



Colorado Department of Transportation | 2829 W Howard Pl | Denver, CO 80204

NAAPME Governing Board Meeting - February 24, 2022



The Nonattainment Area Air Pollution Mitigation Enterprise mitigates the environmental and health impacts of increased air pollution from motor vehicle emissions in nonattainment areas.

About The Nonattainment Area Air Pollution Mitigation Enterprise

This enterprise is created within the Colorado Department of Transportation (CDOT) to support mitigation of the environmental and health impacts of increased air pollution from motor vehicle emissions in nonattainment areas that results from the rapid and continuing growth in retail deliveries made by motor vehicles and in prearranged rides provided by transportation network companies. Enterprise funding is for eligible

projects that reduce traffic, including demand management projects that encourage alternatives to driving alone or that directly reduce air pollution, such as retrofitting of construction equipment, construction of roadside vegetation barriers, and planting trees along ([CRS 43-4-1303](#))

Meeting Resources

[February 24 Meeting Agenda](#)

[Feb 24 Meeting Presentation](#)

NAAPME Governing Board Resources

[Statute - Board Creation](#)

[Board Appointments](#)

[Enterprise Fund & Fees](#)

[Board Powers & Duties](#)

[Enterprise Bylaws](#)

[Articles of Incorporation](#)

[Enterprise Expenditure and Revenue](#)

Additional Resources

Optional Background Reading

- [Basic Information on Nonattainment](#)
- [Map of Colorado's Nonattainment Areas](#)

- [History of Ozone in Colorado](#)
 - CDPHE summary of ozone classification in Colorado since the 1970s
 - [Recent EPA Action on Colorado's Ozone Nonattainment Boundaries](#) (Weld Co)
 - https://www.epa.gov/system/files/documents/2021-11/summar1.doc_0.pdf
 - <https://www.epa.gov/system/files/documents/2021-11/final-weld-county-co-tds-20210831.pdf>
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About the Colorado Department of Transportation



The Colorado Department of Transportation (CDOT) works to provide the best multi-modal transportation system for Colorado that most effectively and safely moves people, goods and information. CDOT manages more than 23,000 lane miles of highway, more than 3,000 bridges and 35 mountain passes. CDOT also manages grant partnerships with a range of agencies and operates Bustang, the state-owned interregional express bus service. Gov. Jared Polis has charged CDOT to further build on the state's intermodal mobility options. Find more details at [codot.gov](https://www.codot.gov).



NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE

GOVERNING BOARD MEETING - FEBRUARY 24, 2022

SCHEDULE AND AGENDA

- I. Opening remarks (5 minutes)
Rebecca White, Director, Division of Transportation Development (CDOT)
- II. Election of Enterprise Board Officers
Rebecca White, Director, Division of Transportation Development (CDOT)

Action Items

- III. Adoption of Articles of Incorporation
Herman Stockinger, Deputy Director, (CDOT)
 - IV. Adoption of Enterprise Bylaws
Herman Stockinger, Deputy Director, (CDOT)
 - V. Approve/Accept Loan Document
Jeff Sudmeier, Chief Financial Officer (CDOT)
 - VI. Open Rules
Herman Stockinger, Deputy Director, (CDOT)
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- VII. Overview of Other SB260 Enterprises
Kay Kelly, Chief of Innovative Mobility (CDOT)
 - VIII. Nonattainment Areas - Areas of Eligibility
Rebecca White, Director, Division of Transportation Development (CDOT)
Dena Wojtach, Manager, Planning and Policy, Air Pollution Control Division (CDPHE)
 - IX. CDOT 10-Year Plan
Marissa Gaughan, Multimodal Planning Branch Manager (CDOT)
 - X. Future Meetings/Wrap-up

**NONATTAINMENT AREA AIR POLLUTION
MITIGATION ENTERPRISE
ARTICLES OF ORGANIZATION**

PREAMBLE

The General Assembly of the State of Colorado (the “State”) found and declared in C.R.S. 43-4-1301 that:

(a) Rapid and continuing growth in retail deliveries made by motor vehicles and in prearranged rides arranged through transportation network companies has increased and will continue to increase traffic congestion and air pollution from motor vehicle emissions, along with the adverse environmental and health impacts that result from such pollution, in nonattainment areas, including but not limited to disproportionately impacted communities and communities adjacent to highways;

(b) It is necessary and appropriate to offset and mitigate these impacts by creating a nonattainment area air pollution mitigation enterprise that has the business purpose of providing funding for eligible projects that reduce traffic congestion, including demand management projects that encourage alternatives to driving alone, and thereby reduce travel delays, engine idle time, and unproductive fuel consumption or that directly reduce emissions by means such as retrofitting of construction equipment;

(c) Instead of reducing the impacts of retail deliveries and prearranged rides arranged through transportation network companies, by limiting retail delivery and prearranged ride activity through regulation, it is more appropriate to continue to allow persons who receive retail deliveries and benefit from the convenience afforded by unfettered retail deliveries and to allow transportation network companies that arrange prearranged rides to continue to provide that service without undue restrictions and to instead impose a small fee on each retail delivery and prearranged ride and use fee revenue to fund necessary mitigation activities.

(d) The creation of a nonattainment area air pollution mitigation enterprise is in the public interest and will promote the health, safety, and welfare of all Coloradans and visitors to the state by mitigating the impacts of prearranged rides arranged through transportation network companies and residential and commercial deliveries on the state's transportation infrastructure, air quality, and emissions.

The General Assembly thereupon created in C.R.S. § 43-4-1303(1)(a) a nonattainment area air pollution mitigation enterprise as a government-owned business in the Colorado Department of Transportation (the “Department”).

Article I. Name

The nonattainment area air pollution mitigation enterprise created in C.R.S. § 43-4-1303(1)(a) shall be known as the NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE (“Enterprise”).

Article II. Authority

The Colorado Legislature approved the creation of the Nonattainment Area Air Pollution Mitigation Enterprise during its regularly scheduled session in 2021, and the Governor of the State of Colorado signed SB 21-260 into law on June 17, 2021. The Enterprise shall function pursuant to these Articles of Organization until such time as it may be abolished by a specific action under applicable Colorado state law.

Article III. Purpose

The business purpose of the Enterprise is to mitigate the environmental and health impacts of increased air pollution from motor vehicle emissions in nonattainment areas that results from the rapid and continuing growth in retail deliveries made by motor vehicles and in prearranged rides provided by transportation network companies by providing funding for eligible projects that reduce traffic, including demand management projects that encourage alternatives to driving alone or that directly reduce air pollution, such as retrofitting of construction equipment, construction of roadside vegetation barriers, and planting trees along medians. To accomplish this purpose, the Enterprise may impose an air pollution mitigation per ride fee and an air pollution mitigation retail delivery fee; issue grants, loans, and rebates; and issue revenue bonds payable from the revenue and other money available to the Enterprise.

Article IV. TABOR Exemption

As provided in C.R.S. § 43-4-1303(4), the Enterprise constitutes an “enterprise” for purposes of section 20 article X of the state constitution so long as it retains the authority to issue revenue bonds and receives less than ten percent of its total annual revenue in grants from all Colorado state and local governments combined. By providing impact remediation services as authorized by C.R.S. § 43-4-1301 *et seq.*, the nonattainment area air pollution mitigation enterprise provides a benefit to fee payers when it remediates the impacts they cause and therefore operates as a business in accordance with the determination of the Colorado supreme court in *Colorado Union of Taxpayers Foundation v. City of Aspen*, 2018 CO 36. Consistent with the determination of the Colorado supreme court in *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo. 1995), that the power to impose taxes is inconsistent with enterprise status under section 20 of article X of the state constitution, the general assembly declared that the revenue collected by the Enterprise is generated by fees, not taxes, because the air pollution mitigation per ride fee and the air pollution mitigation retail delivery fee imposed by the Enterprise as authorized by C.R.S. § 43-4-1303(7) and (8) are imposed for the specific purpose of allowing the enterprise to defray the costs of providing the remediation services specified by law, including mitigating impacts to air quality and greenhouse gas emissions caused by the activities on which the fees are assessed, and contribute to the implementation of the

comprehensive regulatory scheme required for the planning, funding, development, construction, maintenance, and supervision of a sustainable transportation system. The fees are collected at rates that are reasonably calculated based on the impacts caused by fee payers and the cost of remediating those impacts.

Article V. Enterprise Board

The Board of the Enterprise shall consist of up to seven (7) Members as described and defined in C.R.S. § 43-4-1303(2)(a).

The Enterprise Board shall exercise their powers and perform their duties as if the same were transferred to the Colorado Department of Transportation by a type 1 transfer, as defined in C.R.S. § 24-1-105.

Article VI. Officers

The officers of the Enterprise shall be elected according to the Bylaws of the Board and shall have the duties set forth in the Bylaws.

Article VII. Powers

The Enterprise may:

- (a) Impose an air pollution mitigation per ride fee as authorized in C.R.S. § 43-4-1303(7);
- (b) Impose an air pollution mitigation retail delivery fee as authorized in C.R.S. § 43-4-1303(8);
- (c) Issue grants, loans, and rebates as authorized in C.R.S. § 43-4-1303(9); and
- (d) Issue revenue bonds payable from the revenue and other available money of the Enterprise.

In addition to any other powers and duties specified in C.R.S. § 43-4-1303, the Board also has the following powers and duties:

- (a) To adopt bylaws for the regulation of its affairs and the conduct of its business;
- (b) To acquire, hold title to, and dispose of real and personal property;
- (c) To employ and supervise individuals, professional consultants, and contractors as are necessary in its judgement to carry out its business purpose;
- (d) To contract with any public or private entity, including state agencies, consultants, and the attorney general's office, for professional and technical assistance, office space and administrative services, advice, and other services related to the conduct of the affairs of the Enterprise;

(e) To seek, accept, and expend gifts, grants, donations, or other payments from private or public sources, so long as the total amount of all grants from the state of Colorado and local governments received in any state fiscal year is less than ten (10) percent of the Enterprise's total annual revenue for the state fiscal year;

(f) To publish the processes by which the Enterprise accepts applications, the criteria for evaluating applications, and a list of grantees or program participants. The Enterprise shall actively seek input from communities, including but not limited to disproportionately impacted communities, and local governments to mitigate the environmental and health impacts of highway projects, reduce traffic congestion, and improve neighborhood connectivity for communities adjacent to highways. The Enterprise shall include mitigation strategies that take into account the input as well as issues and impacts of particular importance to the state such as reduction of greenhouse gas emissions and fine particulate matter;

(g) To promulgate rules for the sole purpose of setting the amount of the air pollution mitigation per ride fee and the air pollution mitigation retail delivery fee at or below the maximum amounts authorized by law; and

(h) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers necessary and duties granted by law.

Article VIII. Revenues and Expenditures

The nonattainment area air pollution mitigation enterprise fund has been created in the state treasury. The fund consists of air pollution mitigation per ride fee revenue and air pollution mitigation retail delivery fee revenue credited to the fund pursuant to C.R.S. §§ 43-4-1303(7) and (8), any monetary gifts, grants, donations, or other payments received by the Enterprise, any federal money that may be credited to the fund, and any other money that the general assembly may appropriate or transfer to the fund. The state treasurer shall credit to the fund all interest and income derived from the deposit and investment of money in the fund. Money in the fund is continuously appropriated to the Enterprise for the purposes set forth in C.R.S. § 43-4-1301 *et seq.* and to pay the Enterprise's reasonable and necessary operating expenses, including the repayment of any loan received pursuant to C.R.S. § 43-4-1303(5)(b).

CDOT may transfer money from any legally available source to the Enterprise for the purpose of defraying expenses incurred by the Enterprise before it receives fee revenue or revenue bond proceeds. The Enterprise may accept and expend any money so transferred, and notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer is a loan from CDOT to the Enterprise that is required to be repaid and is not a grant for purposes of section 20(2)(d) of article X of the state constitution or as defined in C.R.S. § 24-77-102(7). All money transferred as a loan to the Enterprise shall be credited to the nonattainment area air pollution mitigation enterprise initial expenses fund in the state treasury, and loan liabilities that are recorded in the

nonattainment area air pollution mitigation enterprise initial expenses fund but that are not required to be paid in the current fiscal year shall not be considered when calculating sufficient statutory fund balance for purposes of C.R.S. § 24-75-109. The state treasurer shall credit to the fund all interest and income derived from the deposit and investment of money in the nonattainment area pollution mitigation enterprise initial expenses fund. The nonattainment area air pollution mitigation enterprise initial expenses fund is continuously appropriated to the Enterprise for the purpose of defraying expenses incurred by the Enterprise before it receives fee revenue or revenue bond proceeds. As the Enterprise receives sufficient revenue in excess of expenses, the Enterprise shall reimburse CDOT for the principal amount of any loan made by CDOT plus interest at a rate set by CDOT.

Article IX. Articles of Organization – Amendment

The Board may amend, supplement, or repeal these Articles of Organization or adopt new Articles of Organization. All such changes shall affect and be binding upon the Enterprise, the Board and Members heretofore, as well as hereafter, authorized. Any amendment, supplement, or repeal of these Articles of Organization, or adoption of new Articles of Organization shall require a majority vote of the Members at any regular meeting of the Board.

Article X. Bylaws

The Board shall adopt a set of Bylaws to govern its internal operations and procedures.

NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE BYLAWS

Article I. Board of the Nonattainment Area Air Pollution Mitigation Enterprise

A. Enterprise Board. All of the powers of the Enterprise, as described in Section 43-4-1303, *et seq.*, C.R.S., and as otherwise provided by law, shall be vested in the Board of the Enterprise (“Enterprise Board”). The Enterprise Board shall manage the business and affairs of the Enterprise. The Enterprise shall consist of the members as determined pursuant to Section 43-4-1303(2)(a), C.R.S. (each shall be a “Member” and collectively, the “Members”). Members of the Enterprise Board shall have the ability to vote.

B. Composition and Qualifications.

1. The governing board of the enterprise consists of up to seven (7) Members, appointed as follows: Five (5) Members appointed by the Governor with the consent of the Senate, as follows:
 - a. One Member with expertise on environmental, environmental justice, or public health issues.
 - b. One Member who is an elected official of a disproportionately affected community that is a member of the Denver Regional Council of Governments.
 - c. One Member who is an elected official of a local government that is a member of the North Front Range Metropolitan Planning Organization.
 - d. Up to two (2) Members who are representatives of disproportionately impacted communities.
2. The two (2) Members not appointed by the Governor are:
 - a. The Executive Director of the Department of Transportation or the Executive Director’s designee.
 - b. The Executive Director of the Department of Public Health and Environment or the Executive Director’s designee.

- C. Performance of Duties. By acceptance of the office, each Member of the Enterprise Board shall be deemed to have accepted the obligation to perform their duties in good faith and in a manner they believe to be in the best interests of the Enterprise.
- D. Reimbursement. The Enterprise Board may provide for reimbursement of the Members for reasonable and necessary expenses incurred on behalf of the Enterprise consistent with State Fiscal Rules, but the Members shall otherwise serve without compensation.
- E. Disclosures. Members of the Enterprise Board shall make financial disclosures and avoid conflicts of interest, as provided by law and any policies adopted by the Enterprise.
- F. Term of Office. Appointed Members of the Board serve at the pleasure of the Governor. Other Board Members serve for as long as they hold their Executive Director positions or are designated to serve by an Executive Director.
- G. Vacancies. Members appointed to fill a vacancy will serve the remainder of the unexpired term of the former member.
- H. Removal. Any Enterprise Board member who fails to attend three (3) consecutive Enterprise Board meetings without being excused may be subject to recommendation to the Governor for removal from the Enterprise Board.

Article II. Meetings of the Board.

- A. Place of Meetings. The regular or special meetings of the Enterprise Board or any committee designated by the Enterprise Board shall be held at the principal office of the Enterprise or at any place that a majority of the Enterprise Board, or any such committee, designates.
- B. Regular Meetings. The Nonattainment Area Air Pollution Mitigation Enterprise shall hold regular meetings at such dates, times, and locations, including virtual meetings, as the Enterprise Board shall determine, but no less than four (4) times per calendar year. Members of the Enterprise Board are expected to attend all regular Enterprise Board meetings unless excused in advance.

Any Enterprise Board Member may participate in any regular or special meeting through telephonic and virtual participation, provided that all directors participating are able to hear each other during the meeting.

- The Chair of the Enterprise Board (“Chair”) may postpone or advance the time and date of any regular meeting for a period not to exceed one week. The Enterprise Board may remove items from the agenda or rearrange the order of the agenda items at any time. Items may be added to the agenda only with adequate public notice prior to the meeting, as provided by law.
- C. Special Meetings. Special meetings may be called by the Chair or by a majority of the Members of the Enterprise Board with three (3) days advance notice by mail, electronic mail, or telephone. In an emergency, 24 hours of notice by telephone or electronic mail is sufficient, unless otherwise provided by law.
- D. Notice of Meetings. A notice of the time, date, and location of a meeting will be sent to each Enterprise Board Member by the Program Manager for regular meetings at least two (2) weeks in advance. A public notice of the meeting shall also be posted to the Nonattainment Area Air Pollution Mitigation Enterprise website at least two (2) weeks in advance of the meeting.
- E. Quorum. A quorum of the Nonattainment Area Air Pollution Mitigation Enterprise Board shall be a majority of the voting Enterprise Board Members. If a quorum of the Enterprise Board is present, a simple majority vote of Members present shall be required to carry any motion, order, regulation, bylaw, or other action. All formal action of the Enterprise Board shall be by resolution adopted at a duly called meeting of the Enterprise Board and no individual Member shall exercise any individual administrative authority with respect to the Enterprise.
- F. Voting. Each Member of the Enterprise Board shall be entitled to one vote. The Enterprise Board may act only by resolution or motion at a duly called meeting. Voting shall be either by voice or roll call vote. A roll call vote shall be conducted upon the request of a Member of the Enterprise Board or at the discretion of the Chair. Any Member of the Enterprise Board shall be disqualified from voting on any issue with respect to which they have a private interest, unless such Member has disclosed such interest in compliance with Section 24-18-110, C.R.S.
- G. Conduct of Meetings. All meetings of the Enterprise Board shall be conducted under Robert’s Rules of Order unless specifically provided otherwise by the Enterprise Board or these Bylaws. When action is to be taken at a meeting, a motion shall be made by one of the Members to undertake the action; another Member must second the motion. The Chair or other individual facilitating the meeting shall entertain discussion on the motion, and a vote shall be taken. The motion shall be adopted by a majority of those casting votes, unless a greater margin of votes is otherwise required

by these Bylaws or State law. The Members may vote to govern their proceedings by additional procedures contained in Robert's Rules of Order if they so desire.

- H. Committees. The Enterprise Board may, by a motion or resolution adopted by a majority of the Members of the Enterprise Board, designate not less than two (2) of its Members to constitute one or more committees, each of which shall have and may exercise such authority as may be set forth in said motion or resolution. If any such delegation of authority of the Enterprise Board is made as herein provided, all references to the Enterprise Board contained in these Bylaws, the Articles of Organization, Section 43-4-1203, *et seq.*, C.R.S., or any other applicable law or regulation relating to the authority so delegated shall be deemed to refer to such committee.
- I. Advisory Groups. The Enterprise Board may establish ad hoc advisory groups as needed for specific projects.

Article III. Open Meetings and Open Records

- A. Open Meetings. All meetings of the Enterprise Board shall be open to the public and shall be preceded by adequate public notice as required by law. Public notice of the Enterprise Board agenda shall be made prior to Enterprise Board meetings.
- B. Open Records. The records of the Enterprise Board shall be public records and shall be open for public inspection, as provided by law for public records. Enterprise Board meetings shall be recorded by electronic recording device. Minutes shall be made of all Enterprise Board meetings and shall be approved by the Enterprise Board. After approval by the Enterprise Board, minutes shall be made a part of the Enterprise Board records.

Article IV. Officers and Staff

- A. General. The Chair and Vice-Chair shall be the officers of the Enterprise Board. The Enterprise Board shall appoint a Secretary who shall not be a Member of the Enterprise Board. The Chair and Vice-Chair shall be elected by the Enterprise Board at its meeting in January 2022 and shall serve two (2) year terms in office or until a successor is elected by a vote of the Members of the Enterprise Board. Thereafter, the Enterprise Board shall elect a Chair and Vice-Chair in January in even-numbered years. If the election of such officers is not held at such meeting, such election shall take place as soon thereafter as a meeting may be conveniently held.

- B. General Duties. All officers of the Enterprise, as between themselves and the Enterprise, shall have the authority and shall perform such duties in the management of the Enterprise as may be provided in these Bylaws, the Articles of Organization, or as may be determined by resolution or action of the Enterprise Board not inconsistent with these Bylaws.
1. Chair. The Chair shall preside at all meetings of the Enterprise Board. The Chair shall be a Member of the Enterprise Board. The Chair shall serve as the principal spokesperson for the Enterprise Board, and shall aid the Enterprise Program Manager and/or Secretary in coordination of meetings and agendas, and perform all duties incident to the office.
 2. Vice-Chair. The Vice-Chair shall, in the case of the absence or disability of the Chair, perform the duties of the Chair. The Vice-Chair shall be a Member of the Enterprise Board. The Vice-Chair shall also perform such other duties as may be prescribed by the Enterprise Board from time to time.
 3. Secretary. The Secretary, a member of the Colorado Department of Transportation (“CDOT”) staff, shall keep the records of the Enterprise Board. The Secretary shall perform all of the other administrative duties usually pertaining to this office, including taking the minutes of Enterprise Board meetings, and coordinating all communications, announcements, etc. The Secretary shall work with the Chair to coordinate Enterprise Board meeting details, including securing a location, posting the agenda, board packets, and notification of meetings. The Secretary’s term of office shall be at the will of the Enterprise Board.
 4. Program Administrator. The Program Administrator is a senior member of the CDOT staff assigned to provide strategic management and support for the Enterprise Board. The Program Administrator shall serve as a point of contact for the Enterprise and the Enterprise Board. The Program Administrator may suggest policies, procedures, and agenda items for the Board’s consideration and shall see that all policies, directions and orders of the Board are carried out. The Program Administrator shall have such other authority, powers, or duties as may be prescribed by the Board.
 5. Other Officers. The Enterprise Board may appoint other officers as it deems necessary and appropriate.

- C. Delegation of Duties. Whenever an officer is absent for any reason, the Enterprise Board may delegate the powers and duties of an officer to any other officer or to any Member of the Enterprise Board.
- D. No Contract Right. Service on the Enterprise Board shall not of itself create contract rights in the office.

Article V. Fiscal Year and Budget

- A. Fiscal Year. The fiscal year of the Enterprise shall be based on the State of Colorado fiscal year (July 1 - June 30).
- B. Budget. The Enterprise Board shall set and adopt annual estimates of revenues and other available funds for the operating fund and for the special revenue fund, respectively. These estimates shall be adopted not later than June of each year for the following fiscal year. If circumstances change, the Enterprise Board may, at a regular or special Board meeting, modify the estimates to ensure expenditures do not exceed available funds or to allow for additional appropriate expenditures if additional funds are available.

Article VI. Amendments

- A. General. The Enterprise Board may amend, supplement, or repeal these Bylaws or adopt new bylaws; all such changes shall affect and be binding upon the Enterprise Board. Any amendments, supplement, or repeal of these Bylaws, or adoption of new bylaws, shall require a majority vote of all Members.
- B. Notice. Specific notice of each meeting at which consideration of proposed amendment to, supplementation of, or repeal of these Bylaws or adoption of new bylaws shall be given in the same manner as notice of special meetings pursuant to Article III, Section C of these Bylaws.
- C. Vote Necessary. Any adoption of new bylaws, or amendment, supplement, or repeal of these Bylaws, shall require approval by a majority of the Enterprise Board at any regular meeting at which the amendment, supplement, repeal, or adoption is considered.

Article VII. Miscellaneous Provisions

- A. Invalid Provision. The invalidity or unenforceability of any particular provision of these Bylaws shall not affect the other provisions herein, and these Bylaws shall be construed in all respects as if such invalid or unenforceable provision were omitted.
- B. Governing Law. These Bylaws shall be governed by and construed in accordance with the constitution and laws of the State of Colorado and Section 43-4-1203, *et seq.*, C.R.S. for the Enterprise, as amended from time to time.
- C. Gender. Whenever required by context, the singular shall include the plural, the plural the singular, and one gender shall include the other.
- D. Contracts and Amendments. The Enterprise Board shall set budgets for its operations and shall have authority to approve and enter into contracts and amend existing contracts so long as the total projected expenditures for either the operating fund or the special revenue fund do not exceed the estimate of available funds approved for the fiscal year by the Board.



COLORADO

Department of Transportation

Nonattainment Area Air Pollution Mitigation Enterprise

Governing Board Meeting
February 24, 2022



Meeting Agenda

- I. **Introductions (5 minutes)**
- I. **Election of Enterprise Board Officers**
Rebecca White, Director, Division of Transportation Development (CDOT)
- I. **Adoption of Articles of Incorporation**
Herman Stockinger, Deputy Director, (CDOT)
- I. **Adoption of Enterprise Bylaws**
Herman Stockinger, Deputy Director, (CDOT)
- I. **Approve/Accept Loan Document**
Jeff Sudmeier, Chief Financial Officer (CDOT)
- I. **Open Rules**
Herman Stockinger, Deputy Director, (CDOT)
- I. **Overview of Other SB260 Enterprises**
Kay Kelly, Chief of Innovative Mobility (CDOT)
- I. **Nonattainment Areas - Areas of Eligibility**
Rebecca White, Director, Division of Transportation Development (CDOT)
Dena Wojtach, Manager, Planning and Policy, Air Pollution Control Division (CDPHE)
- I. **CDOT 10-Year Plan**
Marissa Gaughan, Multimodal Planning Branch Manager (CDOT)
- I. **Future Meetings/Wrap-up**

ACTION AGENDA



Selection of Enterprise Board Officers

Rebecca White,
Director, Division of Transportation Development (CDOT)



Board Leadership & Support Roles

General Duties

All officers of the Enterprise, as between themselves and the Enterprise, shall have the authority and shall perform such duties in the management of the Enterprise as may be provided in these Bylaws, the Articles of Organization, or as may be determined by resolution or action of the Enterprise Board not inconsistent with these Bylaws.



Board Leadership & Support Roles

Chair

The Chair shall preside at all meetings of the Enterprise Board. The Chair shall be a Member of the Enterprise Board. The Chair shall serve as the principal spokesperson for the Enterprise Board, and shall aid the Enterprise Program Manager and/or Secretary in coordination of meetings and agendas, and perform all duties incident to the office.

Vice Chair

The Vice-Chair shall, in the case of the absence or disability of the Chair, perform the duties of the Chair. The Vice-Chair shall be a Member of the Enterprise Board. The Vice-Chair shall also perform such other duties as may be prescribed by the Enterprise Board from time to time.



Board Leadership & Support Roles

Appointed Secretary

The Secretary, a member of the Colorado Department of Transportation (“CDOT”) staff, shall keep the records of the Enterprise Board. The Secretary shall perform all of the other administrative duties usually pertaining to this office, including taking the minutes of Enterprise Board meetings, and coordinating all communications, announcements, etc. The Secretary shall work with the Chair to coordinate Enterprise Board meeting details, including securing a location, posting the agenda, board packets, and notification of meetings. The Secretary’s term of office shall be at the will of the Enterprise Board.



Board Leadership & Support Roles

Program Administrator

The Program Administrator is a senior member of the CDOT staff assigned to provide strategic management and support for the Enterprise Board. The Program Administrator shall serve as a point of contact for the Enterprise and the Enterprise Board. The Program Administrator may suggest policies, procedures, and agenda items for the Board's consideration and shall see that all policies, directions and orders of the Board are carried out. The Program Administrator shall have such other authority, powers, or duties as may be prescribed by the Board.

Other Officers

The Enterprise Board may appoint other officers as it deems necessary and appropriate.



ACTION AGENDA ITEMS



Motions to Approve:

1. Minutes of the January 31, 2022 CTE Board Meeting
2. NAAPME Board Articles of Organization
3. NAAPME Board Bylaws
4. Start-Up Loan Agreement between the CDOT NAAPME Board in the amount of \$56,800



Adoption of Articles of Incorporation

Herman Stockinger,
Deputy Director, (CDOT)



Adoption of Articles of Incorporation & Enterprise Bylaws

Articles of Organization - mostly reiterates statute

- Business Purpose
- TABOR Exemption
- Powers and Duties
- Revenues and Expenditures
- Need to Adopt Bylaws

Enterprise Bylaws - details how the Board shall function

- Board Composition and Details
- Frequency and Method of Holding Meetings
- Open Meetings and Open Records
- Officers and Staff
- Fiscal Year and Budget
- Miscellaneous Provisions



Loan for Board Expenditures

Jeff Sudmeier,
Chief Financial Officer (CDOT)



Expected Revenue and Loans for Board Expenditures

Nonattainment Area Air Pollution Mitigation Enterprise - Summary FY 2022-23 to FY 2031-32

Fiscal Year	Mitigation Per Ride Fee	Mitigation Retail Delivery Fee	Total Fee Revenue
FY 2021-22	\$0	\$0	\$0
FY 2022-23	\$5,193,149	\$1,932,077	\$7,125,226
FY 2023-24	\$6,350,348	\$2,131,003	\$8,481,351
FY 2024-25	\$7,799,651	\$2,294,681	\$10,094,332
FY 2025-26	\$9,325,133	\$2,597,962	\$11,923,096
FY 2026-27	\$11,713,055	\$2,871,891	\$14,584,946
FY 2027-28	\$14,330,228	\$3,177,431	\$17,507,658
FY 2028-29	\$17,528,868	\$3,432,886	\$20,961,753
FY 2029-30	\$21,626,892	\$3,900,463	\$25,527,354
FY 2030-31	\$26,448,435	\$4,328,152	\$30,776,588
FY 2031-32	\$31,857,744	\$4,808,073	\$36,665,817
10-Year Total	\$152,173,502	\$31,474,619	\$183,648,121



Nonattainment Area Air Pollution Mitigation Enterprise Loan

- The Enterprise currently has no operating budget and no source of funding.
- Staff has prepared a loan (SB21-260 requires funds to be repaid and prohibits a grant). The loan was approved by the Transportation Commission on December 16, 2021, contingent on approval by the Enterprise Board.
- Repayment starts September 1, 2022 and the deadline for the principal amount and the interest (2% annually) on the unpaid principal balance is June 30, 2023. The Enterprise has the option to prepay all or a portion of the loan principal without penalty.



Nonattainment Area Air Pollution Mitigation Enterprise Loan

Staff estimates \$74,700 to cover costs prior to FY 2022-23 when fee revenues begin.

Expense Description	Quantity	FY22 Funding
Deputy Director (DTD)	20.0% of 1.0 FTE	\$25,000
Division of Transportation Development (DTD) Staff (10-Year Plan Development)	15.0% of 1.0 FTE	\$12,000
Fellow	30.0% of 1.0 FTE	\$18,000
Division of Accounting and Finance Staff	15.0% of 1.0 FTE	\$15,000
Policy Staff	2.5% of 1.0 FTE	\$2,500
Board Travel/Reimbursement	\$1,000 per mtg (2)	\$2,000
Meeting Expenses	\$100 per mtg (2)	\$200
Total		\$74,700



Open Rulemaking

Herman Stockinger,
Deputy Director, (CDOT)



Statutory Authority for Rulemaking

Rules Carry the Force of Law and Must be Authorized in Statute

43-4-1303 (6)(h) “... To promulgate rules for the sole purpose of setting the amounts of the air pollution mitigation per ride fee and the air pollution mitigation retail delivery fee at or below the maximum amounts authorized in this section;”

43-4-1303 (7)(b)(I) &(II): Sets the per ride fee:

- Eleven and $\frac{1}{4}$ cents for each prearranged ride that is a carshare ride or for which the driver transports the rider in a zero emissions motor vehicle;
- Twenty-two and $\frac{1}{2}$ cents for every other prearranged ride.

43-4-1303 (8)(b): Sets the retail delivery fee:

- Seven-tenths of one cent per retail delivery.



1.0 Statement of Basis and Purpose and Statutory Authority

- States the reason for the rule and where the authority lies in statute for the Enterprise to promulgate rules.

2.0 Definitions

- Duplicates many statutory definitions, and defines terms that are used in the Rule.

3.0 Fees

- Sets the initial fees effective July 1, 2022.
- Assumes the adjustment for inflation and working with DOR to determine the new rate.
- Reiterates statute that the Enterprise must notify DOR of changes in the fee by each March 15.

4.0 Declaratory Orders

- Every rule, by statute, must provide for the entertaining of, and prompt disposition of petitions for declaratory orders to terminate controversies or remove uncertainties surrounding the Rule.



Rulemaking for Enterprise Fee Setting

Process and Timeline

- Open Rule: **Enterprise Opens Rule February 24**, authorizes CDOT Hearing Officer to conduct Public Hearing.
- File Rule: CDOT staff “files the rule” with the Secretary of State
- Public Hearing: On April 4, CDOT staff will conduct the public hearing per the Administrative Procedures Act.
- Adopt Rule: **Enterprise Board adopts Rule on April 14**
- Effective Date: As early as May 31.



Board Member Participation and Proposed Motion

Board Member Participation in the Rulemaking

- All board member will be invited to attend the rulemaking hearing, but are not required to attend.
- It would be appropriate but optional to “assign” a board member to offer introductory comments at the rulemaking hearing and “represent” the Board at the hearing.

Elements of an Appropriate Motion to Open the Rules

- Move to authorize CDOT staff to open the Nonattainment Enterprise Rules;
- Authorize the appointment of a member of CDOT staff to serve as the Hearing Officer to preside over the Rulemaking Hearing and process.



INFORMATION AGENDA ITEMS



Other Enterprises Established by SB260



\$733 million of new fee revenue supports 3 new electrification and charging infrastructure Enterprises:

Charging Infrastructure & Electric Vehicle Equity

- ◆ New **‘Community Access’ Enterprise** in Colorado Energy Office (CEO).
- ◆ Build charging infrastructure in communities across the State, and support electric vehicle and eBike adoption in low and moderate income communities.
- ◆ **\$310 million** investment
- ◆ Paired with existing CO EV Infrastructure Fund - \$115 million and potential federal funding

Fleet Electrification Incentives

- ◆ New **‘Clean Fleet’ Enterprise** in CO Department of Public Health and Environment (CDPHE)
- ◆ Support fleet replacement (delivery trucks, TNCs, school buses, and other light/medium/heavy duty vehicles) with incentives to meet climate and air quality goals
- ◆ Support CDPHE’s Mobile Source Program to complement vehicle investment.
- ◆ **\$289 million** investment

Public Transit Electrification

- ◆ New **“Clean Transit” Enterprise** in Colorado Department of Transportation (CDOT).
- ◆ Support electrification of public transit through electrification planning efforts, facility upgrades, fleet vehicle replacements and associated charging infrastructure.
- ◆ **\$134 million** investment



Nonattainment Areas - Areas of Eligibility

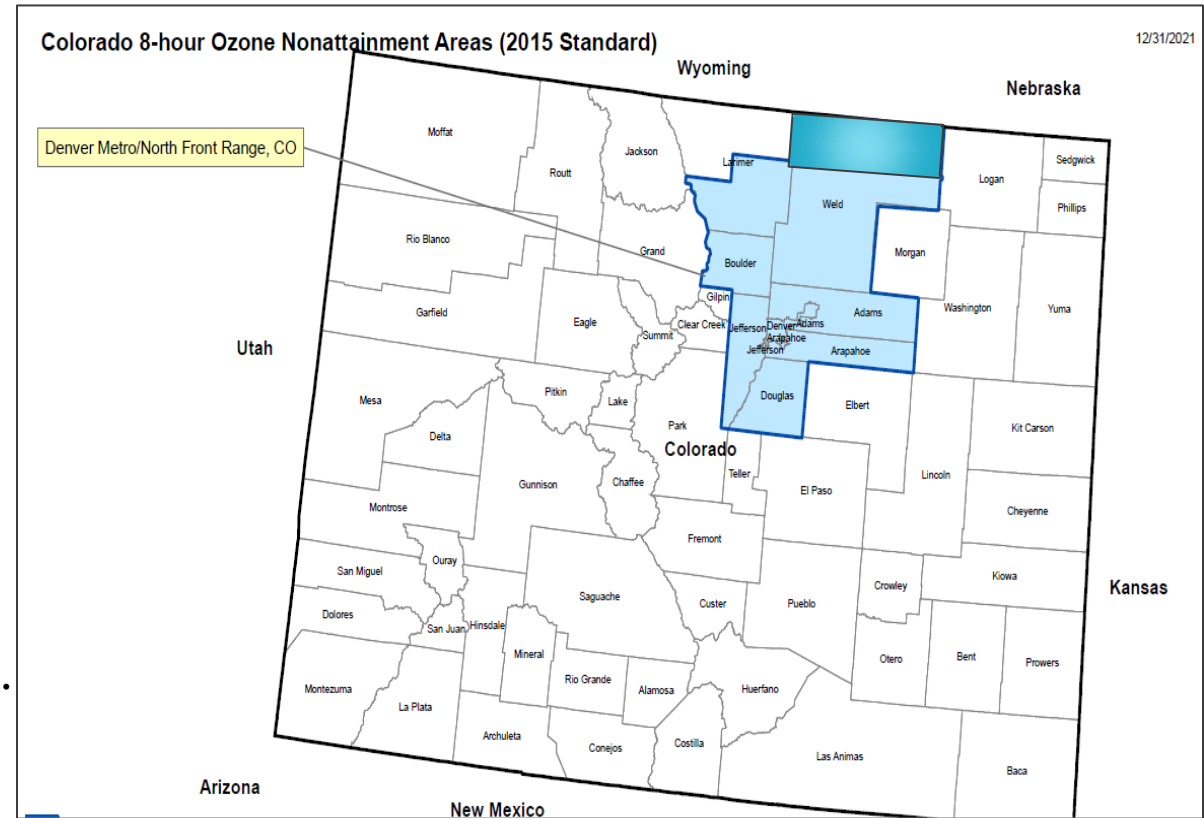
Rebecca White, Director,
Division of Transportation Development (CDOT)

Dena Wojtach,
Manager, Planning and Policy, Air Pollution Control Division (CDPHE)



Nonattainment Area Discussion

- Colorado includes both nonattainment areas and areas that have been redesignated from nonattainment to “maintenance”.
- A maintenance status is typically in place for a 20 year period. A number of areas across Colorado were redesignated to maintenance for carbon monoxide and particulate matter (PM-10) in the early 2000’s and are thus transitioning into full attainment.
 - Maintenance areas = Aspen, Canon City, Colorado Springs, Lamar, Pagosa Springs, Steamboat Springs, and Telluride).
 - These areas are eligible for funding from the federal Congestion Mitigation and Air Quality (CMAQ) program.
- The only current nonattainment area in Colorado is the 9 county region along the Front Range.
- However, the Colorado Springs area has been “hovering” close to nonattainment for ozone and will likely be designated in the coming few years.



Source- EPA, 1/18/22:
https://www3.epa.gov/airquality/greenbook/co8_2015.html



SB260 Legislative Language

(10) "ELIGIBLE PROJECT" MEANS A PROJECT LOCATED WITHIN A NONATTAINMENT AREA THAT:

- (a) IS ELIGIBLE FOR CMAQ FUNDING; OR
- (b) REDUCES EMISSIONS OF AIR POLLUTANTS OR GREENHOUSE GAS POLLUTANTS.

(16) "NONATTAINMENT AREA" MEANS AN AREA THAT THE AIR QUALITY CONTROL COMMISSION CREATED IN SECTION 25-7-104 HAS DESIGNATED AS A NONATTAINMENT AREA PURSUANT TO SECTION 25-7-107.

The APCD website, <https://www3.epa.gov/airquality/greenbook/ancl.html>, includes a map of nonattainment and attainment/maintenance areas". Importantly, maintenance is included together with attainment, not with nonattainment.



Question for the Board

Staff recommends that enterprise funding be only eligible within areas designated as “nonattainment” by CDPHE.

This currently includes the 9-county Front Range area but may grow to include Colorado Springs in the coming years.



CDOT 10 Year Plan

Marissa Gaughan,
Multimodal Planning Branch Manager



10-Year Plan at a Glance

The 10-year Plan includes a Strategic Pipeline of Projects that represents:

- 1,000+ lane miles touched
- Critical investments in transit and mobility hubs
- The largest investment in rural road condition in CDOT history
- A focus on taking care of our system: Over 50% of funds go to improving the condition of our roadway system (asset management & resurfacing projects)





Public Outreach

The 10-Year Plan was the most expansive and inclusive transportation planning effort in CDOT's History.



9,079

Completed Surveys

17,305

Online Map Comments

15,000+

Website Pageviews

16,201

Telephone Town Hall
Participants

1.2 MILLION+

Views on Social Media

3,500+

People Talked With at
Community Events

81

News Stories

14.7 MILLION

Approximate Views of
News Stories



Plan Documents


Spring 2020 STATEWIDE PLAN INFORMATION YTP.cdotevt.gov

THE LATEST ON TRANSPORTATION PLANNING

YOUR TRANSPORTATION PRIORITIES POWERED BY YOU

VISION FOR COLORADO'S TRANSPORTATION SYSTEM

10-YEAR STRATEGIC PROJECT PIPELINE



“ In May 2019, I directed the Colorado Department of Transportation (CDOT) to embark on an effort to refresh our transportation plan and priorities based on firsthand input from residents across the state.

Our goals were simple: to hear directly from Coloradans about what they need from our transportation system; to ensure that we are prioritizing precious taxpayer dollars in ways that best deliver on those needs; and to energize an ongoing statewide conversation about the vitality of transportation in connecting our daily lives.

Now, with that input gathered from across the state, we're ready to present our 10-year vision for Colorado's transportation system. **”**

Shoshana Lee
—Shoshana Lee, CDOT Executive Director

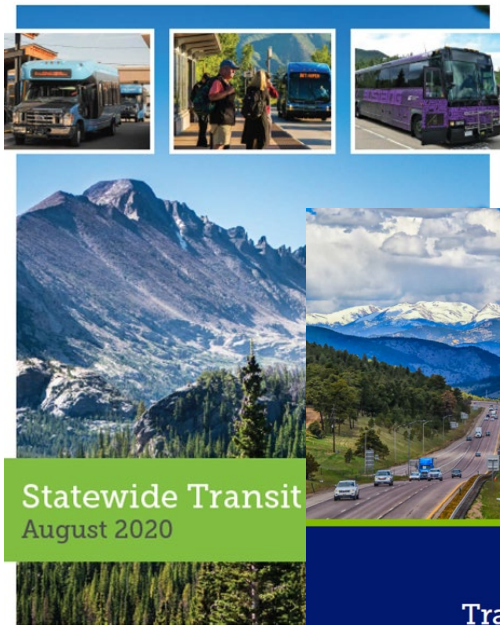
LEARN MORE YTP.cdotevt.gov | YTP@state.co.us



CENTRAL FRONT RANGE Coordinated Public Transit Human Services Transportation Plan DRAFT February 2020

Central Front Range

Counties:
Custer, Fremont, Park, Teller (portion), El Paso (portion)



Statewide Transit August 2020

Statewide Transportation Plan
Adopted August 20, 2020

10-Year Plan

Rural Regional Plans

Statewide Transportation & Transit Plans

Story Map

Project Fact Sheets

Other Plans



10-Year Plan Strategic Pipeline of Projects

PROJECT PIPELINE

ADOPTED MAY 2020 | LAST UPDATED JANUARY 2022



NORTHWEST PROJECTS

We are here!

	Project Type	Total Project Cost	Total Strategic Funding	Other Funding	Funded YRS 1-2	Funded YR 3	Proposed YR 4	Planned YRS 5-10	Planning Project ID
Highway & Transit– Region 3									
Interstate 70	I-70 Auxiliary Lane Frisco East to Silverthorne	\$25 M	\$25 M			\$25 M			0043
	I-70 West: Vail Pass Safety Improvements - Phase 1*	\$140 M	\$33.5 M	✓	\$33.5 M				0042
	Summit County Transit Operations Center (Design & Engineering)*	\$0.531 M	\$0.425 M	✓	\$0.425 M				1165
	I-70B East of 1st Street to 15th Street*	\$16 M	\$16 M			\$16 M			0041
	North Avenue Transit Infrastructure Improvements	\$1.5 M	\$1.5 M		\$1.5 M				2727
	Grand Junction Mobility Hub	TBD	\$4.08 M	✓	\$80 K	\$0.5 M	\$3.5 M		2747
	I-70 and CO 9 (Exit 203) Interchange Improvements	\$30 M	\$30 M					\$30 M	1157
	I-70 West Vail Pass Auxiliary Lanes	\$50 M	\$50 M					\$50 M	1161
	Vail Intermodal Site	\$15 M	\$15 M					\$15 M	1903
	I-70 Interchange Improvements in Garfield County	\$15 M	\$15 M					\$15 M	1171
	I-70 West: Dowd Canyon Safety and Capacity Improvements	\$14 M	\$14 M					\$14 M	1952
	I-70 Glenwood Canyon Critical Asset Repair	\$40 M	\$11 M					\$11 M	1151
	I-70 Business (Pitkin Avenue) Corridor Improvements between First Street and 15th Street	\$18 M	\$18 M					\$18 M	2568
I-70 Business Corridor Improvements between 32 Road and I-70 in Grand Junction	\$5 M	\$5 M					\$5 M	2569	



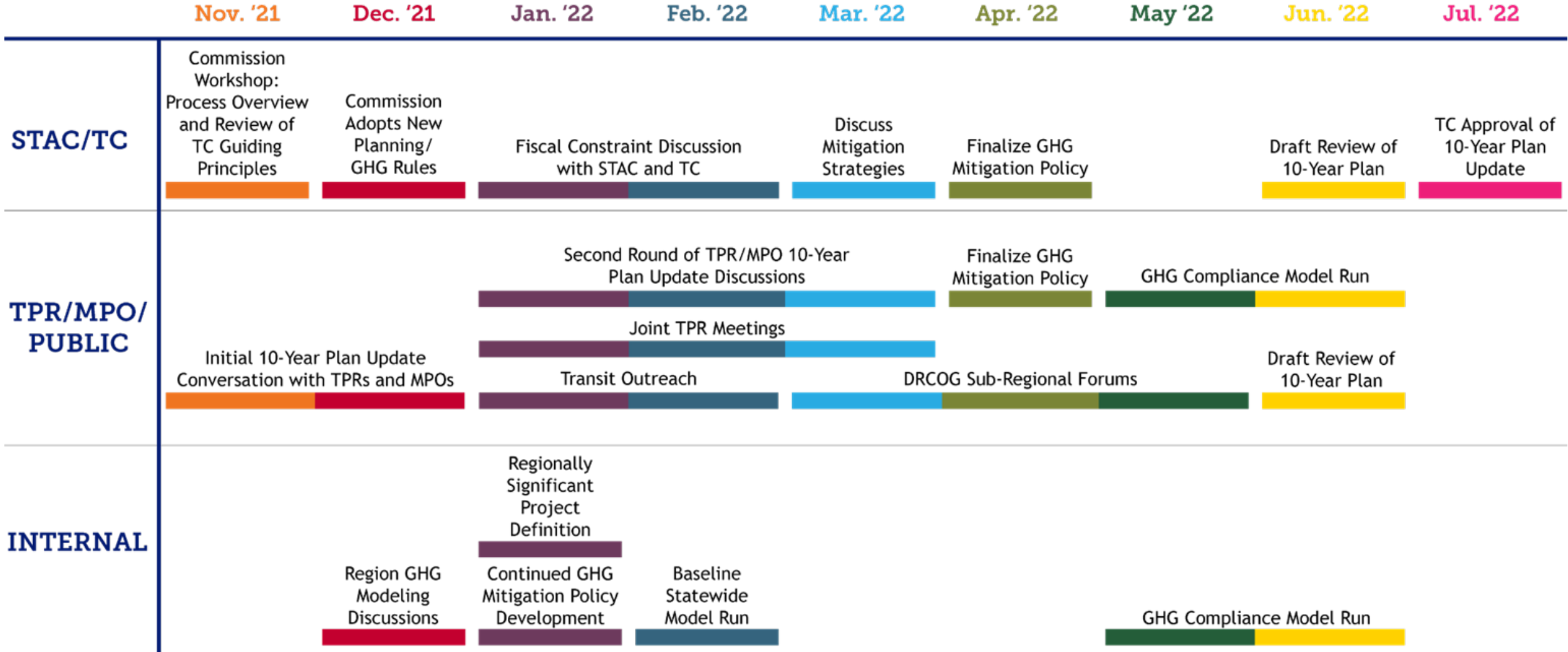
Updating the 10-Year Plan

Why are we updating the 10-Year Plan?

- New revenue: SB260 was passed to help deliver the 10-Yr Plan. Additionally, the federal infrastructure bill brings new transportation dollars to the state.
- Greenhouse Gas Rulemaking: In December 2021, the Transportation Commission adopted the new GHG Pollution Reduction Planning Rule. The 10-Year Plan must comply with the new standard for reduced greenhouse gas emissions.
 - Because of this rulemaking, many projects are being revised to include elements that help reduce emissions (e.g. new transit services).
- Progress delivering the first four years of the 10-Year Plan: Looking across the entire time period of the current plan, we are transitioning from completing the last year of the original 4-year list to determining the next set of projects and adding additional years to the plan.



10-Year Plan Update Timeline





Plan Resources

Home Travel Center News Safety Performance Business Center Programs & Projects About CDOT Library

Search... Search A-Z

YOUR TRANSPORTATION PRIORITIES POWERED BY YOU

10-Year Vision
Explore our vision for Colorado's transportation system for the next 10 years.

Statewide Transportation Plan
Give your feedback on our transportation projects and priorities.

Statewide Transit Plan
Review our plan to create an integrated transit system across Colorado.

Regional Transportation & Transit Plans
Join our review process and give us your input.

Resources & Documents
Navigate our library of resources and project documents.

Accountability Dashboard
Explore our Senate Bill interactive portfolio for project costs and updates.

EXPRESS Lanes

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www.ytp.codot.gov



Wrap-Up / Next Steps



Upcoming Dates:

- Tuesday, March 15th - Board Confirmation Hearings
- Monday, April 4th - Nonattainment Rulemaking Hearing
- April 14, 3:00 PM - 4:30 PM - *Nonattainment Board Meeting*
- May 26, 3:00 PM - 4:30 PM - *Nonattainment Board Meeting*
- June 26, 2022, 3:00 PM - 4:30 PM - *Nonattainment Board Meeting*
- Wednesday, June 1st - Deadline to Publish/Post 10-year Plan

Upcoming Meeting Topics:

- 10 Year Plan Development



NAAPME Information & Resources

Nonattainment Area Air Pollution Mitigation Enterprise

The Enterprise mitigates the environmental and health impacts of increased air pollution from motor vehicle emissions in nonattainment areas.



Contact Us

Multimodal Planning Branch
Division of Transportation Development
2829 W. Howard Place, 4th Floor
Denver, CO 80204

dot_dtd_multimodalplanning@state.co.us

Resources

[Board Appointments](#)

[Enterprise Funds](#)

[Board Powers & Duties](#)

Upcoming Meetings

February 24, 2022 3:00 pm

[Link to YouTube Live](#)

Link to Meeting materials will be posted 24 hours prior to meeting



Background Information



Enterprise Overview

- Created within CDOT to mitigate transportation-related emissions in ozone nonattainment areas
- Enterprise can fund projects that reduce traffic or directly reduce air pollution through the congestion mitigation and air quality improvement program
- Enterprise can impose an air pollution mitigation fee on retail deliveries and rides provided by TNCs to fund its operations





Governing Board

Appointment	Appointment Criteria
Lynn Baca, <i>Brighton</i>	Elected official of a disproportionately impacted community that is a member DRCOG
Yessica Holguin, <i>Denver</i>	Representative of a Disproportionately Impacted Community
Kristin Stephens, <i>Fort Collins</i>	Elected official of a local government that is a member of NFRMPO
Danielle "Stacy" Suniga, <i>Greeley</i>	Expertise on Environmental, Environmental Justice, or Public Health Issues
Leanne Wheeler, <i>Aurora</i>	Representative of a Disproportionately Impacted Community
Shoshana Lew	Executive Director, CDOT (or designee)
Dena Wojtach	Executive Director Designee, CDPHE