Casey Tighe, Audit Director  
Stacey Stegman, for Public Relations Director  
Scott McDaniel, Staff Services Director  
Dave Gordon, Aeronautics Director  
Tony DeVito, Region 1 Transportation Director  
Tom Wrona, Region 2 Transportation Director  
Dave Eller, Region 3 Transportation Director  
Johnny Olson, Region 4 Transportation Director  
Kerrie Neat, Region 5 Transportation Director  
Reza Akhavan, Region 6 Transportation Director  
Harry Morrow, Chief Transportation Counsel  
John Cater, FHWA  
Vince Rogalski, Statewide Transportation Advisory

## Committee (STAC)

AND: Other staff members, organization representatives,  
the public and the news media

An electronic recording of the meeting was made and filed with supporting documents in the Transportation Commission office.

### **Swearing in**

Secretary Herman Stockinger conducted the swearing in ceremony for Commissioner Ed Peterson.

### **Audience Participation**

Chairman Parker mentioned that no one had signed up to speak and asked if there was anyone in the audience who wished to address the Commission and there was no request.

### **Individual Commissioner Comments**

Commissioner Connell reported that she would be meeting with the Clear Creek County Commissioners and that they had requested the meeting to express their views on the Twin Tunnel project. She declared that she would report on the county meeting at the December meeting of the Transportation Commission.

Commissioner Aden said that he had driven up Red Mountain Pass and visited the new Bear Creek Bridge, noting it was a very scenic area and the site of a Bridge Enterprise project with 30 foot scenic walkway that has become a big tourist attraction for the area. Commissioner Aden reported that in his meeting with the Ouray County Commissioners, they had been very complimentary of CDOT in regards to this project and the way that it had been managed.

Commissioner Barry thanked the City of Brighton for hosting Bagels with Barry.

Commissioner Peterson mentioned that he had attended the JEFFTAG meeting in Jefferson County in November and had re-introduced himself to many past acquaintances and will work closely with them in the coming months.

Commissioner Gruen stated that he met with Region 2 RTD, Tom Wrona and City of Fountain staff to address concerns they had. He stated that he appreciated that Tom Wrona had attended the meeting and thanked him. He stated that he hopes that the meeting was a good start for more communication and more meetings that will resolve the access management issues they are having.

Commissioner Killin enjoyed dinner with the contractors last night. Nice time to get together and touch base.

Commissioner Ortiz stated that he appreciated the EJMT Tour in October and thanked the staff for arranging the tour and commended the staff at the tunnel. He stated the Commission should do more of those trips. He reported that following the tour he has a better understanding of the rockfall issues after the trip.

Commissioner Gilliland agreed with Commissioner Ortiz that it was a great road trip. She reported that she has been meeting with local elected officials in Morgan, Weld and Larimer County and that she will be setting up regularly scheduled quarterly meetings with the officials. She declared that she supports the idea of open communications and has received positive feedback in regards to the future meetings.

Commissioner Parker accompanied Region 5 RTD, Carrie Neet to a meeting with the 6 counties of the San Luis Valley where many of the County Commissioners were in attendance. He mentioned that at the CCA Dinner held on Wednesday, November 16, he visited with the contractor that did the Bear Creek project. Commissioner Parker asked him where the crew had stayed during the project and he mentioned that they had given quite a boost to the economy of Ridgeway by staying there. Director Hunt and he met and made plans for additional road trips. He reported that in December a tentative schedule would be available.

#### **ED Report:**

Executive Director, Don Hunt declared that he also had enjoyed the road trip in October, and that he would like to get outside of the Denver area a few times within next year with the Commission. He confirmed that he has also gone out on the road himself on a CDOT Statewide Tour, had meetings with Regions 1 and 6 employees already, with a good contingent of employees at those meetings. He stated that on November 17, he would be with Commissioner Parker in Durango, meeting with front line employees as well as businesses and in the area.

He declared that, speaking of CDOT Employees, the State just completed a statewide employee engagement survey. There was a large participation from around the state with 100,000 employees taking the survey and that figure included about 2/3 of CDOT employees. Mr. Hunt gave a few highlights: CDOT employees feel their work is important, feel they are held accountable, and that their work gives them a feeling of personal accomplishment. He declared however, that employees generally didn't feel they could grow within CDOT or be innovative and that most frustrating of all is the result that many employees felt like CDOT leaders failed to give a clear picture of the department's direction. He stated that they do appreciate their immediate supervisor.

Director Hunt mentioned that CDOT also conducted a statewide customer survey, and he was pleased to report that 78% of residents think CDOT does a good job and gave high ratings to the Maintenance activities in particular. He said that on the other hand, only 55% of CDOT employees think that the citizens appreciate their work. Mr. Hunt declared that in his visits to the Regions, he was delivering the message to employees that 78% of residents do appreciate what they are doing.

Director Hunt talked about I-70 East, and confirmed that the Viaduct is the single largest infrastructure problem in the state and that the work on the PEIS had been going on for several years. He reported that a Consensus process and collaborative team succeeded in coming up with a preferred alternative to keep I-70 on the current alignment, and then in the end, the consensus failed to determine whether the preferred alignment should shift north or south. Denver supports the north shift, with investments in a new school and rec facility and the group will work over the next few months to agree on the details. He declared that CDOT is more than willing to agree on those investments.

Mr. Hunt stated that in January a new State wide civic engagement process would be unveiled by Governor Hickenlooper and that the Governor will engage over 1000 Colorado Residents for envisioning Colorado's Future. He reported that the 4 big issues are: Education, Health care, ballot reform, and transportation. Mr. Hunt commented that the Governor believes there will be a lot to agree about despite participant's differences.

### **Chief Engineer Report**

Chief Engineer Tim Harris said that there were a couple of successes he wanted to mention:

- Ribbon Cutting Ceremony on Pecos Street railroad separation structure
- Budget action this month to fund I-225 widening project that will fund three lanes on I-225
- The 4<sup>th</sup> Street Bridge project in Pueblo received an award for a Bridge of Excellence from the American Segmental Bridge Institute

Tim Harris presented the award to Region 2, RTD Tom Wrona who stated that he wanted to thank the staff of Region 2 and the Contractors – Flat Iron Constructors, Figg Engineers for the design, and PBS&J who helped during construction. He was proud to report that the bridge is Colorado's longest span on the State Highway system.

Commissioner Aden asked for clarification that with the project on 225 it will then be 3 lanes for its entire length to I-70. Chief Harris confirmed that fact and added that it would also extend the light rail line from Parker to Iliff which is a little further than the current end-of-the-line.

### **High Performance Transportation Enterprise (HPTE) Director's Report**

Mike Cheroutes reported that there were a few items he wanted to highlight:

- HPTE Board met Wednesday, November 16, 2011 with a full agenda and received a report from KPMG in regards to getting a preferred model to take into the P3 market in February which is the goal for the US 36 project.
- Taking a new look at the tolling policies, specifically the issue of the incremental surcharge to the license plate tolling fee that is levied to recover costs

- Taking a second look at the administrative hearing process that as partners with E-470 and their toll collection operation CDOT is a part of. The goal is to make sure that what works for them works for us or whether we should do something a little different. He reminded the Commission that CDOT contracts with E-470 to collect and process tolls on the I-25 HOT Lanes and that what works well for them may not work for CDOT.
- Thanks to the Commission for considering the resolution for the loan to the HPTE as an alternative for the Enterprise to use to be able to get acceleration on some projects.

### **FHWA Division Administrator Report**

Doug Bennett spoke for John Cater who was out spending the morning with the FHWA Deputy Administrator at the Pecos Street Bridge Ribbon Cutting. Doug Bennett welcomed Commissioner Peterson. He spoke on local agency issues and stated that efforts that what the Staff Branches department has been doing is making progress on local agency issues.

He reported that the Federal DOT does a survey each year as well, with questions such as “are you happy where you are working” – of the 52 divisions, the Colorado division received the second highest employee score!

### **STAC Report**

Vince Rogalski declared that the STAC had met Thursday, November 16, 2011 and he welcomed new Commissioner Peterson. He commented on the following presentations:

- Report from Mickey Ferrell regarding the federal “MAP-21” bill, which the STAC saw as encouraging.
- Reviewed the FY '13 budget and voted to accept the staff recommendation on the draft budget. Surface treatment reduced but if additional money came in it should go to surface treatment to restore those levels.
- Debra Perkins-Smith presented on the MOUs and Transportation Commission policies and kick-off of the 2040 Plan, including Tiering and other issues.
- Mark Imhoff provided an update on the Division of Transit and Rail, and the draft state rail plan, along with other studies that are being kicked off.

### **Committee Reports**

#### **AUDIT COMMITTEE**

Commissioner Gruen delivered the following report in regards to the Audit Committee Meeting on November 16, 2011:

- Committee elected Les Gruen Chair of the Committee

- The Committee approved a report on payments made by the region one business office. The audit found that the payments by the region one business office were accurate and process timely. The audit recommended some general process improvements relating to defining and documenting the review roles and responsibilities of different people processing payments.
- The committee reviewed a local agency project by the City of Lakewood. The audit found the project was properly managed by the city with the exception of completing the final forms related to materials testing. The tests were completed but the forms had not been submitted to CDOT, thus preventing project closure. CDOT Staff said they would continue to work with local entities to get complete documents to close projects. The Committee understands that local agency contracts will be an area for future process improvement efforts.
- There was discussion of the tiering process for payments to local agencies. The idea is to identify ways to streamline the payment process to the local agencies while still providing the expected level of oversight of federal funds. A tiering working group is being formed by CDOT staff to implement improvements to the process of monitoring and paying sub recipients.
- Audit has commenced a series of fuel reconciliation audits throughout CDOT

### **DBE Committee**

Commissioner Barry gave the following report of the DBE Committee Meeting on November 16, 2011:

- The revised Emerging Small Business Program is now up and running. The application and new work codes are available online, and the Center for Equal Opportunity expects the directory to go live today.
- CDOT has selected a project in Region 4 as the first ESB Restricted Project. The project is approximately \$600,000 and will go to ad December 1<sup>st</sup>.
- Much of the meeting yesterday involved a discussion about communicating changes in the program and reaching out more to minority businesses. On the recommendation of Commissioner Barry, the Center for Equal Opportunity intends to contact Stacy Stegman to see if small and minority businesses outreach can become a component of the research of the Commission's communication plan.
- CDOT did exceed its annual DBE goal achieving over 16 percent DBE participation on CDOT contracts last year.

- The Center for Equal Opportunity and Region 6 also announced the success of their most recent outreach event for the US 36 Managed Lanes project which brought the three short listed primes and over 150 small business representatives together to network.

#### Communications Committee Update

- The communications subcommittee met with the Public Relations Office on Monday, November 14, 2011 regarding the development of the strategic communications plan, which is well underway.
- Information gathering and analysis was recently completed through electronic surveys to business groups, elected officials, transportation stakeholders and internal staff including senior management and the Transportation Commission.
- Analysis of the information shows that Snow & Ice, Safety and Maintenance are top priorities for stakeholders. While economic development, environment and multiple types of transportation consistently fall to the bottom of the list of priorities among stakeholders.
- It is also clear that residents and some stakeholders do not understand which activities CDOT performs and which fall to other state agencies and businesses do not recognize the critical role CDOT plays in economic development.
- In addition to the survey, an analysis of media was completed for a one-month period in September 2011 to determine if coverage was positive, negative or neutral. Of the 189 articles in newspapers, television and online new sources, 66% were neutral, 14% were negative and 20% were positive.
- Staff will now take this information and the data from focus groups that were recently conducted and develop key messages and ultimately a complete communications plan that will be completed in early December.
- The plan will also include recommendations for closing some of the education gaps such as the link between economic development and transportation and how to best communicate performance measures that are of value to the general public.
- The planning team will continue to keep us updated as key messages are developed and the plan is finalized. We look forward to seeing the complete plan next month.

#### **EFFICIENCY AND ACCOUNTABILITY COMMITTEE**

Commissioner Gilliland gave the following report on the October 20, 2011 meeting of the Committee:

- The Committee started planning for next year. The makeup of the Committee could change as members were appointed to one year terms that will end in December.
- The Committee is evaluating the efficiency and effectiveness of the current \$150,000 statutory limitation on work performed by CDOT maintenance forces. The Committee identified several issues related to this limitation and the impact raising the limit could have on private contractors. The Committee asked that additional information be provided by staff before a recommendation can be made to the Executive Director.
- The Committee discussed the pros and cons of allowing local entities pre-contract award authority. Under this approach the local entity would be allowed to proceed with contract expenses even if the federal funding approval was not yet finalized. The local agency could still apply for the federal funding if and when it is approved, but if the federal funding does not come through, the local agency would have to incur the expense. More study is needed in this area so the Committee did not reach a final decision.
- The Committee reviewed the initial draft of the Annual Report. This draft will be discussed in the E and A Committee meeting on November 17, 2011

### **SAFETY COMMITTEE**

Commissioner Connell gave the following report on the Safety Committee Meeting held on November 16, 2011

The Safety Committee met on Wednesday, November 16, 2011.

- 1) The Commissioners nominated and approved Kathy Connell from District 6 as Chairperson.
- 2) Public Relations Representative Heather Halpape provided an update on current Highway Safety PR Activities. Highlights included:
  - a. The Teen Driving campaign, which will focus on Seat Belts and Distracted Driving.
  - b. The Broncos Designated Driver Program, which has resulted in 5,573 Designated Drivers signing up for the program!
  - c. The Heat is On! In addition to the recent enforcement periods of Fall Festivals from Sept. 9 through October 24, which resulted in 1,703 arrests; and Halloween, which resulted in 363 arrests, upcoming enforcement is planned for Thanksgiving, the Holiday Party period of Dec. 1-12, and New Year's.
- 3) Risk Manager Tracie Smith discussed FY 12- 1st quarter trends and Safety Officer Scott Bowers provided an update on the Statewide Safety Action Plan.
  - a. For Auto Liability Equipment accidents, total accidents increased by 2% for Quarter 1 compared to the same period in FY11; state fleet vehicle accidents decreased 25% compared to the same period last year.

- b. Workers' Compensation claims for FY12 Quarter 1 decreased 13% over the same prior in FY11.
  - c. The 2012 Statewide Safety Plan consists of 15 state wide measures and 21 region specific measures tracked by CDOT Safety Officers. A few highlighted safety measures common to all regions include:
    - i. Safety Award Nominations
    - ii. An accident investigation class for first level supervisors
    - iii. The Winter Safety Campaign
- 4) Ty Ortiz, Rock Fall Program Manager, provided an update on Rock Fall Projects.
- a. Reviewing First Quarter 2012:
    - i. Projects slated for 2012 include I-70 Georgetown Hill in Region 1; SH133 McClure Pass in Region 3; and US470 Mt. Harris Canyon in Region 3.
    - ii. Rockfall program staff responded to 14 locations in the first quarter, a high number based on prior year data.
    - iii. The original budget for FY12 was \$5.2 million; however, an additional allocation of \$2 million is available and is being considered for application among two options: either adding funds to upcoming or existing regional projects, or a warning system for Glenwood Canyon.

### **Act on Consent Agenda**

Chairman Parker stated that a motion would be entertained on the Consent Agenda and Commissioner Aden moved for approval of the item. Commissioner Gruen seconded the motion and on a vote of the Commission, the Consent Agenda was unanimously approved.

### **Approve the Special & Regular Meeting Minutes of October 19 & 20, 2011**

#### **Resolution #TC-2034**

BE IT HEREBY RESOLVED, that the Transportation Commission's Special and Regular Meeting Minutes of October 19 & 20, 2011 are hereby approved as published in the official agenda of the November 16 & 17, 2011 meeting Agenda.

### **Resolution to approve the Policy Amendment Number 4 for the FY12 -FY17 STIP**

**Resolution # TC-2035**

**Resolution to Approve STIP Policy Amendment Package for Amendment #5**

**Approved by the Transportation Commission on: November 17, 2011**

WHEREAS, the Colorado Transportation Commission has statutory authority pursuant to 43-1-106, C.R.S. to approve, accept, and amend various planning documents resulting from Section 135 Title 23 of the USC, and 43-1-1101 through 1105 C.R.S.; and

WHEREAS, the Commission adopted the 2012 – 2017 Statewide Transportation Improvement Program (STIP) in May, 2011; and

WHEREAS, the STIP is occasionally amended due to significant changes in project scope or projects need to be programmed in or out of the first four years of the STIP, thereby requiring a policy amendment to the STIP; and

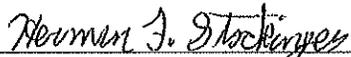
WHEREAS, the Section 450 Title 23 of the CFR requires a public process be implemented for review and comment on proposed policy amendments, as well as Transportation Commission approval of said amendments; and

WHEREAS, the public process for the policy amendments set before the Commission for Amendment #5 was provided from October 14, 2011 through November 16, 2011, and no comments were received; and

WHEREAS, it is requested that the Transportation Commission approve these policy amendments to the STIP, which are detailed in the attached table, and direct staff to forward this approval to the Federal Highway Administration and the Federal Transit Administration for concurrence.

NOW, THEREFORE, BE IT RESOLVED, the attached STIP Policy Amendment package for Amendment #5 be adopted and forwarded to the Federal Highway Administration for concurrence.

BE IT FURTHER RESOLVED, after said concurrence is received from the Federal Highway Administration, staff from the CDOT Office of Financial Management and Budget will finalize the policy amendments in the STIP Database.



Herman Stockinger, Secretary  
Transportation Commission of Colorado

**Resolution to approve the extension of the MOUS's with DRCOG AND PPACG to June 30, 2013**

**Resolution #TC-2036**

**To extend the Memorandum of Understanding (MOU) between CDOT and DRCOG and between CDOT and PPACG from December 31, 2011 to June 30, 2013.**

**Approved by the Transportation Commission on: November 17, 2011**

WHEREAS, the Transportation Commission of Colorado adopts resource allocation of state and federal transportation resources for use in long range planning and for the Statewide Transportation Improvement Program (STIP); and

WHEREAS, the Transportation Commission of Colorado adopts the annual budget for the Colorado Department of Transportation; and

WHEREAS, the Commission, the Denver Regional Council of Governments Board of Directors (DRCOG) and the Pikes Peak Council of Governments (PPACG) agree with the objective of allocating these state and federal transportation resources in an equitable manner to all of the state's transportation planning regions, including the DRCOG and the PPACG regions; and

WHEREAS, the Transportation Commission authorized the execution of a Memorandum of Understanding (MOU) between CDOT and DRCOG dated November 22, 2004 to address the coordination both agencies agreed to for planning and the allocation of state and federal revenue; and

WHEREAS, the Transportation Commission also authorized the execution of a similar Memorandum of Understanding (MOU) between CDOT and PPACG dated April 4, 2005; and

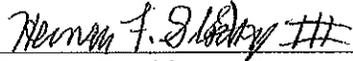
WHEREAS, each MOU details the major funding programs and the methods of allocating funds but does not commit to specific future funding amounts; and

WHEREAS, each MOU expires on December 31, 2011 and CDOT and DRCOG and CDOT and PPACG agree that each respective MOU has served a useful purpose to make allocation of resources more transparent, but also recognize that these MOU's have created some difficulties with the recent volatility of funding; and

WHEREAS, CDOT, DRCOG and PPACG agree that each MOU needs to be revisited in the future, and recognize that resource allocation discussions for the next STIP and Statewide Long Range Plan will begin in FY 12 and continue into FY 13, and that the development of future resource allocations will be conducted within the planning process, and

WHEREAS, CDOT will be developing the FY 14 budget during FY 12 and 13 and budget decisions for FY 14 will be beyond the term of this MOU extension.

THEREFORE, the Transportation Commission authorizes the CDOT Executive Director to execute an agreement with DRCOG and with PPACG to extend each current MOU From December 31, 2011 to June 30, 2013 recognizing that it is the intent of these parties to work together to review resource allocation policies for future years.



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Herman Stockinger, Secretary  
Transportation Commission of Colorado

**Discuss and Act on the 6th Budget Supplement**

Ben stated that there were no walk on items. He requested approval of the Supplement.

Commissioner Connell made a motion for approval of the Budget Supplement and Commissioner Barry seconded the motion. On a vote of the Commission, the Budget Supplement was unanimously approved.

**Resolution #TC-2037**

**Approval of the 6th Budget Supplement**

BE IT RESOLVED THAT, the 6<sup>th</sup> Supplement to the Fiscal Year 2011-2012 Budget be approved.

**Discuss and Act on the Resolution to approve granting a Loan to the High Performance Transportation Enterprise**

Ben Stein confirmed that supporting documents were provided in the Agenda Book. Commissioner Parker asked what rates or fees would be associated with the loan and Ben reported that was stated in the paperwork and that the rate is tied to the SIB (State Infrastructure Bank) loan rate of 3.25%

Chairman Parker requested a motion on the item. Commissioner Aden moved for approval of the Resolution and Commissioner Peterson seconded the motion. On a vote of the Commission, the Resolution was unanimously approved.

**RESOLUTION # TC-2038**

**Approving a Loan for Operating Expenses to HPTE**

**Approved by the Transportation Commission on: November 17, 2011**

WHEREAS, the Transportation Commission is charged with formulating the general policy with respect to the management, construction and maintenance of public highways and other transportation systems in the State; and

WHEREAS, the Transportation Commission promulgates and adopts all budgets for the Colorado Department of Transportation (CDOT) and state transportation programs; and

WHEREAS, the High Performance Transportation Enterprise (HPTE) was authorized and created pursuant to C.R.S. 43-4-806 as a government-owned business, a TABOR-exempt enterprise and a division of CDOT charged with aggressively pursuing innovative means of financing surface transportation projects; and

WHEREAS, HPTE has a Director and three (3) additional full-time equivalent employees who have been pursuing innovative financing alternatives for a number of surface transportation infrastructure projects; and

WHEREAS, HPTE has engaged the services of financial and legal consultants to assist and facilitate the evaluation of various innovative financing alternatives; and

WHEREAS, HPTE was not capitalized at its creation and is therefore presented with the challenge of paying for its operating expenses; and

WHEREAS, although the I-25 Express Lanes generate excess revenue for HPTE, such revenue is restricted and not available for payment of HPTE's operating expenses; and

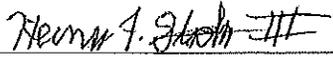
WHEREAS, revenue from the US 36 Managed Lanes will not be available to HPTE for some time and HPTE therefore has no unrestricted revenues available to pay for on-going operating expenses; and

WHEREAS, C.R.S. 43-4-806(4) authorizes the Transportation Commission to transfer money from the state highway fund to HPTE to defray expenses of HPTE and provides that, notwithstanding any state fiscal rule or generally accepted accounting principle to the contrary, such a transfer shall be treated as a loan and shall not be considered a grant for purposes of TABOR; and

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WHEREAS, the Transportation Commission recognizes and respects the legal principle that it cannot bind future Transportation Commissions with respect to budgetary and policy decisions, recognizes it cannot agree, in advance, to allocate and transfer state highway funds to the HPTE in future years for operating expenses and agrees that any decision as to whether or not to allocate and transfer such funds to the HPTE shall be made by the Transportation Commission, in its sole discretion, in the year in which the transfer is to occur.

NOW THEREFORE BE IT RESOLVED, the Transportation Commission of Colorado approves and authorizes CDOT entering into a Loan Agreement to provide funds for HPTE's operating expenses in the total amount of \$1 million, which total amount shall incur interest at the rate charged by the State Infrastructure Bank on the effective date of the loan. Such funds are anticipated to be sufficient to cover HPTE's operating expenses for FY2012 with future HPTE operating expense funding requests to be considered by the Transportation Commission, in its sole discretion, in the year in which HPTE's operating expense loan is requested.



Herman Stockinger, Secretary  
Transportation Commission of Colorado

**Discuss and Act on the Resolution for approval of the FY 13 Budget**

Ben Stein noted the new format for the budget and stated that it would be submitted to the General Assembly and the Governor. He reminded the Commission that it was a statutory requirement to submit the draft budget and that in February there would be a chance for revisions and then the Final Budget would be submitted for approval in April 2012.

Commissioner Killin commended the budget office for the new budget format stating that the changes made it easy to read. She then moved for approval of the Draft Budget and Commissioner Connell seconded the motion. Chairman Parker stated that it had been moved and seconded and asked if there was further discussion. There being none, on a vote of the Commission, the Resolution was unanimously approved.

**Discuss and Act on the Resolution to open Rule Making for the Noise Mitigation Rules and Delegate authority to an Administrative Hearing Officer to hold a public rule making hearing**

Debra Perkins-Smith made the following comments on the rules regarding using waste tires for noise mitigation.

- I am here concerning Item 14 on the Commission's agenda.
- Documents pertaining to Item 14 begin on Page 140 of your packets. The resolution is located on page 143.
- The Department is requesting that the Commission open rulemaking and delegate authority to an Administrative Hearing Officer to hold a public rule making hearing concerning 2 CCR 601-17 Rules Regarding the Use of Waste Tires for Noise Mitigation Purposes Along Colorado State Highways Pursuant § 43-2-401 C.R.S.
- The current rules were adopted in 2008 as a result of a HB06-1257 which allowed the Colorado Commission on Higher Education to expend moneys in the advanced technology fund on projects involving the use of waste tires for noise mitigation along state highways as prioritized by the Department of Transportation. It allowed certain individuals such as a homeowner living in an area adjacent to a state highway to apply to the Department for construction of specified noise mitigation measures along the highways after meeting certain requirements.
- Since the enactment of HB06-1257, three noise walls have been constructed using recycled waste tires. The grant program currently has minimal funding which, it is anticipated, will be diminished even further in the next fiscal year.
- The grant program enacted to use recycled tires is not being utilized to a significant degree due to factors including lack of funding.
- However, as long as the statute remains in effect, the Department is required to have rules in place to govern the grant process.

- The Department recommends updating the rules by changing the noise mitigation eligibility criteria and the prioritization process to conform with the relevant federal noise abatement regulations 23 CFR772 which were revised in 2010.
- The Department waited to request opening the rules until CDOT's Noise Analysis and Abatement Guidelines were completed and approved by the FWHA in June of 2011.
- In addition, pursuant to Executive Order D-2011-005, the Department has attempted to eliminate any unnecessary language in the rules while continuing to comply with the requirement that they are in place.
- Are there any questions?
- I request that you adopt the resolution on page 143 of your packet to open rule making for permanent rules, 2 CCR 601-17.

Chairman Parker requested a motion on the item. Commissioner Aden moved for approval of the Resolution and Commissioner Peterson seconded the motion. On a vote of the Commission, the following Resolution was unanimously approved.

**Resolution # TC-2040**

**Open Rule Making and Delegate Authority to an Administrative Hearing Officer to conduct a hearing regarding amendments to the Rules Regarding the Use of Waste Tires for Noise Mitigation Purposes Along Colorado State Highways Pursuant to §43-2-401 *et seq.* C.R.S. (2011).**

**Approved by the Transportation Commission on: November 17, 2011**

WHEREAS, section § 43-2-404 C.R.S. (2011) authorizes the Transportation Commission of Colorado ("Commission") to promulgate rules regarding § 43-2-401 *et seq.* (2011) including noise mitigation standards and measures; and

WHEREAS, the permanent Rules Regarding the Use of Waste Tires for Noise Mitigation Purposes Along Colorado State Highways Pursuant to §43-2-4-1 *et seq.* C.R.S (the "Use of Waste Tire Noise Mitigation Rules") were effective August 1, 2008; and

WHEREAS, the Commission has the authority to conduct a rule making hearing or to delegate the authority to an Administrative Hearing Officer for the purposes of conducting the rule making hearing, making a complete procedural record of the hearing, and submitting that record and any recommendations to the Commission for its review and action concerning amendment to the Use of Waste Tire Noise Mitigation Rules; and

WHEREAS, the Department recommends the Use of Waste Tire Noise Mitigation Rules be amended to update noise mitigation standards and measures to conform to current federal requirements of 23 CFR 772; and

WHEREAS, amendment of the Use of Waste Tire Noise Mitigation Rules further effectuates Governor Hickenlooper's Executive Order D 2011-005, which seeks to eliminate any unnecessary legal requirements on local governments; and

NOW THEREFORE BE IT RESOLVED, the Commission authorizes staff to prepare a draft of the amended Use of Waste Tire Noise Mitigation Rules, and to take all necessary actions in accordance with the State Administrative Procedures Act to initiate rulemaking for the purpose of amending the Rules Regarding the Use of Waste Tires for Noise Mitigation Purposes Along Colorado State Highways Pursuant to § 43-2-401 *et seq.* C.R.S. (2011).

BE IT FURTHER RESOLVED, the Commission delegates its authority to conduct the rulemaking hearing to a CDOT Administrative Hearing Officer to prepare a complete record of the hearing and forward said record and Rules to the Commission for consideration and adoption of the Rules.

Herman A. Stockinger III  
Herman Stockinger, Secretary  
Transportation Commission of Colorado

**Discuss and Act on the Resolution to Open a Rule Making and Delegate Authority to a CDOT Administrative Hearing Officer for the Rules Regarding Travel Restrictions Imposed by the Department on State Highways, 2 CCR 601-14**

Scott McDaniel made the following presentation on the item:

- I am here concerning Items 15 and 16 on the Commission's agenda.
- Documents pertaining to Item 15 begin on Page 148 of your packets. The resolution is located on page 151.
- This agenda item concerns opening the permanent rules for 2 CCR 601-14 Rules Regarding Travel Restrictions on State Highways, popularly known as the Chain Law.
- The current rules were adopted in 1996 and required updating to current practice. We are amending the rules primarily to include a textile traction device approved by the Chief Engineer that may be used in place of chains when used according to the manufacturer's instructions. We are also including reference to enhanced penalties for non-compliance. Finally, we took the opportunity to eliminate unnecessary or outdated language, as well as correct a few grammatical errors.
- Are there any questions?
- I request that you adopt the resolution on page 151 of your packet to open rule making for permanent rules, 2 CCR 601-14, Rules Regarding Travel Restrictions on State Highways, and delegate authority to an Administrative Hearing Officer to hold a public hearing.

Chairman Parker requested a motion on the item. Commissioner Reiff moved for approval of the Resolution and Commissioner Gilliland seconded the motion. On a vote of the Commission, the following Resolution was unanimously approved.

**Resolution # TC-2041**

**Open Rule Making and Authorize an Administrative Hearing Officer to Conduct a Hearing Pertaining Concerning 2 CCR 601-14, Rules Regarding Travel Restrictions on State Highways ("Chain Law Rules").**

**Approved by the Transportation Commission on: November 17, 2011**

WHEREAS, § 43-1-106 (8)(k) C.R.S. (2011) directs the Transportation Commission of Colorado ("Commission") to make all necessary and reasonable orders, rules, and regulations in order to carry out the provisions of § 43-1-101 *et seq.* C.R.S. (2010); and

WHEREAS, § 42-4-106(5)(VII)(b) C.R.S. (2011) authorizes the Commission to promulgate rules concerning chain laws and other restrictions on highways;

WHEREAS, § 42-4-106 (5) C.R.S. authorizes the Department of Transportation to prohibit the use of highways under dangerous driving conditions to vehicles unless they are equipped with tire chains, four-wheel drive with adequate tires in order to protect the safety of the public; and

WHEREAS, the proposed amendments to the rules update existing rules effective October 30, 1996 by including in the definition of "Alternative Traction Device" a textile traction device approved by the Chief Engineer that may be used in place of chains when the chain laws are in effect and when used in conformance with the manufacturer's instructions; and

WHEREAS, other amendments to the rules will provide notice of the enhanced penalties under § 42-4-106(5)(a)(II), (III) and (IV) enacted after 1996 for non-compliance with the chain laws; and

WHEREAS, the Commission has the authority to delegate its authority to an Administrative Hearing Officer for the purposes of conducting a rule making hearing, making a complete procedural record of the hearing, and submitting that record and any recommendations to the Commission for its review and action concerning the Rules.

NOW THEREFORE BE IT RESOLVED, the Commission authorizes staff to prepare a draft of the proposed Rules, and to take all necessary actions in accordance with the Colorado Administrative Procedures Act to initiate rule making for the purpose of amending the Rules Regarding Travel Restrictions on State Highways, 2 CCR 601-14.

BE IT FURTHER RESOLVED, the Commission delegates its authority to conduct the rule making hearing to a CDOT Administrative Hearing Officer to

prepare a complete record of the hearing and forward said record and Rules to the Commission for consideration and adoption of the Rules.

Herman F. Stockinger III

Herman Stockinger, Secretary  
Transportation Commission of Colorado

**Discuss and Act on the Resolution to Adopt Emergency Rules and Authorize an Administrative Hearing Officer to Conduct a Hearing Following Adoption Pertaining to 2 CCR 601-14, Rules Regarding Travel Restrictions on State Highways (“Chain Law Rules”).**

Scott McDaniel made the following presentation on the item:

- Now, I will speak to Item 16 on the agenda, located at page 159 of your packets. The resolution is located on page 162. This concerns the same set of rules as Agenda Item 15, 2 CCR 601-14, Rules Regarding Travel Restrictions on State Highways.
- We are requesting that you adopt emergency rules today on this same set of rules, so that are effective immediately. Under the Administrative Procedure Act, the Commission may adopt emergency rules and hold a hearing following adoption. They follow a different process under Administrative Procedure Act than emergency rules.
- The Commission is authorized to adopt emergency rules when it finds that immediate adoption is **imperatively necessary for the preservation of public health, safety or welfare and compliance with the permanent rule making requirements would be contrary to the public interest.** *(Dave this is the magic language in the statute)*
- In this case, the Department believes the inclusion of the textile traction device as an “Alternative Traction Device” is important to include as soon as possible given that the use of this device will occur in the coming winter months.
- We are moving forward on permanent rules at the same time, and, if the Commission allows, will hold a hearing on both permanent and emergency rules on January 11 from 10 a.m. to noon. The public will have an opportunity to comment on the rules and may recommend changes at the hearing. Written comments may also be submitted prior to the hearing. The Commission will then be requested to adopt the permanent rules at the Commission meeting on February 16, 2012.
- Without the adoption of emergency rules, the requirements of the Administrative Procedure Act would result in the rules becoming effective in April 2012, after most of Colorado’s inclement weather has ended.
- If adopted today, the emergency rules will expire on May 17, 2012, and the permanent rules will take effect in March 2012.

- In this case, adoption of emergency rules is necessary to preserve public safety. Having the rules in place immediately will assist law enforcement, motor carriers and drivers to understand what Alternative Traction Devices may be used in dangerous driving conditions this winter.
- The Department requests that you pass the resolution to adopt 2 CCR 601-14, Rules Regarding Travel Restrictions on State Highways as emergency rules, and delegate authority to an Administrative Hearing Officer to hold a public hearing following adoption.
- *(Trey Rogers clarifies difference between rules).*

Chairman Parker requested a motion on the item. Commissioner Reiff moved for approval of the Resolution and Commissioner Killin seconded the motion. On a vote of the Commission, the following Resolution was unanimously approved.

**Resolution # TC-2042**

**Adopt Emergency Rules and Authorize an Administrative Hearing Officer to Conduct a Hearing Following Adoption Pertaining to 2 CCR 601-14, Rules Regarding Travel Restrictions on State Highways ("Chain Law Rules").**

**Approved by the Transportation Commission on: November 17, 2011**

WHEREAS, § 43-1-106 (8)(k) C.R.S. (2011) directs the Transportation Commission of Colorado ("Commission") to make all necessary and reasonable orders, rules, and regulations in order to carry out the provisions of § 43-1-101 *et seq.* C.R.S. (2010); and

WHEREAS, § 42-4-106(5)(VII)(b) C.R.S. (2011) authorizes the Commission to promulgate rules concerning the Department's ability to impose restrictions on highways; and

WHEREAS, the Colorado Administrative Procedure Act, § 24-4-103 (6)(a) authorizes the Commission to adopt emergency rules if the commission finds that immediate adoption of the rules is imperatively necessary for the preservation of public health, safety or welfare and compliance with the permanent rule making requirements would be contrary to the public interest; and

WHEREAS, the proposed amendments to the rules update existing rules effective October 30, 1996 by including in the definition of "Alternative Traction Device" an approved textile traction device that may be used in place of chains when the chain laws are in effect; and

WHEREAS, adopting the rules on an emergency basis would make the rules effective immediately and provide notice to law enforcement officials and drivers that this device is an acceptable alternative to chains under certain conditions and when used in conformance with the manufacturer's directions; and

WHEREAS, adherence to the permanent rule making requirements in the Administrative Procedure Act would result in an effective date of the rules in spring of 2012, after most of Colorado's inclement weather has ended; and

WHEREAS, other amendments to the rules will provide notice of the enhanced penalties under § 42-4-106(5)(a)(II), (III) and (IV) for non-compliance with the chain laws; and

WHEREAS, the Commission has the authority to delegate authority to an Administrative Hearing Officer to hold a hearing following adoption of emergency rules.

NOW THEREFORE BE IT RESOLVED, the Commission hereby ADOPTS the recommended amendments concerning 2 CCR 601-14, Rules Regarding Travel Restrictions on State Highways as Emergency Rules; and

BE IT FURTHER RESOLVED, the Commission FINDS as required by the Colorado Administrative Procedure Act that emergency rules are imperatively necessary to preserve the public health, safety and welfare, and compliance with the requirements of the permanent rule making process would be contrary to the public interest; and

BE IT FURTHER RESOLVED, the Commission hereby delegates its authority to conduct the rule making hearing to a CDOT Administrative Hearing Officer to prepare a complete record of the hearing and forward said record and Rules to the Commission for consideration and adoption of the Rules.



Herman Stockinger, Secretary  
Transportation Commission of Colorado

### **Acknowledgements**

Chairman Parker asked the Executive Director if there were any Acknowledgements and he confirmed that there were none.

### **Other Matters**

There were no other matters.

### **Adjournment**

Chairman Parker announced that the meeting was adjourned at 10:35 a.m.

*Herman J. Stockinger III*

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Herman Stockinger, Secretary  
Transportation Commission of Colorado