



August 31, 2021

CDOT Transportation Commission
CDOT Headquarters
2829 W. Howard Pl.
Denver, CO 80204

Dear Commissioners:

Thank you for the opportunity to provide public comments to the Transportation Commission on the proposed changes to the Rules Governing Statewide Transportation Planning Process Transportation Planning Regions, containing the Greenhouse Gas Transportation Planning Standard, proposed on August 13, 2021. We have continued to discuss this rule with Colorado Department of Transportation (CDOT) staff and appreciate the time spent explaining the proposal and discussing our suggestions. In an effort to continue that process of open collaboration, we are submitting the following comments early in the rulemaking process so we can continue those discussions while making the Transportation Commission aware of the dialogue.

Colorado Communities for Climate Action is a coalition of 39 counties and municipalities across Colorado advocating for effective state and federal climate policy. CC4CA's members span Colorado's Western Slope and Front Range; small rural towns and major suburbs; counties and municipalities; and wealthy, middle income, and low-income neighborhoods. With member populations ranging from under 1,000 to more than 500,000, CC4CA local governments represent nearly one-quarter of all Coloradans. Rural communities make up two-thirds of the membership, including more than half of the members being West Slope communities.

Because the Employee Traffic Reduction Program (ETRP) was withdrawn from consideration by the Air Quality Control Commission, this proposal is Colorado's first major transportation-related rulemaking specifically designed to respond to the climate crisis. As such, we understand that this is new territory for Colorado and all parties involved, but it's important to keep in mind the overarching target established by Colorado's Greenhouse Gas (GHG) Emissions Reduction Roadmap to reduce transportation sector emissions by 12.8 million metric tons (MMT) of carbon dioxide equivalent (CO₂e) by 2030.

This letter reflects initial comments and questions on the proposal, and we expect to have additional input after more discussion with CDOT staff and after the technical documentation is made available for a full review. The main points covered in the comments below include: ensuring that equity is a key focus of this rulemaking, the necessity for robust emission reduction targets and

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reductions in vehicle miles traveled (VMT), allowing public review of the modeling analysis and ground truthing the model, and key points related to potential loopholes in the proposal and enforceability of the rule.

Equity Must be a Primary Focus of this Rulemaking

This rule presents one of Colorado’s best opportunities to fulfill the intent and requirements of HB19-1261 and HB21-1266 to prioritize benefits and avoid harms to disproportionately impacted communities as defined in § 24-38.5-302(3), C.R.S. We are encouraged to see some seeds planted in the proposed rule towards engaging and serving these communities, and we urge greater specificity and assurance that the most beneficial projects will be realized in those communities according to their expressed needs as well as data-driven approaches to projecting benefits.

Disproportionately impacted community input must inform all measures affecting them

Equity engagement for these rules cannot take place primarily through large listening sessions and stakeholder meetings. Before detailed measures are proposed, CDOT should work with climate outreach staff at the Colorado Air Pollution Control Division (APCD) and the Equity Unit at the Colorado Department of Public Health and Environment (CDPHE) to assess transportation priorities in disproportionately impacted communities. We appreciate the existing equitable outreach provisions (4.02.5) but would further recommend that outreach should take place at existing community meetings wherever possible. We have been glad that SB21-260 will establish a new Environmental Justice and Equity Office within CDOT in order to “work directly with disproportionately impacted communities in the project planning, environmental study and project delivery phases of transportation capacity projects.” We ask that this Office be stood up in time to help existing state equity outreach staff ensure that measures being considered meet the needs of disproportionately impacted communities.

We are eagerly awaiting the public release of CDPHE’s Colorado EnviroScreen tool, based on the EPA EJSCREEN model, that will enable us to delineate communities qualifying as “disproportionately impacted” under HB21-1266. CDOT and Metropolitan Planning Organizations (MPOs) must work with CDPHE as soon as possible to initiate outreach to these communities as located by the tool.

As this rule is refined, we recommend that the Transportation Commission consider the work that CDPHE’s Air Pollution Division, together with its Climate Equity Advisory Committee, has already done in drafting a Climate Equity Framework, including six Climate Equity Principles that should be used in shaping state rule development. From those principles, APCD developed a checklist of “Key Questions” and “Other Important Questions to Ask” to help rulemaking staff and boards anticipate potential benefits or burdens to disproportionately impacted communities from rules being considered in order to equitably shape rule development. The Climate Equity Framework is a living document still taking input. We recommend that CDOT work with CDPHE and the Climate Equity Advisory Committee to add shape to the Framework around transportation equity so that it can be most effectively applied to these rules. We urge CDOT and the Transportation Commission to apply these Key Questions for now to develop and evaluate proposed rules, and to work with the APCD, the Climate Equity Advisory Committee, the Climate Equity Community Advisory Group, and the Environmental Justice unit at CDPHE to do so. It may be helpful to index this language to the Equity Principles and/or key questions. Furthermore, it would

inspire confidence in the community if their input is indexed and/or reflected specifically in adopted rules and Applicable Planning Documents. Finally, APCD review (8.04) should answer all the “Key Questions” and “Other Important Questions to Ask,” consulting with the Climate Equity Advisory Committee and Climate Equity Community Advisory Group as needed.

The rule must stipulate VMT reductions and specific local benefits in the Applicable Planning Documents as well as in Mitigation Measures

We recognize that disproportionately impacted communities benefit from any project that reduces GHG emissions or that drives down VMT on the major thoroughfares that cut through these communities. However, this rule must prioritize projects that directly improve local air quality while providing needed local clean transportation services by reducing VMT. Section 8.0.3, GHG Mitigation Measures includes a list of good examples for the type of project that should be prioritized. Certain measures such as these that (1) fill the transit gap in communities that are being pushed further from community centers; (2) increase affordable EV ownership and charging; and (3) evolve neighborhoods toward “complete streets” should be discussed with the community and considered as best practices that should be implemented in all disproportionately impacted communities.

It's critical that the final rule include specific requirements that will result in defined direct benefits to Disproportionately Impacted Communities. Therefore, we suggest the following specific language be added to section 8 of the proposed rule. Black text is from CDOT’s proposal, red text is suggested language:

8.02 Process for Determining Compliance

8.02.3 By April 1, 2022, CDOT shall establish an ongoing administrative process, through a public process, for selecting, measuring, confirming, and verifying GHG Mitigation Measures, so that CDOT and MPOs can incorporate one or more into each of their plans in order to reach the Regional GHG Planning Reduction Levels in Table 1. Such a process shall include, but not be limited to, determining the relative impacts **and benefits** of GHG Mitigation Measures, measuring and prioritizing localized impacts **and benefits** to communities and Disproportionately Impacted Communities in particular. The mitigation credit awarded to a specific solution shall consider both aggregate and community impact **and benefit**. **Where such impact or benefit affects a Disproportionately Impacted Community, that consideration shall take precedence over others. At least 25% of the Mitigation Measures must have a direct benefit in terms of increased multimodal options to Disproportionately Impacted Communities.**

8.02.5.3 A Mitigation Action Plan that identifies GHG Mitigation Measures needed to meet the reduction levels within Table 1 shall include:

- 8.02.5.3.1 The anticipated start and completion date of each measure.
- 8.02.5.3.2 An estimate, where feasible, of the GHG emissions reductions in MMT of CO₂e achieved by any GHG Mitigation Measures.
- 8.02.5.3.3 Quantification of specific co-benefits including reduction of copollutants (PM_{2.5}, NO_x, etc.) as well as travel impacts (changes

to VMT, pedestrian/bike use, transit ridership numbers, etc. as applicable).

- 8.02.5.3.4 Description of benefits to Disproportionately Impacted Communities and a demonstration of how at least 25% of mitigation measures will directly benefit Disproportionately Impacted Communities.

These are just two specific additions to the rule with an equity focus; we would like to discuss other options for adding equity measures to the rule. We appreciate that the plan for selecting GHG Mitigation Measures (8.02.3) and the Mitigation Action Plan (8.02.5.3) express intent to prioritize disproportionately impacted communities. However, since these only take effect “In the event that a plan fails to comply,” we ask CDOT to consider commensurate equity provisions in the “Applicable Planning Document[s]” defined in the proposed rule. An emphasis on reducing VMT, discussed in our comments below, also brings a focus on equity because increasing multimodal options can have a direct impact on equity.

GHG Emissions Reduction Targets and VMT Reductions

The proposed emission reduction targets should be the absolute minimum amount of reductions considered for this rule. Colorado’s existing and planned transportation measures leave a gap of 4.7 MMT of GHG reductions in 2030, and this proposed rule would reduce that gap by 1.5 MMT. CDOT staff has explained that the 1.5 MMT is the high end of the modeled range and that 0.5 MMT is the low end. That falls far short of the at least 3.3 MMT in reductions by 2030 that should be met in order to reach Colorado’s climate goals. Additional strategies to further reduce transportation emissions within the 4.7 MMT category have yet to be developed, so the amount of the associated emissions reductions is uncertain. The Clean Trucking Strategy and indirect source rules are two strategies being considered in this area, but the potential reductions are unknown at this time. Because of the worsening nature of the climate crisis, early reductions have the largest impact and are absolutely necessary to reverse the current devastating course. Therefore, we strongly urge the Commission and CDOT staff to increase the GHG planning reduction levels identified in Table 1 (8.01.2).

The Roadmap’s “HB 1261 Targets Scenario” assumes a VMT reduction of 10% by 2030. Because of this statewide goal, VMT reductions should be explicitly included in this rule. VMT reductions should be closely tied to the reduction goals in the budgets that are developed under the GHG planning standard. A primary emphasis of the GHG rule should be to reduce VMT through multimodal strategies such as increased transit, bike paths, and sidewalks. Strong VMT reductions in the next five years are very important because there will not be enough EVs on the road by then to reduce vehicle emissions to meet Colorado’s goals. Additionally, an emphasis on VMT reduction will benefit DI communities.

The current definition of multimodal projects includes projects that increase capacity, such as adding several new traffic lanes along with bike paths. This is counterproductive: a heavy emphasis on multimodal that does not reduce VMT won’t help us achieve our GHG goals. Any project that increases capacity in turn increases VMT. Yet, transportation modeling and air quality models for transportation conformity incorrectly assume that capacity projects that reduce congestion will decrease emissions.

Comments and suggested edits to Section 8, Table 1, and Table 2 of the proposed rule:

- We suggest adding language in Section 8.01.1 explaining that the reduction targets by MPO area reflect the total reductions in that area and are not the sole responsibility of the MPOs and that CDOT will assist the MPOs in meeting the targets. We understand from CDOT staff that it was too difficult to break out the share of the reductions between CDOT and the MPOs, but an explanation to this effect in the rule should be included to avoid any misunderstanding.
- The baseline projections in Table 1 are confusing despite the explanation in 8.01.1. because the projections only show slight decreases and then increase by 2050. These projections are using a business as usual scenario for modeling the emission reductions from this rule only and don't take account of the other emissions reduction strategies in Colorado. It would be best to remove these projections from the rule because it appears as if transportation emissions will barely decrease in almost 30 years, while in reality, emissions should greatly diminish.
- If the baseline projections remain in the rule, an explanation should be added as to why the projections vary from the Roadmap projections. The 2025 baseline projections in the proposed rule are 27.4 MMT while Colorado's GHG Roadmap figure for 2025 is 23 MMT.
- Table 2 is confusing as well; presumably these figures project total transportation sector emissions with all the strategies implemented, including this proposed rule. But the 2030 projections are 20 MMT while the Roadmap's 2030 projections are 18 MMT (see Colorado's GHG Roadmap Table 7, page 97). Is this meant to indicate that the proposed rule, plus the projected uptake of EVs, will leave us 2.0 MMT short of the Roadmap target?
- Suggested new language for the Table 2 description is provided below. If the figures in this table don't reflect the new explanation, we suggest that they be updated if possible.
- Based on our comments above, please include a table showing VMT reductions for all projection years as well.

Suggested edits follow. Black text is from CDOT's proposal, red text and red strikeouts are suggested edits.

8.00 GHG Emission Requirements

8.01 Establishment of Regional GHG Transportation Planning Reduction Levels

8.01.1 The GHG emission reduction levels within Table 1 apply to MPOs ~~areas~~ and the Non-MPO area within the state of Colorado as of the effective date of these Rules. ~~The reduction levels listed by MPO are not meant as the sole responsibility of that MPO, but rather the total reduction for that area. CDOT is responsible for a share of the reductions in the MPO area. Baseline values are specific to each MPO and CDOT area and represent estimates of GHG emissions resulting from the existing transportation network and implementation of the most recently adopted RTP for all MPOs and the 10-Year Plan in non-MPO areas as of the effective date of these Rules. Table 2 projects total transportation sector emissions reflects the difference in Baseline levels from year to year assuming a rapid growth in Colorado's electric vehicles goals are met across the State (940,000 light duty electric vehicles in 2030, 3.38 million in 2040 and a total of 97% of all light duty vehicles in 2050) in addition to the emission reductions from this rule.~~

Values in both tables include estimates of population growth as provided by the state demographer.

8.01.2 Regional GHG Transportation Planning Reduction Levels

Table 1: GHG Transportation Planning Reduction Levels in MMT of CO₂e

<u>Regional Areas</u>	<u>2025 Reduction Level (MMT)</u>	<u>2030 Reduction Level (MMT)</u>	<u>2040 Reduction Level (MMT)</u>	<u>2050 Reduction Level (MMT)</u>
<u>DRCOG</u>	<u>0.27</u>	<u>0.82</u>	<u>0.63</u>	<u>0.37</u>
<u>NFRMPO</u>	<u>0.04</u>	<u>0.12</u>	<u>0.11</u>	<u>0.07</u>
<u>PPACG</u>	<u>N/A</u>	<u>0.15</u>	<u>0.12</u>	<u>0.07</u>
<u>GVMPO</u>	<u>N/A</u>	<u>0.02</u>	<u>0.02</u>	<u>0.01</u>
<u>PACOG</u>	<u>N/A</u>	<u>0.03</u>	<u>0.02</u>	<u>0.01</u>
<u>CDOT/Non-MPO</u>	<u>0.12</u>	<u>0.37</u>	<u>0.30</u>	<u>0.18</u>
<u>TOTAL</u>	<u>0.5</u>	<u>1.5</u>	<u>1.2</u>	<u>0.7</u>

Table 2: ~~Baseline Emissions Due to Projected Number of Light Duty Electric Vehicles~~ Transportation Sector ~~Emissions~~ Projections from All Implemented Strategies

	<u>2025 Projections (MMT)</u>	<u>2030 Projections (MMT)</u>	<u>2040 Projections (MMT)</u>	<u>2050 Projections (MMT)</u>
<u>TOTAL</u>	<u>27.0</u>	<u>20.0</u>	<u>14.0</u>	<u>8.9</u>

Modeling Analysis Review and Modeling Requirements Under the Rule

The technical documentation and the modeling analysis and inputs should be available for the public to review now that the rulemaking process has begun. Without these technical materials, it's difficult to review this rule as a whole. CDOT has said that they are working on finalizing a modeling report and a Q&A document; it would be best if this information is made available well in advance of the scheduled regional hearings. Because we haven't been able to review any technical document associated with this proposal, we aren't able to provide comments on the modeling at this time. But one key question about the modeling at this point is whether EVs and charging infrastructure investments are included in the modeling. We need to ensure those reductions are not

double counted in this proposal because most of those reductions are already covered in other emissions reduction estimates.

Regarding the modeling requirements in the proposed rule itself, we have the following questions and comments:

- Are MPOs going to be required to ground truth their modeled GHG emissions/VMT with real-world data collection (such as traffic counts)? If so, how often will this be required?
- Will a third-party review process be used to review the modeling analyses?
- Will the modeling results and documentation be available for public review?

Measurable Reductions Are Critical

Under the proposal CDOT and MPOs need to provide a GHG Transportation Report that meets several specific requirements, including a GHG emissions analysis demonstrating compliance with the applicable GHG reductions level and a mitigation action plan that identifies the needed mitigation measures and estimates reductions, where feasible (see Section 8.02.5.3.2). We would like more explanation of when GHG estimates would be infeasible and suggest edits to the rule language so that the rule does not imply that estimates would often be infeasible.

8.02.5.3 A Mitigation Action Plan that identifies GHG Mitigation Measures needed to meet the reduction levels within Table 1 shall include:

8.02.5.3.1 The anticipated start and completion date of each measure.

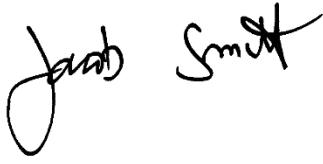
8.02.5.3.2 An estimate, ~~where feasible,~~ of the GHG emissions reductions in MMT of CO₂e achieved by any GHG Mitigation Measures. ~~It's expected there will be rare situations where GHG estimates are not feasible.~~

Enforcement is Key to the Success of this Rule

Under the proposed rule, if compliance is not demonstrated after committing to GHG mitigation measures, the Commission will restrict the use of certain funds, requiring that money be focused on projects that reduce GHGs. The proposal includes the option to apply for a waiver if the rule requirements have not been met. We would like to learn more about this potential waiver process and how Colorado's GHG goals will still be met. The proposal states that "a substantial increase in GHG emissions" won't be allowed, but what is considered a substantial increase and how can we meet reduction goals while allowing any increases in emissions? As explained above, the proposed 1.5 MMT reductions by 2030 are not enough to meet the sector's goal of 12.8 MMT reductions. Waivers could also circumvent the requirement to protect and prioritize disproportionately impacted communities that might otherwise see air quality and transportation infrastructure improvements. Any increase in GHG emissions would be counter to the goal of this rule.

We appreciate the opportunity to comment on this proposed rule and the continued communications with CDOT staff to ensure that this is a strong rule that will help Colorado achieve its reduction goals for the transportation sector. Much progress has been made and we look forward to discussing our input with the Transportation Commission and CDOT.

Sincerely,

A handwritten signature in black ink, appearing to read "Jacob Smith". The signature is written in a cursive, fluid style. The first name "Jacob" is written with a large, looping 'J' and a small 'a'. The last name "Smith" is written with a capital 'S' and a stylized 't'.

Jacob Smith, Executive Director

c: Shoshana Lew, Herman Stockinger, Rebecca White, Theresa Takushi