



**COLORADO**

**Department of Transportation**

Nonattainment Area Air Pollution  
Mitigation Enterprise

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

## GOVERNING BOARD MEETING - JUNE 23, 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.*

### Meeting Resources

- I. [ZOOM MEETING REGISTRATION LINK](#) | [YOUTUBE LIVE STREAM](#)
- II. [NAAPME Board Meeting Agenda - June 23, 2022](#)
- III. [NAAPME Board Meeting Minutes from May 26, 2022](#)
- IV. [NAAPME Board Meeting Registry of Actions from May 26, 2022](#)
- V. [NAAPME Board Meeting Presentation - June 23, 2022](#)
- VI. [Attachment A - NAAPME 10-Year Plan Draft](#)
- VII. [Attachment B - NAAPME 10 Year Plan - Public Comment 1 - DeBarros](#)
- VIII. [Attachment C - NAAPME 10 Year Plan - Public Comment 2 - Bornhoft](#)
- IX. [Attachment D - NAAPME FY2022-23 Revenue Allocation Plan](#)
- X. [Attachment E - CDOT & NAAPME IALA - FY2022 Enterprise Inception Loan](#)
- XI. [Attachment F - 2 CCR 608-1 - REGULATION 1 - NAAPME FEES - FINAL - April 2022](#)

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## NAAPME Governing Board Resources

- [CRS 43-4-1303 - Creation of NAAPME \(SB260\)](#)
- [Board Appointments](#)
- [Enterprise Fund & Fees](#)
- [Board Powers & Duties](#)
- [NAAPME Bylaws](#)
- [NAAPME Articles of Incorporation](#)
- [NAAPME Loan Document](#)
- [2 CCR 608-1 Permanent Rule](#)
- [NAAPME Permanent Rulemaking Hearing Exhibits](#)
- [Policy Directive 703.0 - Annual Budget, Project Budgeting, and Cash Management Principles](#)

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## Additional Resources

- [Basic Information on Nonattainment](#)
- [Map of Colorado's Nonattainment Areas](#)
- [History of Ozone in Colorado](#)
- [Recent EPA Action on Colorado's Ozone Nonattainment Boundaries](#)
  - [https://www.epa.gov/system/files/documents/2021-11/summar1.doc\\_0.pdf](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-ts-d-20210831.pdf>
- [Commonly Used Acronyms \(STIP\)](#) | [Acronyms Table \(CDOT\)](#)

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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](http://codot.gov).



# COLORADO

## Department of Transportation

Nonattainment Area Air Pollution  
Mitigation Enterprise

BOARD MEETING & EXECUTIVE SESSION | JUNE 23, 2022 | 3:00PM - 4:30PM

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### SCHEDULE AND AGENDA

- I. **Convene Meeting & Roll Call** **3:00 PM - 3:05PM**  
*Kristen Stephens, NAAPME Chair*
  
- II. *Decision Item:* **3:05 PM - 3:10 PM**  
**Approval of Minutes from the 26 May 2022 Board of Directors Meeting**  
*Kristen Stephens, NAAPME Chair*
  
- III. *Decision Item:* **3:10 PM - 3:25 PM**  
**10-Year Plan - Public Comment Review  
and Adoption of Plan**  
*Darius Pakbaz, NAAPME Program Administrator*
  
- IV. *Decision Item:* **3:25 PM - 3:40 PM**  
**Adoption of Fiscal Year 2023 NAAPME Budget**  
*Darius Pakbaz, NAAPME Program Administrator*
  
- V. **Future Governing Board Meeting Cadence** **3:40 PM - 3:50 PM**
  
- VI. **Conclude Meeting/Next Steps** **3:50 PM - 4:00 PM**
  
- VII. *Decision Item:* **4:00 PM - 4:30 PM**  
**NAAPME Board of Directors Executive Session**  
*Executive Session pursuant to CRS 24-6-402(3)(a)(II) for the purpose of receiving legal  
advice and an update from counsel on a lawsuit filed against NAAPME and to discuss  
with counsel and receive advice on legislation passed by the Colorado Legislature*



# COLORADO

## Department of Transportation

Nonattainment Area Air Pollution  
Mitigation Enterprise

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

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### NAAPME Board Meeting Minutes | May 26 2022 | 3:00PM - 4:30PM

#### **Role Call - 00:32**

##### **Board Members:**

Kristin Stephens, *Chair*

Yessica Holguin, *Director*

Stacey Suniga, *Director*

Leanne Wheeler, *Director*

Dena Wojtach, *Director*

Shoshana Lew, *Director*

##### **CDOT:**

Rebecca White, *Director, Division of Transportation Development*

Darius Pakbaz, *Deputy Director, Division of Transportation Development*

Jenni Fogel, *Program Assistant, CDOT*

Kathy Young, *CO State AG Office*

George Hypolite, *CO State AG Office*

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#### **Approval of May 05, 2022 NAAPME Board Meeting Minutes - 01:40**

**Purpose:** Approval of April 14, 2022 NAAPME Board Meeting Minutes

##### **Action:**

- Motion made by Director Wheeler to approve
  - Motion seconded by Director Suniga
  - Motion passes with no further discussion
- 

#### **Public Outreach Presentation - 02:35**

**Purpose:** To brief the Board of Directors on the results of the NAAPME public outreach survey, in addition to results from survey conducted at NAAPME Public Outreach Listening Session

##### **Action:**

- No action required on this agenda item

##### **Discussion:**

- Presented by Darius Pakbaz, *NAAPME Program Administrator*
- The survey was open for two weeks and recorded 181 total responses
  - Survey results include close to 95 separate comments left by respondents
    - Respondents prioritized reducing pollutants, and least preferred carbon taxes
- Survey conducted at Public Outreach Listening Session recorded 21 responses
- Question concerning *sustainably reducing traffic congestion*, from most to least supported:
  - Expand van pools and car pools
  - Expand Bustang
  - Building more bike trails/sidewalks
  - Establishing Mobility Hubs
  - Bus Rapid Transit
- Question concerning *reducing the environmental and health impacts of highway construction projects*, from most to least supported:
  - Air Quality Monitoring
  - Retrofitting construction Equipment
  - Roadside Vegetation Barriers
  - Mitigation of Construction Projects Impacts
- Question concerning *Neighborhood Connectivity for Communities*, from most to least supported:
  - Projects that slow and calm traffic
  - Building sidewalks and bike paths
  - More and safer bike/ped connectivity
- Director Wojtach: *Did any of the results stand out to anyone present?*
  - Darius Pakbaz: Nothing surprising, though the public comments offered more interesting feedback
  - Rebecca White: It was interesting that there is so much support of air quality monitoring;
- Chair Stephens: Has a question regarding the letter received from CC4CA; One of their suggestions is to work in tandem with the other enterprises created under SB21-260; Is there the possibility to do so?
  - Rebecca White: Defers to Kathy Young and George Hypolite
  - Kathy Young: For legal reasons, the enterprises should remain separate; having crossover will likely result in issues; Suggests going into an executive session next meeting; CO State AG Office will have responded to current litigation by then (June 16); Would like to advise on a few items next NAAPME Board meetings
- Director Wheeler: There is a considerable amount of concern about siloing; Would like a better understanding if NAAPME Board can share information with other enterprises
  - Kathy Young: If there is something the Board deems is not under the purview of the NAAPME, they are free to share with other enterprises
- Director Suniga: Can we partner with other groups working in the same space as the NAAPME?
  - Chair Stephens: Is aware of the study mentioned by Director Suniga; Perhaps if enterprise has a competitive grants process, this will likely be an incorporated best practice;
- Darius Pakbaz will embed results into the 10-Year Plan Documents; Happy to share data with our sister enterprises

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### **10-Year Plan Draft Review - [17:53](#)**

**Purpose:** To outline the details of the NAAPME Board concerning the funding priorities for Enterprise and the format of the statutorily required 10-year Plan; CRS 43-4-1302(10)(a)(I) requires NAAPME to develop and publish a ten-year plan no later than June 1, 2022, create a public accountability dashboard, conduct public outreach, and present an annual report From SB21-260:

*(10)(a) To ensure transparency and accountability, the enterprise shall: (I) No later than June 1, 2022, publish and post on its website a ten-year plan that details how the enterprise*

*will execute its business purpose during state fiscal years 2022-23 through 2031-32 and estimates the amount of funding needed to implement the plan. No later than January 1, 2032, the enterprise shall publish and post on its website a new ten-year plan for state fiscal years 2032-33 through 2041-42.*

**Action:**

- No action required on this agenda item

**Discussion:**

- Updates and staff review of the plan
- Posting of a draft plan on NAAPME website by COB June 1, 2022
- Adoption of the plan at the June Meeting
  - Darius Pakbaz: Based on the interpretation of the statute, we can post if the board decides, we can post a draft of it on June 1 leave it open for potential public comment.
  - Will allow for annual updates with public comment period and official *readoption*
- Director Wheeler: Supports the idea of posting by Jun 1 as a draft, and for allowing additional public comments
- Director Suniga: Echoes her support for posting of a draft by Jun 1;
- Director Wojtach: Also support the posting of a draft raft and public comments; also
- Director Wheeler: Will there be an opportunity for the NAAPME Board to view a final version of the draft?
- Chair Stephens: Would directors wish to have an additional work session?
  - Director Holguin: Does not see the necessity for another meetings; Wants to maximize time for public comments; Would like at least a week to review
  - Director Suniga: Would like to have materials in time to do a proper review
- Darius Pakbaz: Setting a deadline of June 10 would allow for additional public comment and allow for revisions, ahead of the June 17 week-out date of the Jun 23 NAAPME Board meeting;
- Director Wojtach: echoes earlier support for no additional meeting; requests staff to highlight any major changes to draft submitted so far; Is very interested to see all public comments before a more finalized version of the 10-Year Plan is shared
- [27:37](#) - Darius Pakbaz gives detailed overview of 10–Year Plan Contents
  - Letter from Board of Directors
  - Introduction
  - Business Purpose of the NAAPME
  - Board of Directors - com[position
  - Nonattainment Areas of Colorado
  - 10 Year Anticipated Funding and Spending Forecast
  - Enterprise Funding Focus Areas and Project Selection
  - Public Outreach Activities
  - Enterprise Reporting & Next Steps
- Special thanks to Annelies Van Vonno (CDOT) for help with the graphic design of the 10-Year Plan Draft

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**State Fiscal Year 2023 Budget Review - [31:48](#)**

**Purpose:** Give the NAAPME Board a preview of a proposed budget for FY23; if there are any changes from Division of Accounting and Finance, or if the Board has any potentials changes, to provide time to incorporate those amendments

**Action:**

- No action required on this agenda item

**Discussion:**

- Director Wojtach: excess funds held in reserve will get rolled over into projects, but at what cadence- quarterly? End of fiscal year?
  - Darius Pakbaz: Based off of initial understanding from DOR; That can be eliminated from the plan itself; We can roll over any unused admin fees into projects, but will want to keep a small reserve on hand;
- Director Holguin: Thanks the NAAPME staff for contributing the language translation services into the budget
- Director Suniga: Echos Dir. Holguin's thanks for including translation services in the budget; The line item related to salaries - are those FTEs?
  - Darius Pakbaz: Essentially a portion of the FTE; CDOT staff will only spend a portion of their time to the NAAPME; In the next fiscal year we can assess what support we will need and adjust accordingly;
  - Jeff Sudmeier: We will work to put in place policies for budget setting, so as to not do everything by resolution; Ultimately, the NAAPME Board has the ability to amend its budget throughout the course of the year as the Board deems necessary.
- Chair Stephens: When do we start collecting the fees? What about the revenue forecast? Many variables can affect revenue forecasts; Whether we have a competitive process or fund a CDOT 10-year project,
  - Darius Pakbaz: Jul 1, 2022 ;
  - Jeff Sudmeier: No historical data; we use best available information to forecast; We do quarterly revenue forecasts and will be monitoring throughout the course of the fiscal year; If projections are wildly off, can always circle back and recommend the Board amend its budget;
- Director Wheeler: Are you able to share a core set of parameters/data points that inform the forecast?
  - Jeff Sudmeier: We can share the methodology on which the forecasts are based; As of right now, forecasting most of the fee revenue for the fees created at SB260; We do not expect the underlying conditions to change that were used for forecasts at that time; We will be monitoring very closely the actually revenue which will start coming in.
- Director Wheeler: How do we make a determination as to what to fund as the Board gets its legs under us? Can you address the risk involved here?
  - Jeff Sudmeier: The majority of funds will be programs funds; Will make a determination as to what funds can be applied to; The Board will take some period of time to make a decision as to where funds are allocated; When awards are made, it will take time for IGAs if those are necessary; There will be a lag between when decision is made and when funding is applied to projects; The benefit of this is that there is a lag time between decision and commitments/contracts/actual expenditures
- Darius Pakbaz: Wraps up budget discussion with slide on NAAPME Draft Spending Plan

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**Policy Directive 703 Preview - [53:36](#)**

**Purpose:** CDOT PD 703 establishes guidance on how staff must handle all types of transactions, including budget and project transactions, and what levels of review are required; During the annual review of PD 703.0, a new line for the NAAPME will be added to the matrix so staff can determine required levels of review

**Action:**

- No action required on this agenda item

## Discussion:

- Jeff Sudmeier: This is a CDOT Policy, however, as in the case of the other enterprises which operate under CDOT, instead of having each enterprise have their own unique processes, we can have some uniformity;
- Director Wojtach: What are Pre-award adjustments? Can an entity come in on multiple occasions?
  - Jeff Sudmeier: The slide shown is simply an example as to what an approval review looks like; Part of the reason for doing this is so not everything has to be acted on by the Board by passing a resolution
- Director Suniga: When describing thresholds for decision-making, what are the caps for these thresholds? What is the process for doing so?
  - Jeff Sudmeier - In general, when we're talking about either capital construction projects or grants there is an initial approval process by the board approving a list of projects with specific dollars amounts, or it could happen through an award process that the Board has approved prior, in effect, the Board is saying, *"Now here's the criteria and evaluation process and you don't come back and individually approve them just follow this process."* The other elements in the PDA generally speak to change control once you've made an initial commitment.
  - Darius Pakbaz: We can set those as as needed and and have a discussion on it, I don't think we have to approve it next month, so if we want to happen, we were already having a pretty full agenda next month, so we can have a couple of months, a couple of times in order to discuss that. With the caveat that saying that this board, unlike the transportation Commission only meets quarterly so of those decisions have to be made on that there might be; We might have to call the board on for a special meeting for this.
- Chair Stephens: The numbers on the slide are throwing me a little bit off; Only *staff approval* on items worth \$250,000?
  - Jeff Sudmeier: To clarify, to ensure that there is staff approval doesn't mean that it's just a staff decision, it just simply means that there is an internal administrative process.
- Director Wheeler: The administrative function itself, those are audited functions, is that correct? Ultimately, we, the Board, have to be the fiduciary responsibility
  - Jeff Sudmeier: I think we will be working with you through, whether it's through this policy directive or other other documents for you to sort of establish the administrative framework that and policy framework that the board wants; A simple example: Contracts; We will not be developing contracts in a vacuum, or from scratch; We are still an arm of government; we work with the OSC-approved contract templates; You will have the existing administrative structure of the state that we will be able to apply to those area where yo have an explicitly unique enterprise elements;

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## **Discussion on Future Meeting Cadence and Topics - [1:12:02](#)**

**Purpose: Discuss future meetings after June 2022**

### **Action:**

- No action required on this agenda item
- Director Wojtach announces she will be stepping down from the NAAPME Governing Board at the end of June, as she is retiring from the state service; Will be at next meeting on June 23, 2022

### **Discussion:**

- Recommendation to move to quarterly meetings after June 23rd;
  - Four meetings, scheduled midway through each fiscal quarter.
  - Board's discretion for additional meetings



- Suggestion for future meetings:
    - Aug 25, 2022
    - Nov 17, 2022
    - Feb 23, 2023
    - May 25, 2023
  - Future discussion topics:
    - Adoption of 10-Year Plan, Budget, and PD 703 provisions - June 2022
    - Gap Analysis Reporting, Similar Programs and Funding Sources - June 2022
    - Revenue Forecast to Actual Analysis - Aug 2022
    - Project Prioritization and Program Requirements - Aug 2022
    - Project Accountability Dashboard - November 2022
    - Project Selection Discussion and Preview FY 2024 Budget - November 2022
    - FY 2024 Budget Discussion and Adoption - February 2023
    - Annual Report, 10-Year POlan Updates - May 2023
  - Director Wheeler: It would be my preference, not necessarily to meet every month, but not to just meet quarterly; Does not want to lose momentum as we try to set up some critical infrastructure and process management; Meeting quarterly only works when you're already set up and running, when you're a proven group; We're not at that juncture.
    - Chair Stephens: Maybe that is something we can discuss in June; Not a bad idea to start thinking about establishing working groups and subcommittees - filtering through comments and thinking about priorities in funding, and looking at collaborative opportunities with sister enterprises; Perhaps we can add this to the agenda in June
  - Director Wojtach: Agree that Board ought to wait before moving to quarterly meetings; Board must pin down project prioritization and the program requirements;
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*Meeting adjourned at [4:20](#)*



COLORADO NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE

# REGISTRY OF ACTIONS

DATE OF MEETING **May 26, 2022**

Action Number	Action	Decision
2022-11	Motion to approve minutes for May 5, 2022 meeting <ul style="list-style-type: none"><li>• Motion made by Director Wheeler</li><li>• Director Suniga seconded the motion; it passed with no further discussion</li></ul>	Approved

Jennifer Fogel, Secretary  
Nonattainment Area Air Pollution Mitigation Enterprise

**May 31, 2022**

Date



**COLORADO**

Department of Transportation

# Nonattainment Area Air Pollution Mitigation Enterprise

*Governing Board Meeting*  
June 23, 2022



# Meeting Agenda

## I. Convene Meeting & Roll Call

**DECISION  
ITEM**

II. Approval of Minutes from the 26 May 2022 Board of Directors Meeting  
*Kristin Stephens, NAAPME Board of Directors, Chair*

**DECISION  
ITEM**

III. 10-Year Plan - Public Comment Review and Adoption of Plan  
*Darius Pakbaz, NAAPME Program Administrator*

**DECISION  
ITEM**

IV. Adoption of Fiscal Year 2023 NAAPME Budget  
*Darius Pakbaz, NAAPME Program Administrator*

## V. Future Governing Board Meeting Cadence

## VI. Conclude Meeting/Next Steps

## VII. NAAPME Board of Directors Executive Session

*Executive Session pursuant to CRS 24-6-402(3)(a)(II) for the purpose of receiving legal advice and an update from counsel on a lawsuit filed against NAAPME and to discuss with counsel and receive advice on legislation passed by the Colorado Legislature.*



## DECISION ITEM

# Approval of Minutes from the 26 May 2022 Board of Directors Meeting

*Kristin Stephens, NAAPME Board of Directors, Chair*



# NAAPME 10-Year Plan

*Darius Pakbaz, NAAPME Program Administrator*

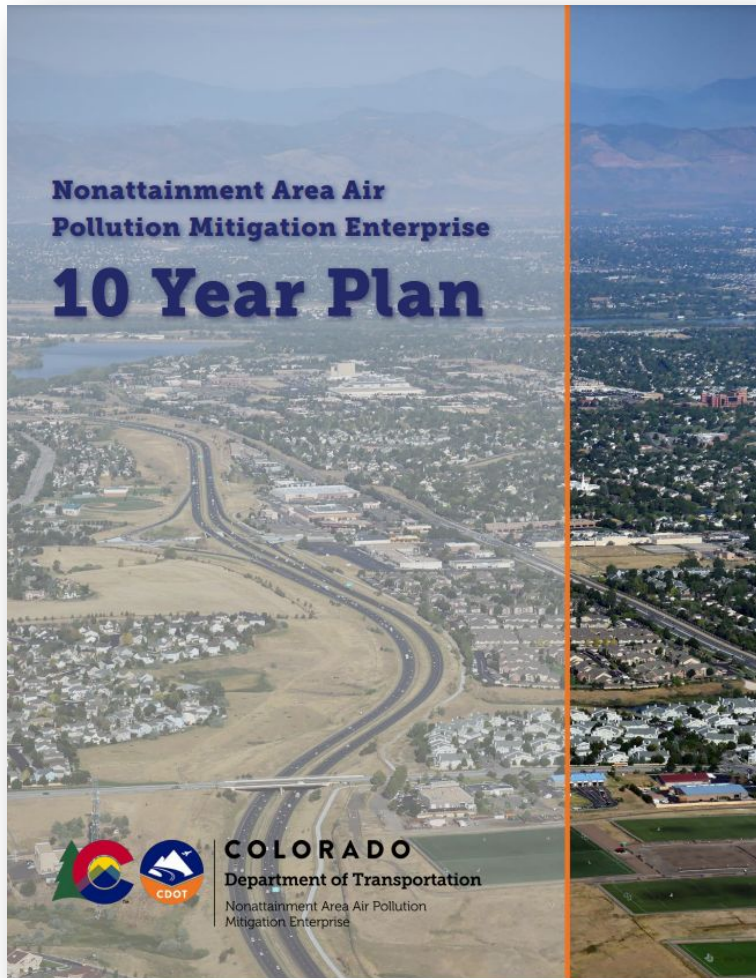


# NAAPME 10-Year Plan

- Enterprise is required to publish, by June 1, 2022, a 10-Year Plan that details how the enterprise will execute its business purpose through FY32.
- Staff Presented a draft plan for the Board to review at the May 26, 2022 Board of Directors meeting.
- This draft plan was published on the Enterprise's website on June 1st, allowing for public comment through June 12th.
- The purpose of this presentation is to provide for final review of the draft plan, notification and discussion of public comments, and adoption of the plan.
- The Board has the discretion to update this plan throughout the 10-Year span.



# NAAPME 10-Year Plan Overview



- I. Letter from the Board of Directors
- II. Introduction
- III. Business Purpose Overview
- IV. Board of Directors
- V. Nonattainment Areas of Colorado
- VI. 10 Year Revenue Forecast and Spending Plan
- VII. Funding Focus Areas & Project Selection
- VIII. Public Outreach
- IX. Reporting & Next Steps





# NAAPME Public Comment on Plan

- Two Comments Received by Enterprise Staff
  1. Attachment B - Audrey DeBarros - Commuting Solutions
    - a. Suggested adding funding for a Employer Trip Reduction Program (ETRP), a voluntary program in partnership with DRCOG, TMOs, employers, etc.
      - i. Similar program considered by Air Pollution Control Division, but not implemented.
    - b. Additional funds for Transportation Management Organizations to add capacity and expand services.
    - c. Initiative to encourage employers to subsidize van pools, transit passes, etc. to inspire behavior change.
  2. Attachment C - Medora Bornhoft - North Front Range MPO
    - a. Provided suggestions to improve language on pages 7, 10, and 17.



# 10-Year Plan Next Steps

- For today's meeting:
  - Discussion on and possible incorporation of public comments
  - Comments and suggested changes from Board of Directors
  - Motion to adopt the NAAPME 10-Year Plan, with revisions discussed today, by the Board of Directors
- Future Initiatives:
  - Revisions of the plan, at the Board's discretion, to incorporate programming decisions



## DECISION ITEM

# NAAPME Board of Directors adopt Initial 10-Year Plan

*Kristin Stephens, NAAPME Board of Directors, Chair*



# FY2023 NAAPME Budget

*Darius Pakbaz, NAAPME Program Administrator*



# NAAPME FY 2023 Annual Budget

- **Draft budget presented May 26, 2022**
- **Four main budget categories:**
  - Programmed Funds - \$6,669,144.02
    - FY 2023 allocation of \$6,621,144.02 PLUS FY 2022 rollforward of \$48,000
  - Enterprise Administration & Agency Operations - \$227,650
    - Subcategories for budget category:
      - Staff Salaries - \$64,800
      - State Agency Support - \$7,000
      - Enterprise Support Initiatives - \$150,000
      - Board Meeting Expenses - \$5,850
  - Debt Service - \$76,486.25
  - Contingency Reserve - \$200,000
- **Adjustments since last meeting**
  - Adjustment to anticipated rollforward amount from fiscal year 2022.
    - Original - \$55,000
    - Revised - \$48,000
  - Loan Repayment amount updated.
    - Original - \$76,431.98
    - Revised - \$76,486.25



# NAAPME Proposed FY 2023 Annual Budget

#	LINE ITEM	A - Estimated Rollforward from FY 2021-22	B - FY 2021-22 Final Allocation Plan	C - FY 2022-23 Final Allocation Plan	FY 2023-23 Final Total Available Budget (A+C)	Directed By	Funding Source
<b>1</b>	<b>NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE</b>						
<b>2</b>	<b>PROGRAMED FUNDS</b>	<b>\$ 48,000.00</b>	<b>\$ -</b>	<b>\$ 6,621,089.75</b>	<b>\$ 6,669,089.75</b>		
3	Programed Funds	\$ 48,000.00	\$ -	\$ 6,621,089.75	\$ 6,669,089.75	NAAPMEB	SB21-260
<b>4</b>	<b>ADMINISTRATION &amp; AGENCY OPERATIONS</b>	<b>\$ -</b>	<b>\$ 73,870.00</b>	<b>\$ 227,650.00</b>	<b>\$ 227,650.00</b>		
<b>5</b>	<b>Staff Salaries</b>	<b>\$ -</b>	<b>\$ 64,800.00</b>	<b>\$ 64,800.00</b>	<b>\$ 64,800.00</b>		
6	Program Administrator	\$ -	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	NAAPMEB	SB21-260
7	Board Secretary	\$ -	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	NAAPMEB	SB21-260
8	Enterprise Controller	\$ -	\$ 8,000.00	\$ 8,000.00	\$ 8,000.00	NAAPMEB	SB21-260
9	DTD Division Director	\$ -	\$ 12,000.00	\$ 12,000.00	\$ 12,000.00	NAAPMEB	SB21-260
10	DTD Planning Specialist 1	\$ -	\$ 8,000.00	\$ 8,000.00	\$ 8,000.00	NAAPMEB	SB21-260
11	DTD Planning Specialist 2	\$ -	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	NAAPMEB	SB21-260
12	DAF Accountant	\$ -	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	NAAPMEB	SB21-260
13	OPGR Rules Coordinator	\$ -	\$ 2,400.00	\$ 2,400.00	\$ 2,400.00	NAAPMEB	SB21-260
14	DAF Contract Administrator	\$ -	\$ 2,400.00	\$ 2,400.00	\$ 2,400.00	NAAPMEB	SB21-260
<b>15</b>	<b>State Agency Support</b>	<b>\$ -</b>	<b>\$ 2,450.00</b>	<b>\$ 7,000.00</b>	<b>\$ 7,000.00</b>		
16	Department of Law - Legal Support	\$ -	\$ 2,450.00	\$ 5,000.00	\$ 5,000.00	NAAPMEB	SB21-260
17	Office of the State Auditor - Annual Financial Audit	\$ -	\$ -	\$ 2,000.00	\$ 2,000.00	NAAPMEB	SB21-260
<b>18</b>	<b>Enterprise Support Initiatives</b>	<b>\$ -</b>	<b>\$ 4,420.00</b>	<b>\$ 150,000.00</b>	<b>\$ 150,000.00</b>		
19	Language Translation Services	\$ -	\$ 4,420.00	\$ 50,000.00	\$ 50,000.00	NAAPMEB	SB21-260
20	Consultant Services	\$ -	\$ -	\$ 100,000.00	\$ 100,000.00	NAAPMEB	SB21-260
<b>21</b>	<b>Board Meeting Expenses</b>	<b>\$ -</b>	<b>\$ 2,200.00</b>	<b>\$ 5,850.00</b>	<b>\$ 5,850.00</b>		
22	Board Travel	\$ -	\$ 2,000.00	\$ 5,000.00	\$ 5,000.00	NAAPMEB	SB21-260
23	Meeting Expenses	\$ -	\$ 200.00	\$ 500.00	\$ 500.00	NAAPMEB	SB21-260
24	Presentation Support	\$ -	\$ -	\$ 350.00	\$ 350.00	NAAPMEB	SB21-260
<b>25</b>	<b>DEBT SERVICE</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 76,486.25</b>	<b>\$ 76,486.25</b>		
26	Debt Service on CDOT Loan - 22-HAA-ZH-00054	\$ -	\$ -	\$ 76,486.25	\$ 76,486.25	NAAPMEB	SB21-260
<b>27</b>	<b>CONTINGENCY RESERVE</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 200,000.00</b>	<b>\$ 200,000.00</b>		
28	Enterprise Reserve Fund (<\$200,000.01)	\$ -	\$ -	\$ 200,000.00	\$ 200,000.00	NAAPMEB	SB21-260
<b>29</b>	<b>TOTAL - NAAPME</b>	<b>\$ 48,000.00</b>	<b>\$ 73,870.00</b>	<b>\$ 7,125,226.00</b>	<b>\$ 7,173,226.00</b>		



## DECISION ITEM

# NAAPME Board of Directors adopt Fiscal Year 2023 Budget

*Kristin Stephens, NAAPME Board of Directors, Chair*



# Future Board of Directors Meetings - FY2023

*Darius Pakbaz, NAAPME Program Administrator*





# Meeting Cadence for June 2022 through Dec. 2022

- **Recommendation - Monthly Board of Director Meetings through second half of 2022:**
  - Continue to follow current cadence of last Thursday of the month, except for holidays
  - Due to holidays, schedule meeting in mid-December
  - Reevaluate schedule cadence at December meeting, and after each monthly meeting.
  - Keep February and May scheduled due to required deadlines
    - **July 28, 2022 - 3:00PM to 4:30PM**
    - **August 25, 2022 - 3:00PM to 4:30PM**
    - **September 29, 2022 - 3:00PM to 4:30PM**
    - **October 27, 2022 - 3:00PM to 4:30PM**
    - **December 15, 2022 - 3:00PM to 4:30PM**
    - **February 23, 2023 - 3:00PM to 4:30PM**
    - **May 25, 2023 - 3:00PM to 4:30PM**



# Future Board Meeting Agenda Topics

- Future Discussion Topics:
  - Gap Analysis Reporting - Similar Programs and Funding Sources - July 2022
  - Location Analysis for Public Outreach Efforts - July 2022
  - Project and Program Selection Requirements - On-Going
  - Revenue Forecast to Actual Analysis - August 2022
  - Project Accountability Dashboard - September 2022
  - PD703 - Provisions for Programming Funds - October 2022
  - Board Meeting Cadence Review - December 2022
  - FY2024 Proposed Budget Discussion - December 2022
  - FY 2024 Budget Discussion & Adoption - February 2023
  - Annual Report, 10-Year Plan Updates - May 2023



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# Conclude Meeting / Next Steps



## Upcoming Dates:

- July 28, 2022, 3:00 PM - 4:30 PM - *Nonattainment Enterprise Board Meeting*

## Upcoming Meeting Topics:

- Gap Analysis Presentation
- Location Analysis for Public Outreach Efforts



## DECISION ITEM

# NAAPME Board of Directors approval to move into Executive Session

*Kristin Stephens, NAAPME Board of Directors, Chair*



# NAAPME Board of Directors Executive Session

*Executive Session pursuant to CRS 24-6-402(3)(a)(II) for the purpose of receiving legal advice and an update from counsel on a lawsuit filed against NAAPME and to discuss with counsel and receive advice on legislation passed by the Colorado Legislature.*

**Nonattainment Area Air  
Pollution Mitigation Enterprise**

# **10 Year Plan**

**DRAFT**  
**JUNE 23, 2022**



**COLORADO**  
**Department of Transportation**  
Nonattainment Area Air Pollution  
Mitigation Enterprise

# Table of Contents

- Letter from the Board ..... 3
- Introduction ..... 4
  - Senate Bill SB 21-260 ..... 5
- Business Purpose of the Enterprise ..... 6
- Nonattainment Enterprise Board of Directors ..... 8
- Nonattainment Areas of Colorado ..... 10
- 10 Year Anticipated Funding and Spending Forecast ..... 12
- Enterprise Funding Focus Areas and Project Selection ..... 16
  - Sustainably Reduce Traffic Congestion ..... 17
  - Reduce Environmental and Health Impacts of Transportation ..... 18
  - Improve Neighborhood Connectivity of Communities Adjacent to Highways ..... 19
- Project and Program Selection ..... 20
- Public Outreach for the 10 Year Plan ..... 22
- Enterprise Reporting and Next Steps ..... 24

# Letter from the Board

Hello Coloradans!

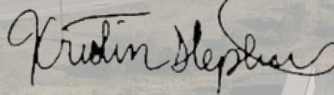
On behalf of the Board of Directors of the Nonattainment Area Air Pollution Mitigation Enterprise, I am pleased to present our Ten-Year Plan. This document lays the framework for how this Enterprise will look, not only to fulfill its business purpose, but to allow stakeholders, local government officials, and community members to see how the enterprise plans to allocate its funds and resources over the first ten years.

In this plan, we have highlighted three funding areas, which will provide the basis for project selection and prioritization activities that will continue into our first official year of operation. However, this is not a static document; we are committed to having this plan be a living document that will grow and change as decisions are made, circumstances change, and new opportunities arise.

As we continue our work and begin funding projects that will help reduce the environmental and health impacts of transportation, we want to be accountable and transparent with the funds that have been entrusted to us from the Colorado General Assembly and the People of Colorado. In the next few months, we will establish a public accountability dashboard on our website that will help monitor what projects are being funded in the nine-county nonattainment area. Starting in July 2023 we will be publishing an annual report and presenting our work and accomplishments to the Colorado Transportation Commission and the committees of reference in the Colorado General Assembly.

Our Ten-Year plan was informed by public outreach events which helped us identify priorities within our three funding focus areas and will lay the foundation for our activities through next year. Many community partners, residents, and transportation planning organizations have provided valuable input on how to provide programs that meet the needs of our communities and provide viable alternatives that can help achieve our business purpose.

We look forward to engaging with you in the future!

Kristin Stephens  


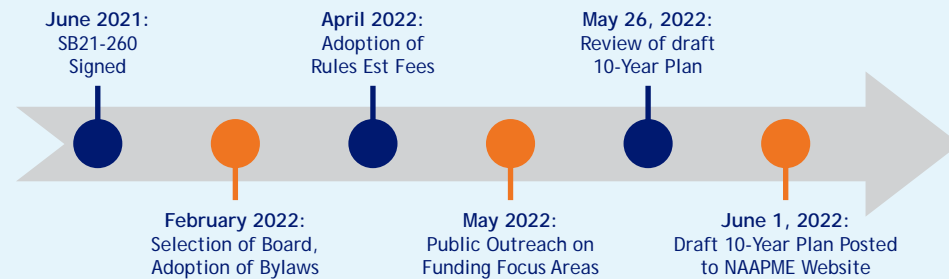
Chair, Nonattainment Area Air Pollution Mitigation Enterprise Board of Directors



# Introduction

The Nonattainment Area Air Pollution Mitigation Enterprise (NAAPME), or Nonattainment Enterprise, is one of four new enterprises created by the Colorado General Assembly through Senate Bill 21-260. The Enterprise was established by the legislature to fund projects that help address traffic congestion and reduce the environmental and health impacts of transportation in areas of the state that are federally designated as being in nonattainment with EPA's air quality standards. The Enterprise is housed within the Colorado Department of Transportation and managed by a Board of Directors.

As required within statute, the Enterprise's 10-Year plan outlines the business purpose of the enterprise and establishes the overall direction for the use of these funds through state fiscal year 2031-32. This plan was designed to be flexible to changes in fee collection and market conditions, community needs, and other issues that could affect the business purpose of the Enterprise.



The plan was developed with direction from the Enterprise's Board of Directors and input from local government and the public through outreach efforts conducted by enterprise staff throughout the spring of 2022.

In addition to outlining the overall direction of the enterprise over the next ten years, this plan explains what areas of the state are in nonattainment status, the development of a preliminary spending plan for the next ten years, and outlines potential requirements for projects funded by the enterprise. Further refinements of the enterprise's 10-year plan will continue throughout its life, at the discretion of the enterprise's Board of Directors.



## Senate Bill 21-260

Senate Bill 21-260, formally known as the *Concerning the Sustainability of the Transportation System in Colorado* act was passed by the Colorado General Assembly and signed into law by the Governor of Colorado in June 2021. The legislation established two new fees that will fund activities under four new enterprises:

- A new fee on most rides from transportation network companies (TNC) like Uber and Lyft, and;
- A new fee on retail deliveries from companies like FedEx and Amazon.

The Nonattainment Area Air Pollution Mitigation Enterprise is one of the recipients of these funds, starting in July of 2022.

# Business Purpose of the Enterprise

Under Colorado Revised Statutes 43-4-1303, as amended by Senate Bill 21-260, defines the business purpose of the Nonattainment Area Air Pollution Mitigation Enterprise in subsection three of this statute as:

**// 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. //**

As required by statute, projects funded by this enterprise will be located within nonattainment areas in Colorado.

Ozone is the only pollutant that currently has a nonattainment area within the state, covering nine counties, along the northern and central Front Range. Areas eligible for funding from the enterprise will change in the event the United States Environmental Protection Agency (EPA) adjusts nonattainment areas within the state.

## Funding Focus Areas

To fulfill its purpose, the Nonattainment Enterprise has three funding focus areas, as outlined in statute, that will help determine whether a project qualifies for funding from the enterprise:



Projects that sustainably reduce traffic congestion



Projects that reduce the environmental and health impacts of transportation



Projects that improve neighborhood connectivity for communities adjacent to highways

The legislation further directs the Enterprise to take into account issues and impacts of particular importance to the state, including reduction of greenhouse gas emissions and fine particulate matter from the transportation sector.

# Nonattainment Enterprise Board of Directors

The enterprise’s seven member board of directors is its primary governing body, charged with the following duties:

- Impose the air pollution mitigation per ride and the air pollution mitigation retail delivery fees;
- Issue grants, loans, rebates, and other funding mechanisms for eligible projects;
- Issue revenue bonds payable from enterprise revenue and other available fund sources to the enterprise
- Adopt bylaws for the regulation of its affairs and the conduct of its business;
- Acquire, hold title to, and dispose of real and personal property;
- Employ and supervise individuals, professional consultants, and contractors as necessary to carry out the enterprise’s business purpose;
- Seek, accept, and except gifts, grants, donations from private or public sources to fulfill its business purpose, within the restrictions outlined with the Colorado Constitution and statutes;
- Promulgate rules specifically to set the amounts collected of both fees, at or below the maximum values authorized by statute; and
- Publish the process by which the enterprise accepts applications, the criteria for evaluating applications, and a list of grantees or program participants.

## Board Composition & Enterprise Staffing

By statute, the governing board consists of seven members, appointed by the Governor of Colorado and confirmed by the Colorado Senate, using the following criteria:

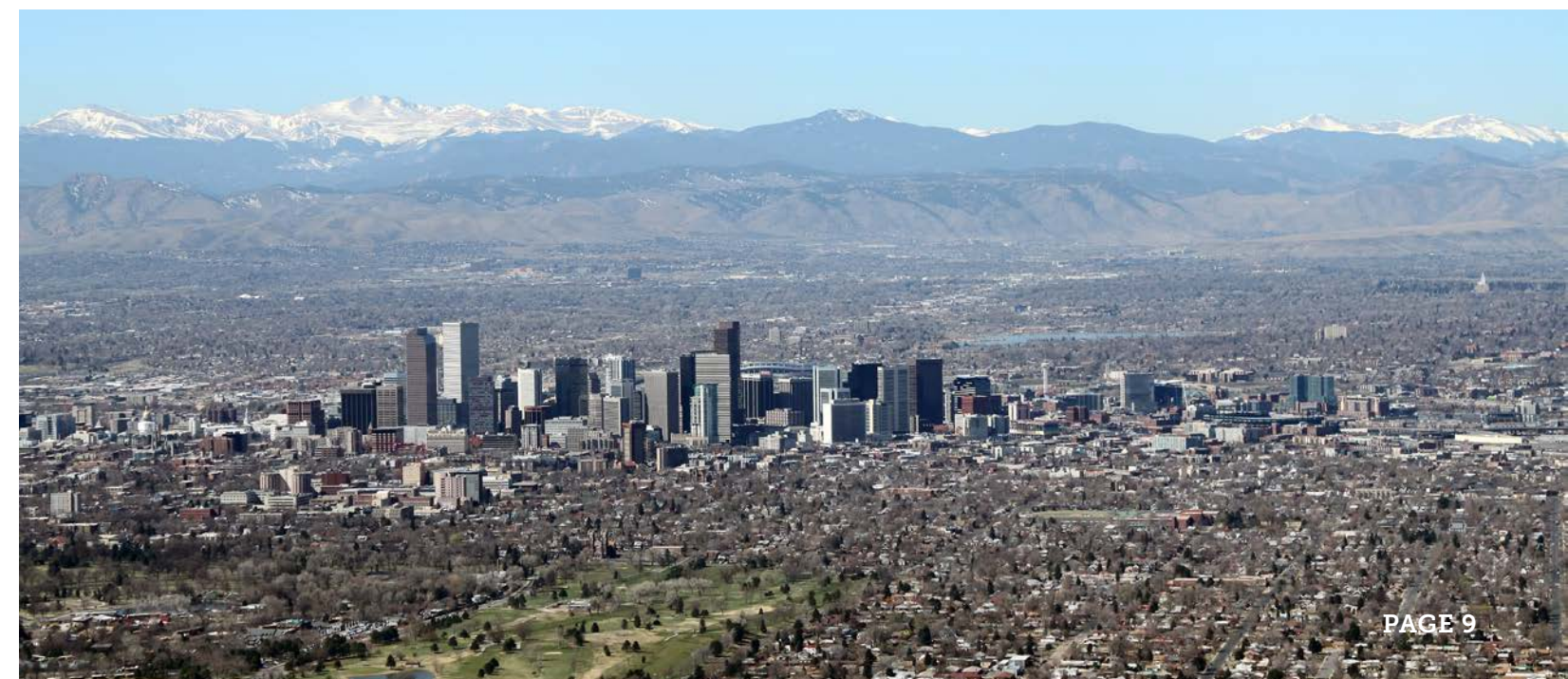
- One member with expertise on environmental, environmental justice, or public health issues;
- One member who is an elected official of a disproportionately impacted community that is a member of the Denver Regional Council of Governments (DRCOG);
- One member who is an elected official of a local government that is a member of the North Front Range Metropolitan Planning Organization (NFRMPO);
- Up to two members who are representatives of disproportionately impacted communities;
- The Executive Director of the Colorado Department of Transportation or the Executive Director’s Designee; and
- The Executive Director of the Colorado Department of Public Health and Environment or the Executive Director’s Designee.

Appointed members of the board serve at the pleasure of the Governor. The other board members serve for as long as they hold their executive director positions or are designated to serve by an executive director.

In addition to the Board of Directors, the enterprise currently has two staff members who have duties defined by the enterprise’s bylaws and were appointed by an affirmative vote of the board: Enterprise Program Administrator and Board Secretary.

**FIGURE 2: COMPOSITION OF THE NONATTAINMENT ENTERPRISE’S BOARD OF DIRECTORS AS OF JUNE 2022**

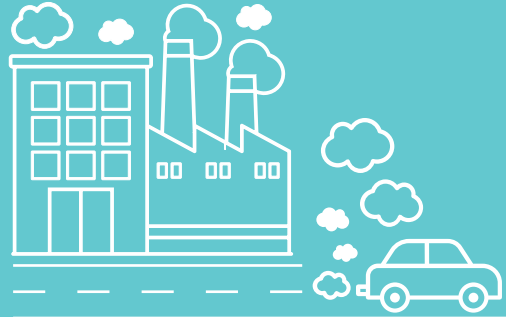
DIRECTOR	COMMUNITY REPRESENTED	APPOINTMENT CRITERIA
Lynn Baca	Brighton	Elected official of a disproportionately impacted community that is a member of DRCOG.
Yessica Holguin	Denver	Representative of a disproportionately impacted community.
Kristin Stephen	Fort Collins	Elected official of a disproportionately impacted community that is a member of NFRMPO.
Danielle “Stacy” Suniga	Greeley	Expertise on environmental, environmental justice, or public health issues.
Leanne Wheeler	Aurora	Representative of a disproportionately impacted community.
Shoshana Lew	Colorado Department of Transportation	Executive Director of the Colorado Department of Transportation.
Dena Wojtach	Colorado Department of Public Health & Environment	Executive Director Designee of the Colorado Department of Public Health and Environment.



# Nonattainment Areas of Colorado

The Clean Air Act, last amended in 1990, requires the EPA to set National Ambient Air Quality Standards (NAAQS) for six principal pollutants (“criteria” air pollutants) which can be harmful to public health and the environment.

Within the act, there are two standards identified for national ambient air quality standards. Primary standards provide public health protection, including protecting the health of “sensitive” populations such as asthmatics, children, and the elderly. Secondary standards provide public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings. Each standard may have a different maximum level for achievement of standards and different time standard for averaging measurements of the pollutant. These pollutants can come from a variety of sources and different industries, but transportation emissions are one major source in many cases.



The six principal criteria air pollutants, as outlined by the Clean Air Act, are as follows:

- Carbon Monoxide (CO)
- Lead (Pb)
- Nitrogen Dioxide (NO<sub>2</sub>)
- Ozone (O<sub>3</sub>)
- Particulate Pollution (PM)
- Sulfur Dioxide (SO<sub>2</sub>)

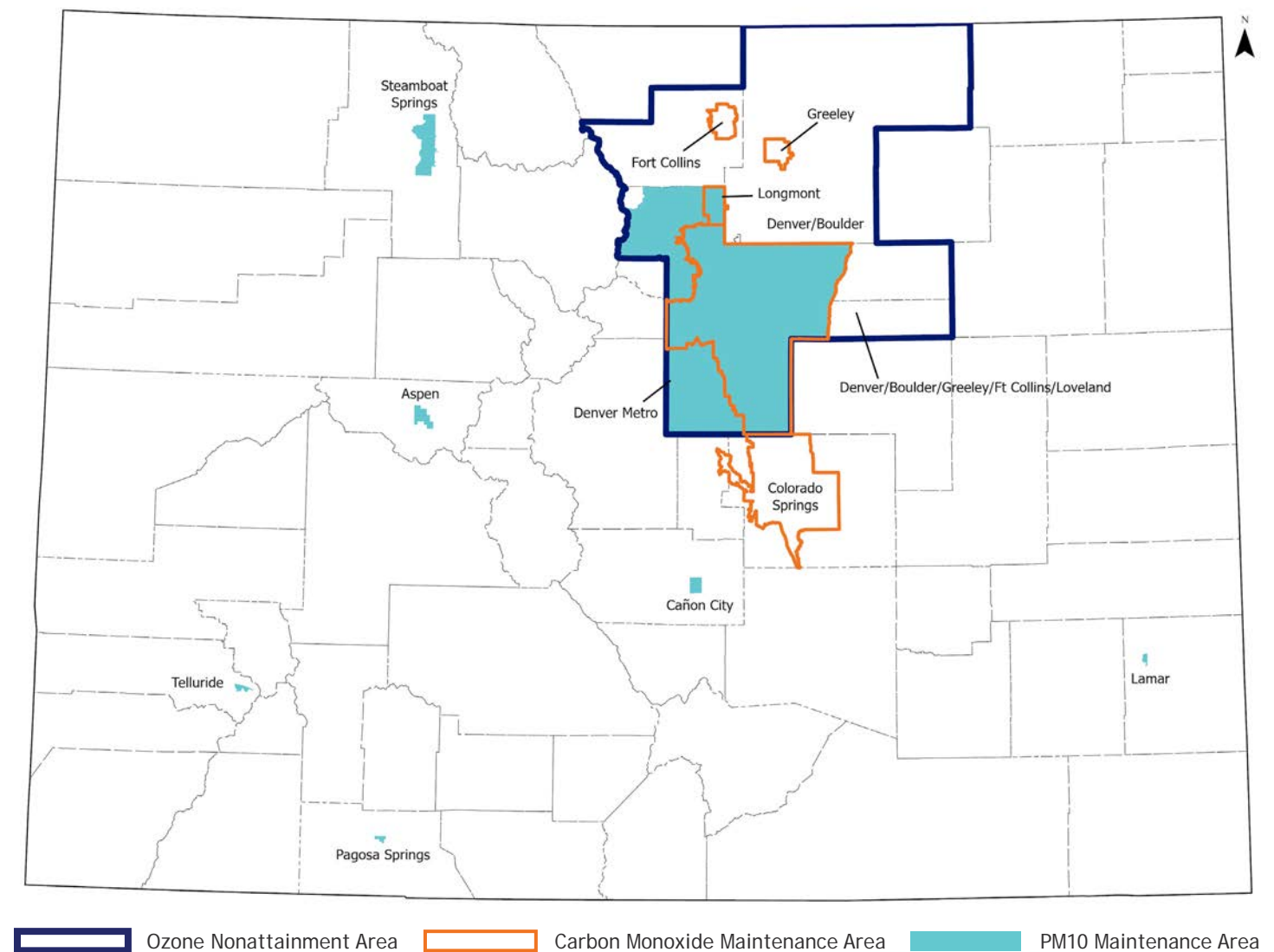
If an area exceeds the maximum levels for NAAQS, it is considered to be in “nonattainment.” This can vary in severity from marginal to extreme, depending on the amount of pollution reported in the area and/or failure to achieve the standard within a specified timeframe. An area can move out of nonattainment, must meet certain maintenance requirements for an amount of time (often twenty years) before requirements can be lifted.

While in the past there have been nonattainment areas for particulate pollution and carbon monoxide, all of these areas within Colorado are currently in attainment or in maintenance status. The only pollutant for which Colorado has a nonattainment area is ozone. The EPA has proposed changing the status of this nonattainment area from “serious” to “severe”

Ozone pollution in the air people breathe can harm their health, especially on hot sunny days when ozone can reach unhealthy levels. People at the greatest risk of harm from breathing air containing ozone often include people with lung conditions, such as asthma. Elevated exposures to ozone can also affect sensitive vegetation and ecosystems, including forests, parks, wildlife refuges, and wilderness areas, especially during the growing seasons. Additional information on the effects of ozone pollution, determination of nonattainment and information on other pollutants in the Clean Air Act are available from the EPA at its [Nonattainment Areas for Criteria Pollutants \(Green Book\) webpage](#).

The only pollutant in which Colorado has a nonattainment zone is Ozone. There are currently **nine counties** in ozone nonattainment including: Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, a portion of Larimer, and Weld counties.

FIGURE 3: NONATTAINMENT AREAS AND MAINTENANCE AREAS WITHIN COLORADO



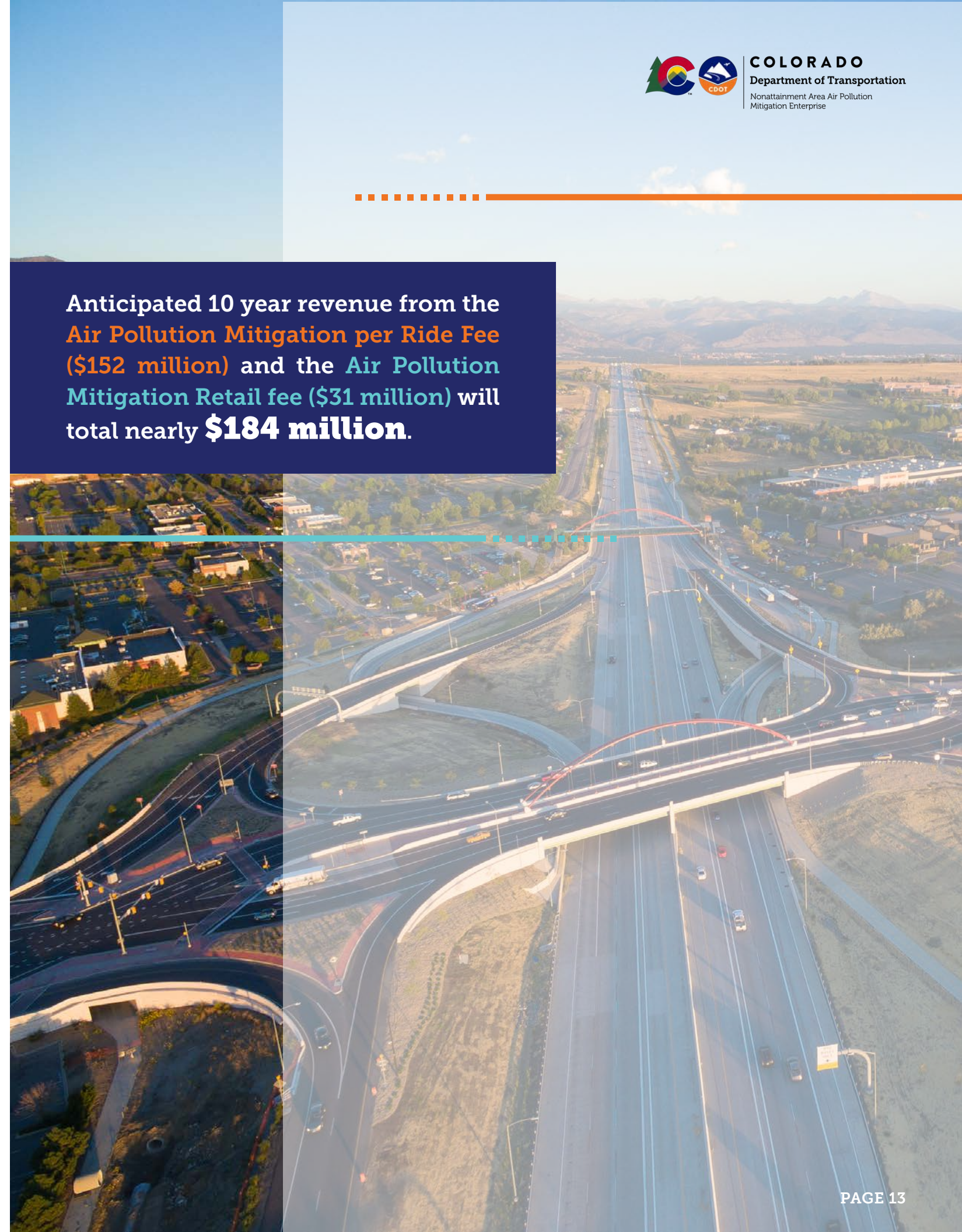
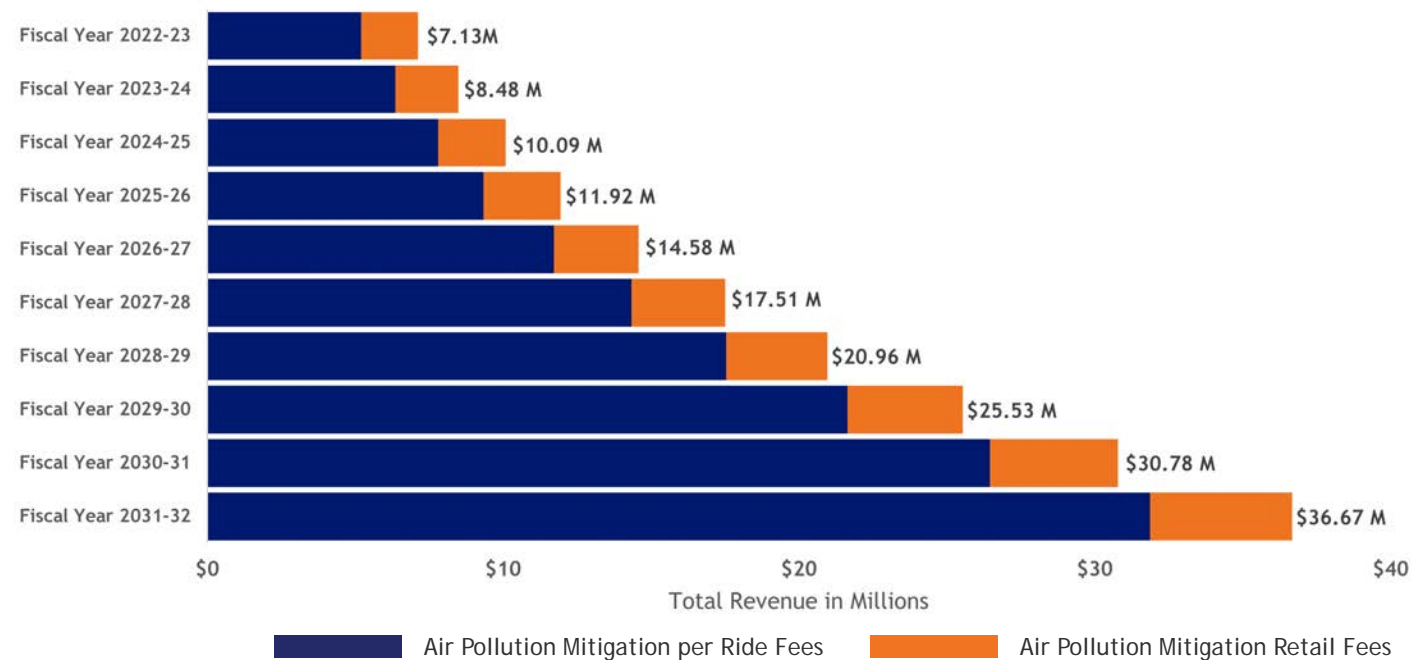
# 10 Year Anticipated Funding and Spending Forecast

As noted in previous sections of this plan, the enterprise is funded by two fees, authorized by the Colorado General Assembly: The Air Pollution Mitigation per Ride Fee and the Air Pollution Mitigation Retail Delivery Fee. On April 14, 2022, the NonAttainment Enterprise Board of Directors completed a formal rulemaking process, setting the levels for each fee starting on July 1, 2022. The adopted fees levels for July 2022 through June 2023 are:

- Eleven and ¼ 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 ½ cents for every other prearranged ride.
- Seven-tenths of one cent per retail delivery.

From these fees, anticipated revenues for the first year are expected to exceed \$7.1 million, including \$5.2 million from the prearranged ride fee and \$1.9 million from the retail delivery fee. Throughout the next ten years, as the fee levels adjust for anticipated inflation rates and taking into account factors such as population growth and increased usage of services, the total amount of fees anticipated to be collected by the enterprise will exceed \$183 million, including \$152 million from the prearranged ride fee and \$31 million from the retail delivery fee. Anticipated revenue levels per year over the next ten years are outlined in Figure 7.

**FIGURE 4: ANTICIPATED 10 YEAR REVENUE FROM AIR POLLUTION MITIGATION FEES**



Anticipated 10 year revenue from the **Air Pollution Mitigation per Ride Fee (\$152 million)** and the **Air Pollution Mitigation Retail fee (\$31 million)** will total nearly **\$184 million.**

## Proposed Spending Forecast

Based on this anticipated revenue, this plan provides a proposed spending forecast. The spending forecast will serve as a guide for annual planning of resources, anticipating the amount of funding needed for the Enterprise’s major budget categories:

- **Programing and Projects**
- **Enterprise Administration and Operations;**
- **Debt Service; and**
- **Enterprise Reserves.**

The spending forecast was developed based on anticipated needs for enterprise operations, debt service, and reserves, with the balance of funding allocated to projects funded by the enterprise.

**Programming and Projects** will be the primary category for the enterprise to fulfill its business purpose and fund projects within Colorado’s nonattainment areas within at least one of the enterprise’s three funding focus areas.

**Enterprise operations** estimates were produced based on current year (2022) staff levels, anticipated staff support from other state agencies, and support from professional consultants/contractors for services to carry out its business purpose. Unused revenue for enterprise operations will be transferred to the Programming and Projects in the next fiscal year.

**Debt service**, anticipated for one year only, will repay to CDOT a loan that allowed the enterprise to function before the collection of revenue.

**Enterprise reserve** are allocated for anticipated contingency purposes, as directed by the Enterprise Board. Any fees in reserve for contingency purposes will not exceed \$200,000. This reserve fund will only have allocations in future fiscal years to bring the fund back to the reserve ceiling amount of \$200,000.

FIGURE 5: THE NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE’S SPENDING FORECAST PLAN - JUNE 2022

LINE ITEM	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 10	YEAR 10
	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	FY 2028-29	FY 2029-30	FY 2030-31	FY 2031-32
<b>TOTAL REVENUE</b>	\$7,125,226.00	\$8,481,351.00	\$10,094,332.00	\$11,923,095.00	\$14,584,946.00	\$17,507,659.00	\$20,961,754.00	\$25,527,355.00	\$30,776,587.00	\$36,665,817.00
Air Pollution Mitigation per Ride Fee	\$5,193,149.00	\$6,350,348.00	\$7,799,651.00	\$9,325,133.00	\$11,713,055.00	\$14,330,228.00	\$17,528,868.00	\$21,626,892.00	\$26,448,435.00	\$31,857,744.00
Air Pollution Mitigation Retail Delivery Fee	\$1,932,077.00	\$2,131,003.00	\$2,294,681.00	\$2,597,962.00	\$2,871,891.00	\$3,177,431.00	\$3,432,886.00	\$3,900,463.00	\$4,328,152.00	\$4,808,073.00
<b>NONATTAINMENT AREA AIR POLLUTION ENTERPRISE - REVENUE ALLOCATION</b>										
Programming & Projects	\$6,622,144.02	\$8,255,433.00	\$9,866,066.62	\$11,692,400.08	\$14,351,736.51	\$17,271,846.93	\$20,723,248.25	\$25,286,061.30	\$30,532,407.77	\$36,418,651.25
Administration & Operations	\$226,650.00	\$225,918.00	\$228,265.38	\$230,694.92	\$233,209.49	\$235,812.07	\$238,505.75	\$241,293.70	\$244,179.23	\$247,165.75
Debt Service	\$76,431.98	\$- .00	\$- .00	\$- .00	\$- .00	\$- .00	\$- .00	\$- .00	\$- .00	\$- .00
Contingency Reserve	\$200,000.00	\$- .00	\$- .00	\$- .00	\$- .00	\$- .00	\$- .00	\$- .00	\$- .00	\$- .00
<b>TOTAL - NAAPME</b>	<b>\$7,125,226.00</b>	<b>\$8,481,351.00</b>	<b>\$10,094,332.00</b>	<b>\$11,923,095.00</b>	<b>\$14,584,946.00</b>	<b>\$17,507,659.00</b>	<b>\$20,961,754.00</b>	<b>\$25,527,355.00</b>	<b>\$30,776,587.00</b>	<b>\$36,665,817.00</b>

*Note: This spending forecast is preliminary and actual revenue allocation will be determined by the enterprise’s board, through the adoption of an official budget for the enterprise before the start of each state fiscal year. This above forecast in Figure 7 is used for planning purposes only. It does not reflect actual allocations of enterprise revenue.*



# Enterprise Funding Focus Areas & Project Selection

At this early stage of the Enterprise's work, specific projects have not yet been identified. Instead the Board has focused on seeking public input on the types of projects that would support the three funding focus areas outlined in the legislation.

More specific requirements will be developed by the enterprise Board of Directors as it develops the first year program.

## The three funding focus areas are:



Sustainably reduce traffic congestion



Reduce the environmental and health impacts of transportation



Improve neighborhood connectivity for communities adjacent to highways



Photo Credit: RFTA



## Sustainably Reduce Traffic Congestion

Reducing traffic congestion is one of the key provisions within the enterprise's purpose. However, to fulfill the objectives of other funding focus areas, this must be done in a sustainable manner.

**Within this funding category, the enterprise will focus on projects that provide alternatives to single occupancy travel including transit services, active transportation alternatives, and carpool alternatives, as well as roadway operations improvements that sustainably reduce congestion, such as traffic incident management.**

Examples include:



- Expanding interregional transit services, like Bustang;
- Development and expansion of bus rapid transit services;



- Construction of Mobility Hubs, destinations for transit services that connect interregional and local services, including first and last miles services, electric vehicle charging, and bike parking;



- New and expanded sidewalks and bike paths; and
- New and expanded vanpool and carpool services for commuter travel.



## Reduce Environmental & Health Impacts of Transportation

As noted previously in this plan, transportation is one of the main contributors to ozone pollution. Additionally, transportation is the largest contributor of greenhouse gas emissions in both Colorado and nationwide.

**This funding focus area focuses on reducing impacts from the construction and ongoing operation of transportation projects.**

Examples include:



- Measures that would reduce the impact of large highway construction projects;
- Retrofitting construction equipment for highway projects;
- Air quality monitoring for larger highway construction projects; and
- Roadside vegetation barriers.



## Improve Neighborhood Connectivity of Communities Adjacent to Highways

**The purpose of this funding focus area is to fund mitigation measures that help reconnect communities and provide multimodal options to move along and across large urban corridors.**

Examples would include:



- More sidewalks and bike paths along major corridors and local roads;
- Safer bike and pedestrian connectivity along busy urban streets; and
- Projects that reduce traffic speeds along busy urban streets.





# Project & Program Selection

In order to allow the maximum flexibility for the selection of specific projects and/or programs for the NAAPME Board of Directors to fund with enterprise revenue, specific requirements and prioritization criteria will be developed by the Board during the first year of revenue collection, and reviewed on an annual basis. This will be made publicly available on the enterprise's website and broadcast at future public outreach activities.

**At a minimum, projects funded by the Nonattainment Enterprise must demonstrate the following:**

- **The location of the project and/or program must be located within the nine county ozone nonattainment area.**

If there is a determination that a new county or area within Colorado has fallen into nonattainment for any of the criteria pollutants as identified by the EPA, they will become eligible for project and/or program funding.

Any area that upgrades to maintenance status that is currently in nonattainment for ozone (as of June 2022), will no longer be eligible for future projects and/or programs, but will be allowed to continue projects and/or programs that are in progress when the determination is finalized.



20 m  
32.2 k

Cherry Creek Trail

# Public Outreach for the 10 Year Plan

The Enterprise initiated outreach activities in February 2022 with the opening of public comment on the rulemaking establishing fees levels for both the prearranged ride fee and the retail delivery fee. Rulemaking concluded on April 14, 2022 with the incorporation of adjustments to the rule based on public feedback and adoption of the rule by the Board of Directors.

During this time, the enterprise established its online presence, which included:

- A website providing information on the Enterprise and access to all meeting materials;
- Establishment of an email address to contact enterprise staff directly;
- Establishment of an email subscription service to allow interested parties to receive updates when new information is available; and
- Release of a short video outlining the purpose of the enterprise, anticipated revenues, and directing viewers towards avenues to provide feedback at the start of May 2022, with a Spanish language version of the video coming soon.

Additionally, all Board of Directors meetings were live streamed on the Youtube platform. Recordings of these meetings, in addition to meeting minutes, were made available on the Enterprise’s website within one week after its occurrence and as required under Colorado statute.



NAAPME’s Public Outreach Survey received **181 responses** and **95 public comments**



To help the Board of Directors and enterprise staff understand stakeholder and community needs, the enterprise conducted the following activities throughout May 2022 to solicit public comment on the funding focus areas outlined in the 10-year plan and how they would prioritize specific examples within each funding focus area.

### Outreach activities included:

- Presentations to the Statewide Transportation Advisory Committee and the DRCOG and NFRMPO Technical Advisory committees, to help notify local government officials about the enterprise and its public outreach programs;
- Public outreach survey, which allowed users to rank project examples within each funding focus area and provide comments on the proposed focus areas;
- Virtual Public Listening session (held May 17), providing information on the enterprise’s purpose and soliciting comment on the funding focus areas; and
- Spanish translation of both the survey and listening session.

## Public Outreach Survey Results

NAAPME’s public outreach survey asked respondents to rank their preferred project types for each of NAAPME’s three funding focus areas. Below are the project types ranked from most popular to least.

### Sustainably Reduce Traffic Congestion

- Expand Van Pools & Car Pools
- Expand Bustang
- Build More Bike Trails & Sidewalks
- Establishing Mobility Hubs
- Bus Rapid Transit

### Reduce Environmental & Health Impacts of Transportation

- Air Quality Monitoring for Highway Projects
- Construction Equipment Retrofit
- Roadside Vegetation Barriers
- Mitigation of Construction Impacts

### Improve Neighborhood Connectivity of Communities

- Projects that Slow and Calm Traffic
- Build More Bike Trails & Sidewalks
- More and Safer Bicycle and Pedestrian Connectivity

# Enterprise Reporting & Next Steps

The enterprise and its Board of Directors are committed to transparency and accountability throughout its work.

## Public Accountability Dashboard

Starting in the next state fiscal year, the Enterprise will begin to develop its Public Accountability Dashboard, which will provide regular updates on the progress of its program, including total revenue collected, revenue allocated to projects and programs, expenditures and completion of funded projects, and anticipated air pollution mitigation benefits.

## Annual Report

An annual report, mirroring the information that will populate the Public Accountability Dashboard, will be published in June at the end of each state fiscal year. This report will be presented to the Colorado Transportation Commission, the Colorado House of Representatives Transportation and Local Government Committee and the Colorado Senate Transportation and Energy Committee.

## Public Outreach Activities

The Board of Directors will discuss and approve future public outreach activities throughout the next fiscal year, which will solicit public comment on project selection and prioritization requirements, community needs, and other topics of interest to fulfill the business purpose of the Enterprise and help inform updates to the 10-year plan.

## Annual 10-Year Plan Updates

Initial adoption of the 10-year plan by the Enterprise Board of Directors on June 23, 2022. The 10-year plan will be updated as projects are funded and implemented. This plan was developed with a particular eye towards uncertainty associated with the new revenue source.





**COLORADO**

**Department of Transportation**

Nonattainment Area Air Pollution  
Mitigation Enterprise

2829 W. Howard Place | Denver, CO 80249

[cdot\\_nonattainmententerprise@state.co.us](mailto:cdot_nonattainmententerprise@state.co.us)

303.757.9007 | [www.codot.gov/programs/planning/naapme](http://www.codot.gov/programs/planning/naapme)



STATE OF  
COLORADO

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## Input to the 10-Year Plan

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**Audrey DeBarros** <audrey@commutingsolutions.org>

Fri, Jun 10, 2022 at 8:42 AM

To: "cdot\_nonattainmententerprise@state.co.us" <cdot\_nonattainmententerprise@state.co.us>

Good morning,

Thank you for the opportunity to provide input to the draft 10-year plan. I am excited to see the draft plan and believe it is moving in the right direction. I do have a couple of suggestions provided here:

Commuting Solutions is one of the 8 Transportation Management Organizations in the Denver metro region who has been working to reduce traffic congestion and improve air quality for decades in partnership with the DRCOG. We are practitioners who typically work to address the demand side of Transportation Demand Management by addressing how the public is traveling and working to shift those trips to driving solo, i.e. walking, cycling, carpool, vanpool, transit, telework, etc. Employer outreach at a grass roots is a core service of TMOs, recognizing historically work trips have generated the highest travel demand in the Denver region.

Last year, the Air Pollution Control Division considered adopting a Employer Trip Reduction Program (ETRP) to mandate employers with 100+ employees to offer TDM services. The rulemaking was withdrawn, but there was a commitment by Governor Polis to lead a volunteer ETRP program. That initiative has not happened.

I think the Nonattainment Enterprise funds would be the perfect revenue source to implement this volunteer program in partnership with DRCOG, TMOs, employers, etc.

I also think the funds should provide additional funding for the TMOs to add capacity to our small organizations so that we can expand the TDM services we provide.

Lastly, incentives to encourage employers to subsidize vanpools, transit passes, etc. are helpful to inspire commute behavior change, as well as funding for campaigns such as what as been funded by SB-180.

Sincerely,

Audrey

Audrey DeBarros | Executive Director

Commuting Solutions

[287 Century Circle, Suite 103](#)

[Louisville, CO 80027](#)

P: 303-604-4383





Setting the pace for the northwest metro region.

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Colorado Nonattainment Area Air Pollution Mitigation Enterprise

2829 W. Howard Place, Denver, CO 80204

[cdot\\_nonattainmententerprise@state.co.us](mailto:cdot_nonattainmententerprise@state.co.us) | [www.codot.gov/programs/planning/naapme](http://www.codot.gov/programs/planning/naapme)

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STATE OF  
COLORADO

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## NAAPME 10-Year Plan Comments

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**Medora Bornhoft** <mbornhoft@nfrmpo.org>

Fri, Jun 10, 2022 at 4:59 PM

To: "cdot\_nonattainmententerprise@state.co.us" <cdot\_nonattainmententerprise@state.co.us>

Nonattainment Enterprise Staff,

Attached are some suggestions for the NAAPME 10-Year Plan.

Thank you,

**Medora Bornhoft, PTP**

Transportation and Air Quality Planner III

Pronouns: she/her



Website: <https://nfrmpo.org>

Email: [mbornhoft@nfrmpo.org](mailto:mbornhoft@nfrmpo.org)

Office: (970) 289-8283

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Colorado Nonattainment Area Air Pollution Mitigation Enterprise

2829 W. Howard Place, Denver, CO 80204

[cdot\\_nonattainmententerprise@state.co.us](mailto:cdot_nonattainmententerprise@state.co.us) | [www.codot.gov/programs/planning/naapme](http://www.codot.gov/programs/planning/naapme)

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**NAAPME 10-Year Plan Comments.docx**

21K

Page 7:

~~The Board of Directors has determined that~~ As required by statute, projects funded by this enterprise, ~~within the scope of its business purpose,~~ will be located within nonattainment areas in Colorado.

Ozone is the only pollutant that currently has a nonattainment area within the state, covering nine counties along the northern and central Front Range. Areas eligible for funding from the enterprise will change in the event ~~The Board of Directors may adjust this as future determinations are made by~~ the United States Environmental Protection Agency (EPA) adjusts nonattainment areas within the state.

Page 10:

If an area exceeds the maximum levels for NAAQS, it is considered to be in “nonattainment.” This can vary in severity from marginal to extreme, depending on the amount of pollution reported in the area and/or failure to achieve the standard within a specified timeframe. An area can move out of nonattainment, but must meet certain maintenance requirements is in a maintenance period for an amount of time (often twenty years) before it can achieve attainment status ~~requirements can be lifted.~~

While in the past there have been nonattainment areas for particulate pollution and carbon monoxide, all of these areas within Colorado are currently in attainment or in maintenance status. The only pollutant ~~in~~for which Colorado has a nonattainment area is ozone. The EPA has recently changed has proposed changing the status of this nonattainment area from “serious” to “severe.”

Page 17:

Within this funding category, the enterprise will focus on projects that provide alternatives to single occupancy travel including transit services, active transportation alternatives, and carpool alternatives as well as roadway operations improvements that sustainably reduce congestion, such as traffic incident management.

**Commented [MB1]:** I realize the board agreed to only provide funds to projects in nonattainment areas instead of also including maintenance areas, but since maintenance areas are actually attainment areas, I don't think they could have made any other choice. Probably best to leave it black and white that it's not a board decision; it's set in statute.

**Commented [MB2]:** Wording implies the board can adjust the nonattainment areas in the state.

**Commented [MB3]:** Implies maintenance areas aren't attainment areas (wish the CAA was less confusing on these terms!)

**Commented [MB4]:** To be nitpicky, the proposed rule to reclassify was released on 4/13/22 and a final rule has not been released as of 6/10. Once released, takes 30 days to be effective, so this plan will be adopted before the reclassification is finalized.





# Revenue Allocation Plan FY 2022-23

#	LINE ITEM	A - Estimated Rollforward from FY 2021-22	B - FY 2021-22 Final Allocation Plan	C - FY 2022-23 Final Allocation Plan	FY 2023-23 Final Total Available Budget (A+C)	Directed By	Funding Source
1	<b>NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE</b>						
2	<b>PROGRAMED FUNDS</b>	\$ 48,000.00	\$ -	\$ 6,621,089.75	\$ 6,669,089.75		
3	Programed Funds	\$ 48,000.00	\$ -	\$ 6,621,089.75	\$ 6,669,089.75	NAAPMEB	SB21-260
4	<b>ADMINISTRATION &amp; AGENCY OPERATIONS</b>	\$ -	\$ 73,870.00	\$ 227,650.00	\$ 227,650.00		
5	<b>Staff Salaries</b>	\$ -	\$ 64,800.00	\$ 64,800.00	\$ 64,800.00		
6	Program Administrator	\$ -	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	NAAPMEB	SB21-260
7	Board Secretary	\$ -	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	NAAPMEB	SB21-260
8	Enterprise Controllor	\$ -	\$ 8,000.00	\$ 8,000.00	\$ 8,000.00	NAAPMEB	SB21-260
9	DTD Division Director	\$ -	\$ 12,000.00	\$ 12,000.00	\$ 12,000.00	NAAPMEB	SB21-260
10	DTD Planning Specialist 1	\$ -	\$ 8,000.00	\$ 8,000.00	\$ 8,000.00	NAAPMEB	SB21-260
11	DTD Planning Specialist 2	\$ -	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	NAAPMEB	SB21-260
12	DAF Accountant	\$ -	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	NAAPMEB	SB21-260
13	OPGR Rules Coordinator	\$ -	\$ 2,400.00	\$ 2,400.00	\$ 2,400.00	NAAPMEB	SB21-260
14	DAF Contract Administrator	\$ -	\$ 2,400.00	\$ 2,400.00	\$ 2,400.00	NAAPMEB	SB21-260
15	<b>State Agency Support</b>	\$ -	\$ 2,450.00	\$ 7,000.00	\$ 7,000.00		
16	Department of Law - Legal Support	\$ -	\$ 2,450.00	\$ 5,000.00	\$ 5,000.00	NAAPMEB	SB21-260
17	Office of the State Auditor - Annual Financial Audit	\$ -	\$ -	\$ 2,000.00	\$ 2,000.00	NAAPMEB	SB21-260
18	<b>Enterprise Support Initiatives</b>	\$ -	\$ 4,420.00	\$ 150,000.00	\$ 150,000.00		
19	Language Translation Services	\$ -	\$ 4,420.00	\$ 50,000.00	\$ 50,000.00	NAAPMEB	SB21-260
20	Consultant Services	\$ -	\$ -	\$ 100,000.00	\$ 100,000.00	NAAPMEB	SB21-260
21	<b>Board Meeting Expenses</b>	\$ -	\$ 2,200.00	\$ 5,850.00	\$ 5,850.00		
22	Board Travel	\$ -	\$ 2,000.00	\$ 5,000.00	\$ 5,000.00	NAAPMEB	SB21-260
23	Meeting Expenses	\$ -	\$ 200.00	\$ 500.00	\$ 500.00	NAAPMEB	SB21-260
24	Presentation Support	\$ -	\$ -	\$ 350.00	\$ 350.00	NAAPMEB	SB21-260
25	<b>DEBT SERVICE</b>	\$ -	\$ -	\$ 76,486.25	\$ 76,486.25		
26	Debt Service on CDOT Loan - 22-HAA-ZH-00054	\$ -	\$ -	\$ 76,486.25	\$ 76,486.25	NAAPMEB	SB21-260
27	<b>CONTINGENCY RESERVE</b>	\$ -	\$ -	\$ 200,000.00	\$ 200,000.00		
28	Enterprise Reserve Fund (<\$200,000.01)	\$ -	\$ -	\$ 200,000.00	\$ 200,000.00	NAAPMEB	SB21-260
29	<b>TOTAL - NAAPME</b>	\$ 48,000.00	\$ 73,870.00	\$ 7,125,226.00	\$ 7,173,226.00		

**CDOT AND AIR POLLUTION MITIGATION ENTERPRISE  
INTRA-AGENCY LOAN AGREEMENT  
AND PROMISSORY NOTE**

THIS INTRA-AGENCY LOAN AGREEMENT and PROMISSORY NOTE (the “Agreement”) is made this 21st day of April, 2022 by and between the DEPARTMENT OF TRANSPORTATION (“CDOT” or the “Department”), an executive agency of the State of Colorado (“State”), referred to herein as “LENDER” and the NON ATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE, a government-owned business within CDOT (“AIR POLLUTION MITIGATION ENTERPRISE”). LENDER and AIR POLLUTION MITIGATION ENTERPRISE are hereinafter referred to individually as a “Party” and collectively as the “Parties.”

**RECITALS**

A. CDOT is an agency of the State authorized pursuant to C.R.S. § 43-1-105, to plan, develop, construct, coordinate, and promote an integrated transportation system in cooperation with federal, regional, local, and other state agencies.

B. Pursuant to C.R.S. § 43-1-106(8) the COLORADO TRANSPORTATION COMMISSION is authorized to formulate the general policy and promulgate and adopt all department budgets on behalf of CDOT.

C. AIR POLLUTION MITIGATION ENTERPRISE was created pursuant to C.R.S. § 43-4-1303(1) and operates as a government-owned business within CDOT.

D. AIR POLLUTION MITIGATION ENTERPRISE has the primary business purpose of mitigating the adverse environmental and health impacts of air pollution and greenhouse gas emissions produced by motor vehicles used to make retail deliveries 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.

E. AIR POLLUTION MITIGATION ENTERPRISE is authorized pursuant to C.R.S. § 43-4-1303(8) to impose an air pollution mitigation retail delivery fee on retailers who make retail deliveries beginning in state fiscal year 2022-2023 to serve its business purpose. AIR POLLUTION MITIGATION ENTERPRISE is also authorized pursuant to C.R.S. 43-4-1303(7) to impose an air pollution mitigation per ride fee to be paid by a transportation network company for each prearranged ride requested and accepted through the company’s digital network beginning in state fiscal year 2022-2023 to serve its business purpose. Fiscal year 2022-2023 commences on July 1, 2022.

F. Pursuant to C.R.S. § 43-4-1303(9) AIR POLLUTION MITIGATION ENTERPRISE is authorized to make grants to eligible entities for eligible projects within a nonattainment area.

G. AIR POLLUTION MITIGATION ENTERPRISE is further empowered, pursuant to C.R.S. § 43-4-1303(6) to employ and supervise consultants and contractors as necessary to carry out its business purpose and to contract with any public or private entity necessary or incidental to the exercise of its powers and performance of its duties.

H. CDOT is authorized pursuant to C.R.S. 43-4-1303(5)(b) to transfer money from the any legally available source to the AIR POLLUTION MITIGATION ENTERPRISE for the purpose of defraying expenses incurred by the AIR POLLUTION MITIGATION ENTERPRISE before it receives fee revenue and the AIR POLLUTION MITIGATION 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 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).

I. The LENDER and AIR POLLUTION MITIGATION ENTERPRISE are authorized under law to execute this Agreement.

J. On or about December 16, 2021, the COLORADO TRANSPORTATION COMMISSION has approved the budget action for this transaction as evidenced by Resolution # TC-2021-12-06.

K. On or about February 24, 2022, at its regular meeting, the AIR POLLUTION MITIGATION ENTERPRISE board approved the below terms and agreed to accept the loan documents and promissory note from CDOT.

**NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS, THE PARTIES TO THIS AGREEMENT HEREBY AGREE AS FOLLOWS:**

1. Incorporation by Reference. The Recitals set forth above are incorporated herein by reference.

2. Loan. The LENDER shall disburse the sum of \$74,700.00 from the State Highway Fund created in C.R.S. 43-1-219 to the Nonattainment Area Air Pollution Mitigation Enterprise Initial Expenses Fund as provided in C.R.S. 43-4-1303(5)(b). The loan disbursement shall be made to the AIR POLLUTION MITIGATION ENTERPRISE by means of a financial instrument or transfer acceptable to CDOT.

3. Loan Term. The term of the loan shall be from the date this Agreement is signed by the State Controller, as evidenced by the date first appearing above, until full payment of the loan principal and the interest thereon is received by CDOT. The AIR POLLUTION MITIGATION ENTERPRISE shall repay to CDOT the principal amount of the loan and the interest on the unpaid principal balance by June 30, 2023.

4. Interest. The loan to the AIR POLLUTION MITIGATION ENTERPRISE shall bear interest at a rate of two percent (2%) on the unpaid balance compounded annually which is the current interest rate established by the COLORADO TRANSPORTATION COMMISSION

for the State Infrastructure Bank. The rate shall be fixed for the term of the loan and interest shall begin to accrue from the date of the loan disbursement.

5. Repayment. The AIR POLLUTION MITIGATION ENTERPRISE shall repay the loan and all accrued interest out of the unrestricted revenues of the AIR POLLUTION MITIGATION ENTERPRISE generated by the air pollution mitigation retail delivery fee and the air pollution mitigation per ride fee which will commence on July 1, 2022. No repayments shall be due until September 1, 2022 at the earliest. Loan payments of both principal and interest shall be payable to the Colorado Department of Transportation, 2829 West Howard Place, Denver, CO 80204 or to such other location or person as may be designated in writing from time to time by CDOT. The AIR POLLUTION MITIGATION ENTERPRISE shall have the option to prepay all or a portion of the loan principal without prepayment penalty if it so chooses.

6. Promissory Note. For value received, the AIR POLLUTION MITIGATION ENTERPRISE hereby promises to pay to the order of the Colorado Department of Transportation and send to its cash receipts office at 2829 West Howard Place, Denver, CO 80204, or to such other location or person as may be designated in writing by CDOT, the principal sum of Seventy Four Thousand Seven Hundred Dollars (\$74,700.00) with interest thereon from the date hereof as hereinafter set forth.

A. This promissory note shall bear interest at the rate of two percent (2%) per annum on any unpaid balance, compounded annually. The principal and interest shall be payable out of unrestricted revenues of the AIR POLLUTION MITIGATION ENTERPRISE generated by the air pollution mitigation retail delivery fee and the air pollution mitigation per ride fee which commence on July 1, 2022. The date and schedule for such payments of principal and accrued interest shall not be fixed in time or manner except that no payments shall be due prior to September 1, 2022 and all principal and interest on the unpaid principal balance shall be due by June 30, 2023.

B. This promissory note is not assumable without the written consent of CDOT. The AIR POLLUTION MITIGATION ENTERPRISE shall have the option to prepay all or a portion of the loan principal without penalty. The AIR POLLUTION MITIGATION ENTERPRISE waives demand, presentment, protest and notice.

C. If payments do not commence beginning September 1, 2022, the AIR POLLUTION MITIGATION ENTERPRISE shall be in default of this Agreement, unless the AIR POLLUTION MITIGATION ENTERPRISE has prior written approval to defer the repayment of the loan. In the event of default, CDOT shall have all rights and remedies available at law or in equity, and such other remedies as provided herein. The rate of interest for payment on which the AIR POLLUTION MITIGATION ENTERPRISE is in default hereof shall be ten percent (10%) over the effective rate described above, computed from the date of any default to the date of cure.

D. The AIR POLLUTION MITIGATION ENTERPRISE shall use the loan amount of Seventy Four Thousand Seven Hundred Dollars (\$74,700.00) for its initial operating expenses. The AIR POLLUTION MITIGATION ENTERPRISE shall, at all times during

this Agreement, comply with all federal and State laws as they currently exist and may hereafter be amended.

7. Remedies in Event of Default. Upon the AIR POLLUTION MITIGATION ENTERPRISE'S default in the performance of any covenant or agreement contained in this Agreement, and upon notice to the AIR POLLUTION MITIGATION ENTERPRISE and failure by the AIR POLLUTION MITIGATION ENTERPRISE to cure within thirty (30) days thereof, CDOT, at its option, may (a) terminate the loan commitment herein and take such other steps associated with such termination as are set forth below in the General Provisions; (b) declare the entire principal amount of the loan then outstanding immediately due and payable; (c) take any other appropriate legal action. Notwithstanding the exercise of any of the remedies above, the AIR POLLUTION MITIGATION ENTERPRISE shall not be relieved of liability to CDOT for any damages sustained by CDOT by virtue of any breach of this Agreement by the AIR POLLUTION MITIGATION ENTERPRISE.

8. General Provisions.

A. All federal and state statutes, regulations, specifications, administration checklists, directives, procedures, documents, and publications that are specifically identified and/or referenced in this Agreement, together with all exhibits and attachments and addenda to this Agreement, are incorporated herein by this reference as terms and conditions of this Agreement as though fully set forth.

B. Neither the commitment of CDOT funds to the Air Pollution Mitigation Enterprise through this Agreement nor any other security or debt financing instrument issued or executed in connection with the loan to the Air Pollution Mitigation Enterprise shall constitute a commitment, guarantee, or obligation of the United States.

C. This Agreement may be terminated as follows:

(a) Termination for Cause. If, through any cause, the Air Pollution Mitigation Enterprise shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if the Air Pollution Mitigation Enterprise shall violate any of the covenants, agreements, or stipulations of this Agreement, CDOT shall thereupon have the right to terminate this Agreement for cause by giving written notice to the Air Pollution Mitigation Enterprise of its intent to terminate and at least thirty (30) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, the Air Pollution Mitigation Enterprise shall return any funds that have been disbursed to the Air Pollution Mitigation Enterprise as part of the loan and any accrued interest thereon within 45 days of the date of termination. Notwithstanding above, the Air Pollution Mitigation Enterprise shall not be relieved of liability to CDOT for any damages sustained by CDOT by virtue of any breach of the Agreement by the Air Pollution Mitigation Enterprise.

(b) Termination for Convenience. CDOT may terminate this Agreement at any time CDOT determines that the purposes of the distribution of funds under the Agreement would no longer be served by the Air Pollution Mitigation Enterprise. CDOT shall effect

such termination by giving written notice of termination to the Air Pollution Mitigation Enterprise and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

(c) Termination Due to Loss of Funding. The parties hereto expressly recognize that the loan is made to the Air Pollution Mitigation Enterprise with funds which are available to CDOT for the purposes of making a loan to the Air Pollution Mitigation Enterprise, and therefore, the Air Pollution Mitigation Enterprise expressly understands and agrees that all its rights, demands and claims to a loan arising under this Agreement are contingent upon availability of such funds to CDOT. In the event that such funds or any part thereof are not available to CDOT, CDOT may immediately terminate or amend this Agreement.

D. This Agreement is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein. Except as specifically provided otherwise herein, no modification of this Agreement shall be effective unless agreed to in writing by both Parties in an amendment to this Agreement that is properly executed and approved in accordance with applicable law.

E. To the extent that this Agreement may be executed and performance of the obligations of the Parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.

F. This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to the State Fiscal Rules.

G. Except as herein otherwise provided, this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

H. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this contract shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the Parties that any person or entity other than the Parties receiving services or benefits under this Agreement be deemed to be an incidental beneficiary only.

I. The Air Pollution Mitigation Enterprise shall maintain all books, documents, papers, accounting records and other evidence pertaining to any costs incurred, and if requested by CDOT, make such materials available to CDOT for three years from the execution date of this Agreement.

J. This Agreement shall not be deemed valid until the Controller of the State of Colorado or such assistant as he may designate shall have approved it.

K. Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

L. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions for the Parties, of the Colorado Governmental Immunity Act, Section 24-10-101 et seq. C.R.S. or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq. as applicable, as now or hereafter amended.

M. The Air Pollution Mitigation Enterprise agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

N. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision of this Agreement, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Agreement to the extent that the Agreement is capable of execution.

O. At all times during the performance of this Agreement, the Air Pollution Mitigation Enterprise shall strictly adhere to all applicable federal and state laws, rules, and regulations that have been or may hereafter be established.

P. The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

Q. Notwithstanding any provision hereof, all financial obligations herein of the Air Pollution Mitigation Enterprise payable after the current fiscal year, including, without limitation, repayment of the principal amount of the loan evidenced hereby, payment of interest thereon, and payment of any damages, penalty interest, or any other financial obligations in the event of a default by the Air Pollution Mitigation Enterprise, shall be made solely from the revenues of the Air Pollution Mitigation Enterprise and are contingent

upon funds for that purpose being appropriated, budgeted, and otherwise made available by the Board of the Air Pollution Mitigation Enterprise, acting in its capacity as the governing body of the Air Pollution Mitigation Enterprise (in such capacity, the "Enterprise Board").

R. The amortization schedule for the loan is attached hereto as Exhibit 1.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first above written.

STATE OF COLORADO  
Jared S. Polis, Governor

COLORADO AIR POLLUTION  
MITIGATION ENTERPRISE

By: DocuSigned by:  
Steve Hanson  
SHOSHANA LEW  
EXECUTIVE DIRECTOR  
DEPARTMENT OF TRANSPORTATION

By: DocuSigned by:  
Darius R. Pakbaz  
DARIUS PAKBAZ  
ENTERPRISE PROGRAM MANAGER

APPROVED:  
Philip J. Weiser

ATTORNEY GENERAL

By: DocuSigned by:  
George Hypolite  
ASSISTANT ATTORNEY GENERAL

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

**§ 24-30-202, C.R.S. requires the State Controller to approve all State Contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate of the State of Colorado.**

**STATE CONTROLLER**  
**Robert Jaros, CPA, MBA, JD**

By: DocuSigned by:  
Ron Fiet  
3D021F8A1F16453...

Date: 4/21/2022



**Non Attainment Area Air Pollution Mitigation Enterprise  
Transportation Commission Loan Amortization**

**Acceptance Date:** 4/21/22  
**Principal Amount:** \$ 74,700.00  
**Interest Rate:** 2.00%

<b>Payment Date</b>	<b>Loan Balance</b>	<b>Payment</b>	<b>Interest</b>	<b>Principal</b>
04/21/22	\$ 74,700.00	\$ -	\$ 1,494.00	
04/21/23	76,194.00		292.25	
06/30/23	76,486.25	76,486.25	(1,786.25)	(74,700.00)
		<b>\$ 76,486.25</b>	<b>\$ 0.00</b>	<b>\$ (74,700.00)</b>

## DEPARTMENT OF TRANSPORTATION

### Nonattainment Area Air Pollution Mitigation Enterprise

#### REGULATION 1 – NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE FEES

##### 2 CCR 608-1

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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#### 1.00 Statement of Basis and Purpose and Authority.

The Nonattainment Area Air Pollution Mitigation Enterprise is authorized by C.R.S. § 43-4-1303(6)(h) to promulgate rules setting the amounts of the Air Pollution Mitigation Per Ride Fee and the Air Pollution Mitigation Retail Delivery Fee at or below maximum levels contained in C.R.S. § 43-4-1303(7) and (8).

SB21-260 Sustainability of the Transportation System created new sources of dedicated funding and new state enterprises intended to preserve, improve, and expand existing transportation infrastructure and mitigate environmental and health impacts of transportation system use. To accomplish these goals, the legislation established a Nonattainment Area Air Pollution Mitigation Enterprise (the Enterprise), an enterprise and government owned business within the Colorado Department of Transportation (CDOT) for the purpose of collecting fee revenue to mitigate the impacts of increased air pollution that results from increased motor vehicle use for Retail Deliveries and Prearranged Rides by Transportation Network Companies. The Enterprise is a Type 1 transfer agency and as such the Legislature specifically vested the Enterprise with the authority to promulgate rules to set the amounts of fees called for in the legislation in addition to other activities. The Enterprise is required to impose the Air Pollution Mitigation Per Ride Fee and the Air Pollution Mitigation Retail Delivery Fee. Per statute, for the Air Pollution Mitigation Retail Delivery Fee, the Enterprise can set a maximum fee of seven-tenths of one cent per Retail Delivery. The board can set a maximum fee of \$0.1125 for any Prearranged Ride in a Zero Emissions Motor Vehicle (ZEV) or that is a Carshare Ride and \$0.225 for any other Prearranged Ride. The fees delineated in the rule mirror the fee amounts set in C.R.S. § 43-4-1303.

The Enterprise shall notify the Department of Revenue (DOR) of the amount of the Air Pollution Mitigation Per Ride Fee to be collected for rides requested and accepted during each state fiscal year no later than March 15 of the calendar year in which the state fiscal year begins. The Enterprise shall also notify DOR of the amount of the Air Pollution Mitigation Retail Delivery Fee to be collected for Retail Deliveries of Tangible Personal Property purchased during each state fiscal year no later than March 15 of the calendar year in which the state fiscal year begins. CDOT will work with DOR to determine the maximum fee amounts that may be imposed, which shall be the maximum amounts for the prior state fiscal year adjusted for inflation.

#### 2.00 Definitions

- 2.1 "Carshare Ride" means a Prearranged Ride for which the Rider agrees, at the time the Rider requests the ride through a digital network, to be transported with another Rider who has separately requested a Prearranged Ride regardless of whether or not another Rider is actually transported with the Rider.
- 2.2 "Prearranged Ride" means a period of time that begins when a Driver accepts a requested ride through a digital network, continues while the Driver transports the Rider in a personal vehicle, and ends when the Rider departs from the personal vehicle, as defined by C.R.S. § 40-10.1-602.

- 2.3 “Retail Delivery” means a retail sale of Tangible Personal Property by a retailer for delivery by a motor vehicle owned or operated by the retailer or any other person to the purchaser at a location in the state, which sale includes at least one item of Tangible Personal Property that is subject to taxation under Article 26 of Title 39. Each such retail sale is a single Retail Delivery regardless of the number of shipments necessary to deliver the items of Tangible Personal Property purchased.
- 2.4 “Rider” means a passenger in a personal vehicle for whom transport is provided, including (a) an individual who uses a Transportation Network Company’s online application or digital network to connect with a Driver to obtain services in the Driver’s vehicle for the individual and anyone in the individual’s party; or (b) anyone for whom another individual uses a Transportation Network Company’s online application or digital network to connect with a Driver to obtain services in the Driver’s vehicle, as defined in C.R.S. § 40-10.1-602.
- 2.5 “Tangible Personal Property” means all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances which are dealt in, capable of being possessed and exchanged, except newspapers excluded by law. Tangible property, as defined in C.R.S. § 39-26-102(15) does not include:
- 2.5.1 Real property, such as land or buildings, nor Tangible Personal Property that loses its identity when it becomes an integral and inseparable part of the realty, and is removable only with substantial damage to the premises. Property severed from real estate becomes Tangible Personal Property.
- 2.5.2 Intangible personal property constituting mere rights of action and having no intrinsic value, such as contracts, deeds, mortgages, stocks, bonds, certificates of deposit or memberships, or uncanceled United States postage or revenue stamps sold for postage or revenue purposes.
- 2.5.3 Water in pipes, conduits, ditches or reservoirs, but does include water in bottles, wagons, tanks or other containers.
- 2.5.4 Computer software that does not meet the criteria enumerated in C.R.S. §39-26-102(15(c)).
- 2.5.5 An advertising supplement included in a newspaper.
- 2.5.6. The method of delivery does not impact the definition of Tangible Personal Property as defined in C.R.S. §39-26-102(15).
- 2.6 “Transportation Network Company” means a corporation, partnership, sole proprietorship, or other entity, operating in Colorado, that uses a digital network to connect Riders to Drivers for the purpose of providing transportation. A Transportation Network Company does not provide taxi service, transportation service arranged through a transportation broker, ridesharing agreements as defined in C.R.S. § 39-22-509(1)(a)(II), or any transportation service over fixed routes at regular intervals. A Transportation Network Company is not deemed to own, control, operate, or manage the personal vehicles used by Transportation Network Company Drivers. A Transportation Network Company does not include a political subdivision or other entity exempted from federal income tax, as defined in C.R.S. § 40-10.1-602.
- 2.7 “Transportation Network Company Driver” or “Driver” means an individual who uses their personal vehicle to provide services for Riders matched through a Transportation Network Company’s digital network. A Driver need not be an employee of a Transportation Network Company.

2.8 “Zero Emissions Motor Vehicle” or “ZEV” means a battery electric motor vehicle or a hydrogen fuel cell motor vehicle.

**3.00 Fees**

3.1 Effective July 1, 2022, the Enterprise shall impose an Air Pollution Mitigation Retail Delivery Fee of seven-tenths of one cent per Retail Delivery of Tangible Personal Property.

3.2 Effective July 1, 2022, the Enterprise shall impose an Air Pollution Mitigation Per Ride Fee of eleven and one-quarter cents for each Prearranged Ride that is a Carshare Ride or for which the Transportation Network Company Driver transports the Rider in a ZEV.

3.3 Effective July 1, 2022, the Enterprise shall impose an Air Pollution Mitigation Per Ride Fee of twenty-two and one-half cents for every other Prearranged Ride not covered by Rule 3.2.

3.4 Starting in 2023, CDOT will work with the Department of Revenue (DOR) to determine the maximum fee amounts that may be imposed, which shall be the maximum amounts for the prior state fiscal year adjusted for inflation.

3.5 The Enterprise shall notify DOR of the amount of the Air Pollution Mitigation Per Ride Fee to be collected for rides requested and accepted during each state fiscal year no later than March 15 of the calendar year in which the state fiscal year begins. The Enterprise shall also notify DOR of the amount of the Air Pollution Mitigation Retail Delivery Fee to be collected for Retail Deliveries of Tangible Personal Property purchased during each state fiscal year no later than March 15 of the calendar year in which the state fiscal year begins.

**4.00 Declaratory Orders**

The Enterprise board may, at its discretion, entertain petitions for declaratory orders pursuant to § 24-4-105(11), C.R.S.

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**Editor’s Notes**

**History**

New rule eff. 06/14/2022.