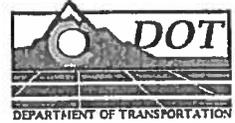


MEMORANDUM

DEPARTMENT OF TRANSPORTATION

Project Development Branch
4201 East Arkansas Avenue, 4th Floor
Denver, Colorado 80222-3400
(303) 757-9364
FAX 757-9868



DATE: March 19, 2013

TO: Transportation Commission

FROM: ^{CR}Christine Rees, Administrative Hearing Officer

SUBJECT: Proposed Adoption of revisions to 2 CCR 601-22, the Rules Governing the Statewide Transportation Planning Process and Transportation Planning Regions

Background

Pursuant to § 43-1-1103(5) C.R.S. the Colorado Transportation Commission (“Commission”) is authorized to promulgate rules concerning the statewide transportation planning process. Section 43-1-106 (8)(k) C.R.S. grants general rule-making authority to the Transportation Commission. Section 43-1-106 (9) C.R.S. provides that the Commission may delegate to an Administrative Hearing Officer the authority to preside over a rule-making hearing. By Resolution #TC-3041 dated January 25, 2013, the Commission opened the rule-making process and delegated authority to an Administrative Hearing Officer to conduct a rule-making hearing.

Summary of Hearing and Factual Findings

Pursuant to §24-4-103 C.R.S., the Colorado Administrative Procedure Act, and Transportation Commission Resolution #TC-3041, a public rule-making hearing was held on March 8, 2013 in the Auditorium of the CDOT Headquarters Complex in Denver, Colorado. A court reporter was present, and a transcript of this hearing is attached. Acting as the Administrative Hearing Officer, I opened the hearing at 9:01 a.m. Mary Frances Nevans, the CDOT Rules Administrator, explained CDOT’s compliance with the Administrative Procedure Act (Transcript pages 5 – 8). Ms. Nevans provided proof of notification to interested parties, (Exhibit 6). No comments were received by the Department.

The Statement of Basis and Purpose is contained in Exhibit 7, page 1. A cost-benefit analysis was not required, (Exhibit 4, page 2). Ms. Nevans demonstrated how CDOT complied with the requirements of the Administrative Procedures Act. Specifically, Ms. Nevans noted that CDOT:

- Obtained proper hearing delegation from the Commission, (Exhibit 1).
- Filed a timely *Notice of Rulemaking* with the Secretary of State, (Exhibit 2).

- Published the Notice of permanent Rules in the Colorado Register, (Exhibit 3).
- Filed the Rules with the Department of Regulatory Agencies (Exhibit 4).
- Posted the proposed Rules on the CDOT website on January 18, 2013 (Exhibit 5).
- Notified interested parties of the date, time and location of the hearing, (Exhibit 6).
- Made available a copy of the Statement of Basis and Purpose and Statutory Authority (Exhibit 7, page 1).
- Will maintain a permanent file of the rulemaking record, (Exhibit 7, page 2).
- Posted timely notice in the rulemaking hearing the lobby of the Department Headquarters Building, (Exhibit 7, page 3).

At the conclusion of the testimony, Kathryn Young, First Assistant Attorney General, after reviewing the record and listening to the oral testimony, concluded that the Department of Transportation had met the requirements of the Administrative Procedure Act with regard to the Rules Governing the Statewide Transportation Planning Process and Transportation Planning Regions.

Findings and Conclusions of Law

No testimony with the exception of testimony from the Colorado Department of Transportation was provided at the public rule making hearing. As stated in the record by Ms. Nevans (Transcript, page 5) the Statewide Transportation Planning Rules were adopted on October 22, 2012. During the review process, the Office of Legislative Legal Services requested that the Department add certain language to the Rules. This rulemaking seeks only to amend the rule to include this language requested by the Office of Legislative Legal Services. I have reviewed the entire record of this proceeding. Based on the record and testimony heard at today's hearing, I find that:

1. All requirements of the Administrative Procedure Act, §24-4-103 C.R.S. have been satisfied.
2. There is sufficient evidence in the record to support the amendment of the Rules as submitted in Exhibit 8.
3. The Commission has the authority to adopt the proposed Rules.

Decision

You must review the record of these proceedings prior to adopting the Rules, and any action must be based upon, and supported by, the record. Copies of the entire record, including the exhibits are available for your review in the Transportation Commission Office. The record supports the proposed amendment of these Rules.

Having reviewed the entire record of this proceeding, including Exhibits 1 through 8 and having heard oral testimony and reviewed any written testimony provided, and being fully apprised of this matter, acting as the presiding Administrative Hearing Officer, I recommend that the Transportation Commission adopt the Rules at issue.

DEPARTMENT OF TRANSPORTATION

Transportation Commission

RULES GOVERNING THE STATEWIDE TRANSPORTATION PLANNING PROCESS AND TRANSPORTATION PLANNING REGIONS

2 CCR 601-22

STATEMENT OF BASIS AND PURPOSE AND STATUTORY AUTHORITY

The purpose of the Rules is to prescribe the statewide transportation planning process through which a long-range multimodal, comprehensive statewide transportation plan will be developed, integrated, updated, and amended by the Colorado Department of Transportation (Department), in cooperation with local governments, Metropolitan Planning Organizations, Regional Planning Commissions, Indian tribal governments, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, Federal Railroad Administration, U.S. Forest Service, Bureau of Land Management, Secretary of the Interior, National Park Service, other federal and state agencies, the private sector, transit and freight operators, and the general public. This cooperative process is designed to coordinate regional transportation planning, guided by the statewide transportation policy set by the Department and the Colorado Transportation Commission (Commission), as a fundamental basis for developing the statewide transportation plan. The result of the statewide transportation planning process shall be a long-range, financially feasible, environmentally sound, multimodal transportation system plan for Colorado.

Further, the purpose of the Rules is to define the state's Transportation Planning Regions for which long-range Regional Transportation Plans are developed, prescribe the process for conducting and initiating transportation planning in the non-MPO Transportation Planning Regions and coordinating with the Metropolitan Planning Organizations for planning in the metropolitan areas. Memorandums of Agreement ("MOA") between the Department and each MPO further prescribe the transportation planning process in the MPO transportation planning regions. In addition, the purpose of the Rules is to describe the organization and function of the Statewide Transportation Advisory Committee (STAC) as established by § 43-1-1104, Colorado Revised Statutes (C.R.S.).

The Rules are being promulgated to meet the intent of both the U.S. Congress and the Colorado General Assembly for developing a continuing, cooperative, and comprehensive statewide performance-based multimodal transportation planning process to address the transportation problems of the state by producing a statewide transportation plan. This plan will be implemented by systematic project prioritization and selection and budgeting of resources, utilizing a comprehensive input process.

The Rules are intended to be consistent with and not be a replacement for the federal transportation planning requirements contained in 23 United States Code (U.S.C.) 134, 135 and

1450, PL 112-141 (“Moving Ahead for Progress in the 21st Century” or “MAP-21”) and in its implementing regulations, where applicable, contained in 23 Code of Federal Regulations (CFR) Part 450, including Subparts A, B and C and 25 CFR Part 170.421 in effect as of October 1, 2012, which are hereby incorporated into the Rules by this reference, and do not include any later amendments. All referenced laws and regulations shall be available for copying or public inspection during regular business hours from the Office of Policy and Government Relations, Colorado Department of Transportation, 4201 E. Arkansas Avenue, Denver, Colorado 80222.

The Statewide Planning Rules, as a component of the statewide plan, emphasize Colorado’s continually greater integration of multimodal, cost-effective and environmentally sound means of transportation. The Rules reflect the Department’s focus on multimodal transportation projects including highways, aviation, transit, rail, bicycles and pedestrians.

The Rules are promulgated by the Commission pursuant to the specific statutory authority found in § 43-1-1103 (5), C.R.S., and § 43-1-106 (8)(k), C.R.S.

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Rulemaking Hearing on Rules Governing the Statewide
Transportation Planning Process and Transportation
Planning Regions

2 CCR 601-22

CDOT Headquarters Building Auditorium

4201 East Arkansas Avenue

Denver, Colorado 80222

March 8, 2013

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| <p>1 *****</p> <p>2 HEARING OFFICER: Good morning. I</p> <p>3 will now call this hearing to order. This is a</p> <p>4 rulemaking proceeding pursuant to the Colorado</p> <p>5 Revised Statutes Section 24-4-103(4)(a) (2010), of</p> <p>6 the State Administrative Procedures Act, concerning</p> <p>7 revisions to the Rules Governing the Statewide</p> <p>8 Transportation Planning Process and the</p> <p>9 Transportation Planning Regions, 2 CCR 601-22.</p> <p>10 Today is March 8, 2013. It is now</p> <p>11 9:05. This hearing is being conducted at the</p> <p>12 Colorado Department of Transportation, 4201 East</p> <p>13 Arkansas Avenue, Auditorium, Denver, Colorado.</p> <p>14 My name is Christine Rees. I am an</p> <p>15 Administrative Hearing Officer for the Department of</p> <p>16 Transportation. I am presiding at this rulemaking</p> <p>17 hearing based upon a delegation of authority from</p> <p>18 the Transportation Commission by Resolution No.</p> <p>19 TC-3041 dated January 25, 2013, which is included in</p> <p>20 the exhibit packet. Also in attendance is First</p> <p>21 Assistant Attorney General Kathryn Young, present by</p> <p>22 telephone.</p> <p>23 We have provided a sign-in sheet. We</p> <p>24 ask everyone to sign in who is attending this</p> <p>25 hearing. If you have not had a chance, please sign</p> | <p>1 was conducted in compliance with the State</p> <p>2 Administrative Procedure Act.</p> <p>3 After this hearing today, I will</p> <p>4 prepare a record for the consideration of the</p> <p>5 Transportation Commission. It will include all of</p> <p>6 the exhibits and all of the testimony, both written</p> <p>7 and oral, that were provided today. The</p> <p>8 Transportation Commission will consider all</p> <p>9 information when it makes the decision on whether or</p> <p>10 not to adopt the rules.</p> <p>11 Are there any questions before I ask</p> <p>12 the Department to make their presentation? Would</p> <p>13 the Department of Transportation like to begin?</p> <p>14 Please state your name and your</p> <p>15 position for the record.</p> <p>16 MS. NEVANS: Thank you, Madam Hearing</p> <p>17 Officer. Good morning, I am Mary Frances Nevans,</p> <p>18 the CDOT rules administrator.</p> <p>19 The Transportation Commission has</p> <p>20 authority to promulgate these rules pursuant to</p> <p>21 43-1-1103 (5), C.R.S., and 43-1-106 (B)(k), C.R.S.</p> <p>22 As Madam Hearing Officer stated, the Commission</p> <p>23 delegated authority to an Administrative Hearing</p> <p>24 Officer by resolution dated January 25, 2013, to</p> <p>25 hold a rulemaking hearing and provide it with</p> |
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| <p>1 in at the back of the room by the door.</p> <p>2 And I'll note for the record that</p> <p>3 there is no public in attendance at this time.</p> <p>4 The procedure we'll follow this</p> <p>5 morning is relatively informal. I will allow</p> <p>6 everyone to speak and make a comment who wishes to</p> <p>7 do so. First, Department staff will give a</p> <p>8 presentation on the rules at issue today. Staff</p> <p>9 will describe the reason why the Department is</p> <p>10 recommending taking this rulemaking action, the</p> <p>11 proposed changes to the rules, and will review and</p> <p>12 submit exhibits.</p> <p>13 Next, I will call on anyone who noted</p> <p>14 on the sign-in sheet that you wish to make comments.</p> <p>15 Comments will be considered as part of the record of</p> <p>16 this proceeding.</p> <p>17 After the period for public comment,</p> <p>18 we will take a brief recess, if needed. When we</p> <p>19 reconvene, the Department will be given another</p> <p>20 opportunity to respond to any public comments.</p> <p>21 I will then invite a representative of</p> <p>22 the Attorney General's office to make any statements</p> <p>23 or comments concerning the rules or procedures.</p> <p>24 After which I will make a finding as to whether or</p> <p>25 not the rulemaking procedure, including the hearing,</p> | <p>1 recommendations and a complete record of the</p> <p>2 proceedings.</p> <p>3 The Statewide Transportation Planning</p> <p>4 Rules were adopted on October 22, 2012. During the</p> <p>5 review process, the Office of Legislative Legal</p> <p>6 Services requested that the Department add language</p> <p>7 to Rules. This rulemaking seeks only to amend the</p> <p>8 rules to include this language requested by the</p> <p>9 Office of Legislative Legal Services.</p> <p>10 I would like to review the exhibits in</p> <p>11 order to establish that the Department of</p> <p>12 Transportation met all of the requirements of the</p> <p>13 State Administrative Procedure Act.</p> <p>14 I would note today is March 8, 2013.</p> <p>15 The notice of rulemaking was filed with the Colorado</p> <p>16 Secretary of State on January 18, 2013, and was</p> <p>17 published in the Colorado Code of Regulations on</p> <p>18 February 10, 2013, meeting the requirement that the</p> <p>19 hearing be held no earlier than March 1, 2013.</p> <p>20 To review the exhibits: Exhibit 1 is</p> <p>21 Transportation Commission resolution TC-3041 dated</p> <p>22 January 25, 2013, opening the rulemaking process and</p> <p>23 delegating authority to an Administrative Hearing</p> <p>24 Officer to conduct this rulemaking hearing.</p> <p>25 Exhibit 2, the Notice of Rulemaking</p> |

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| 6 | <p>1 Confirmation, is the confirmation that the 2 Department filed the rules with the Colorado 3 Secretary of State's Office on January 18, 2013. 4 This notice includes notice of the hearing date, 5 time and location as required by 24-4-103(3)(a) 6 C.R.S. The hearing and rules have been continually 7 published on the Secretary of State's website since 8 that date. 9 Exhibit 3 is the printout from the 10 Code of Colorado Regulations eDocket confirming 11 publication in the Colorado Register under 12 24-4-103(11)(a) and (b) C.R.S. The first page 13 indicates that this was posted on February 10, 2013. 14 Exhibit 4 is from the Department of 15 Regulatory Agencies website confirming that the 16 rules were filed on January 18, 2013, and included 17 the notice of hearing on today's date. The next 18 page confirms that no cost-benefit analysis was 19 required for these rules. 20 Exhibit 5 is a printout on January 18, 21 2013, from the CDOT website establishing that the 22 Department posted the rules on this date. They have 23 been posted continually since that time. 24 Exhibit 6 is the email notification to 25 interested parties which was emailed on January 18,</p> | 8 |
| 7 | <p>1 through 8 into the record for consideration. 2 HEARING OFFICER: Thank you. Exhibits 3 1 through 8 have been admitted entered into the 4 record. 5 MS. NEVANS: Thank you, Madam Hearing 6 Officer. I would ask that you find at the 7 conclusion of the hearing today that all of the 8 statutory requirements of the State Administrative 9 Procedure Act have been met. 10 That's all I have, Madam Hearing 11 Officer. This concludes the testimony from the 12 Department. 13 HEARING OFFICER: Thank you. Can I 14 get a list of all who have signed in? 15 I'm also going to admit the hearing 16 Attendance Record as Exhibit 9. And I will include 17 in the record a copy of the transcript from this 18 hearing. 19 Does anyone have any objections to the 20 Exhibits that have been presented being entered into 21 the record? 22 Does anyone have any comments to make 23 at this time? 24 According to the sign-in sheet, we had 25 one member of the public sign in. He has indicated</p> | 9 |

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| <p>1 that he does not wish to speak and does not wish to 2 submit written comments. 3 I will ask the representative of the 4 Attorney General's Office to make any comments about 5 the rules or procedure today. 6 MS. YOUNG: Good morning. My name is 7 Kathy Young. I am the First Asslstant Attorney 8 General with the Attorney General's Office in the 9 Transportation Unit. 10 It is my opinion that the rulemaking 11 procedure carried out by the Department, including 12 the rulemaking hearing today, was held in accordance 13 with the Administrative Procedures Act. I have no 14 further comments. 15 HEARING OFFICER: Thank you. If there 16 are no other comments, I'll make my findings that: 17 The Transportation Commission properly delegated 18 authority to me to conduct this hearing; That the 19 Department met the requirements of the State 20 Administrative Procedure Act; and that this 21 rulemaking hearing has been conducted in conformance 22 with the State Administrative Procedure Act. 23 I'm going to find that the record does 24 support the Transportation Commission's adoption of 25 the rules as proposed, if it so chooses.</p> | <p>1 CERTIFICATE 2 STATE OF COLORADO))ss. 3 CITY AND COUNTY OF DENVER) 4 5 I, Angela Smith, Professional Reporter 6 and Notary Public for the State of Colorado, do 7 hereby certify that the above-mentioned hearing was 8 taken in shorthand by me and was reduced to 9 typewritten form by computer-aided transcription, 10 that the foregoing is a true transcript of the 11 proceedings had; that I am not attorney nor counsel 12 nor in any way connected with any attorney or 13 counsel for any of the parties to said action or 14 otherwise interested in its event. 15 IN WITNESS WHEREOF, I have hereunto 16 affixed my hand and notarial seal this 13th day of 17 March 2013. 18 My commission expires January 22, 19 2015. 20 21 _____ 22 Angela Smith 23 Reporter, Notary Public 24 Calderwood-Mackelprang, Inc. 25</p> |
| 11 | |
| <p>1 Finally, I'm going to make findings 2 that the public did have an opportunity to comment. 3 Is there anything else to include in 4 the hearing today? Is there anything else? 5 If there is nothing else, I will 6 prepare a record for the Transportation Commission. 7 The record will be available for inspection by the 8 public and kept on file with the Rulemaking Records. 9 Any questions? 10 The oral testimony portion of the 11 rulemaking procedure is now closed. The hearing is 12 adjourned. 13 Thank you, everyone. 14 15 (WHEREUPON, the hearing was closed at 16 9:15 a.m.) 17 18 19 20 21 22 23 24 25</p> | |

Resolution # TC-

Approve Resolution Adopting 2 CCR 601-22, Rules Governing the Statewide Transportation Planning Process and Transportation Planning Regions (“Statewide Transportation Planning Rules”).

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

WHEREAS, the Commission adopted the Statewide Transportation Planning Rules on October 22, 2012 by Resolution # TC-3022; and

WHEREAS, in the required review process under the State Administrative Procedure Act, the Office of Legislative Legal Services has requested that the Department include certain language in the Statement of Basis and Purpose section of the rules; and

WHEREAS, the language incorporates by reference relevant federal authority and provides that a copy of the referenced federal authority may be acquired at the Colorado Department of Transportation; and

WHEREAS, an Administrative Hearing Officer presided over a hearing on March 8, 2013 under a delegation of authority from the Transportation Commission; and

WHEREAS, having reviewed the record of the proceedings and the Administrative Hearing Officer’s recommendations to the Commission;

NOW THEREFORE BE IT RESOLVED, the Commission herein adopts the Statewide Planning Rules, 2 CCR 601-22.