



September 18, 2024

Piper Darlington
Director Colorado Transportation Investment Office (CTIO)
2829 W. Howard Place
Denver CO 80204

Dear Director Darlington,

We are writing today regarding the recent CTIO request to modify the operating hours and days of the I-70 Peak Period Shoulder Lanes (PPSLs)/Mountain Express Lanes (MEXLs) in Clear Creek County. We will refer to them here as the PPSLs to avoid confusing them with the very different Floyd Hill Managed Lanes currently under construction, also referred to as MEXLs in CDOT reports. We are writing to comment on your presentations to our county transportation team and the I-70 Coalition Board last week, and to inform our upcoming Oct. 1 meeting with CTIO.

As you know, the 2011 I-70 Mountain Corridor Record of Decision (ROD) and Programmatic Environmental Impact Statement (PEIS) firmly established the use of the Contact Sensitive Solutions (CSS) process in our corridor, which has since guided us successfully through our state and federal transportation projects.

On our county office wall hangs a 2017 Environmental Excellence Award from FHWA for excellence in CSS Collaboration for the Eastbound PPSL, of which we remain quite proud. It praises CDOT, FHWA and our local jurisdictions for finding common ground and agreeing to enhance mobility while respecting our environment and communities.

Those historic agreements were memorialized in a series of project documents, including an Amended and Restated Memorandum of Understanding (MOU), I-70 WB Peak Period Shoulder Lane Business Rules, Concept of Operations Report for the WB I-70 PPSL Categorical Exclusion, and the WB I-70 Peak Period Shoulder Lane Assurances Letter to Clear Creek County, all of which are ultimately referenced in the County's 1041 permits, Resolution 19-01, which allowed the projects to proceed. The 1041 permit specifically states that CDOT "shall continuously operate the Project in compliance with the operational limits set forth in the paragraph d of the Amended and Restated MOU, the Categorical Exclusion, and the I-70 WB Peak Period Shoulder lane business Rules."

These operational limits in paragraph d of the MOU are explicitly stated as such:

1. The Toll Facility shall not operate on more than 100 days per year (including holidays), or operate in excess of 1,168 hours per year in the eastbound direction

2. The Toll Facility shall not operate on more than 125 days of operation (including holidays), or operate in excess of 965 hours per year in the westbound direction.
3. The Toll Facility shall cease operation by the year 2035 unless modified by a different project, which may or may not be a part of the Corridor's long-term solution.

Further, The MOU states:

"Any proposed changes to the operating limitations of the Toll Facility or to this agreement will be in accordance with the 2011 I-70 Mountain Corridor Record of Decision.

The CDOT and the HPTE agree that if the above operational limitations are not met, the Division (FHWA) has the right to revoke the design variances allowed for the Project and require all Federal funds be repaid in full. If the above-mentioned limitations are not met, the Division has the right to require CDOT to restore the cross section and right side break down shoulder to a pre-Project condition."

The Assurances Letter states:

"Any proposed changes to the operating limitations of the EB PPSL and WB PPSL, or to the Memorandum of Understanding between CDOT, HPTE, and FHWA will be in accordance with the 2011 ROD;" and

"The most recent Concept of Operations (dated October 19, 2018) documents the assumptions related to operating hours, allowable vehicles, etc. The MOU includes language requiring any changes to be in accordance with the 2011 ROD, which requires a Context Sensitive Solutions process for any changes proposed"

The Concept of Operations October 19, 2018, WB I-70 PPSL Categorical Exclusion states:

"The lane will be opened for operation during peak traffic periods, which are Friday afternoons, Saturday mornings, and Sunday mornings during winter and summer." Specifically citing the following operational limitations:

- Friday: Noon – 8 PM Winter; 10 AM – 8 PM Summer
- Saturday and Sunday: 6 AM – 1 PM Winter; 7 AM – 2 PM Summer

And in fact, the Concept of Operations agreement specifically contemplated the usage of PPSL in addition to the core operations above, recommending that the PPSL be implemented on an as needed basis during the following periods: Fall Weekends, Holidays and Holiday Weeks, Spring Break, for Special Events, or for Construction or

Emergency Operations. The request being made by CTIO goes beyond the operational limits and does not fit into any of the additional usage exceptions above.

Among the stipulations and conditions of the 1041 permits is that any application to modify the underlying agreements requires that the permits be amended or reissued under a new application, and that in either case that action shall be in accordance with the County's 1041 Regulations and must be the result of a CSS process in accordance with the 2011 ROD to achieve permit approval. Please also see condition #9 and #10 of the WB PPSL 1041 permit, stating that the approval of the 1041 permit was based on the specific historic agreements/documents noted above.

The County is not in opposition to such a modification if it is not detrimental to our county, logically and technically well supported for its stated purpose, and follows the process requirements both legally prescribed and logically necessary to ensure those two outcomes. The process must use CSS, be inclusive of the county and other stakeholders, and defer to the authority of the permit. Our current reaction to the CTIO presentation and request is that it has yet to achieve those standards. Following are first blush comments based on the information we have received to date:

The most recent request by CTIO to the County contains the following:

1. To expand operating hours:
 - a. EB-PPSL – From **1,168** hours to **1,550** hours
 - b. WB-PPSL – From **965** hours to **1,509** hours

2. **To eliminate allowable days as a limiting factor** in PPSL operations. The current days of operations allowed are:
 - a. EB-PPSL – 100 days (CTIO projected need = 207 days)
 - b. WB-PPSL – 125 days (CTIO projected need = 237 days)

In addition, while not part of CTIO's primary request, its presentation recommended soon revisiting the 2035 end date for the project, "because that date is coming up fast", in order to extend the life of the project beyond that time. Pursuant to the 1041 permit, extending the PPSL project operation beyond 2035 requires an amendment to the permit or application for a new 1041 permit.

CTIO justifications for request and County responses

1. **Hours Limit:** CTIO counted all of the hours when the traffic count exceeded the CTIO trigger volume to justify opening the lane. That trigger is 2,000 per hour EB and 1,500 per hour WB. Our initial comments:
 - a. *Those triggers appear nowhere in our documents and are being left to CTIO discretion.*
 - b. *A common standard is for 2,000 vehicles per hour to be considered "congested" for **one** lane. To give this meaning, to open the Westbound PPSL lane, CTIO states that it uses a volume of 1,500 vehicles per hour,*

equaling 750 vehicles per lane per hour in the two standard lanes, which equates to one vehicle every 4.8 seconds in those lanes. Travelling at 65 mph (95 feet per second), that gives us a separation distance of 457 feet (1.5 football fields or 23 car lengths) between vehicles. Although that is an unrealistically even distribution of vehicles, it is also a very stark departure from “congested”. We presume that the trigger is therefore used to preempt gridlock by opening before the problem arises. But when applied to only a few hours on a given day, that volume does not remotely constitute congestion either for those hours, or for the day.

- c. CTIO stated that the traffic counters used were located near the Veterans Memorial Tunnels (VMT), as opposed to the Eisenhower Johnson Memorial Tunnels (EJMT), previously used for reporting. The VMT location reports much higher volumes than EJMT, and we believe captures local school, work and other short-trip, round-trip commuting traffic during the morning and afternoon hours. We believe it may distort congestion perception, and therefore need more precise data from both locations.*
- d. The underlying data was not provided to show how many of those hours are of short duration, such as only 1-3 hours at a time, when that duration may not constitute justification to open the lanes. In summary, we need 365 day/24-hour data to evaluate the request.*

2. **Days Limit:** CTIO stated that managing for both days and hours was too unwieldy and difficult. CTIO cited that looking at the current days when the triggering traffic count was met, it would need 237 days WB (up from 125), and 207 days EB (up from 100). CTIO promised that it would never use the lanes 24/7.

- a. If CTIO is already suggesting extending beyond 2035, and using 65% of the days now, it is venturing into to a territory that will not be 24/7, but in time can become 7 days a week. If the lane is only closed when we are asleep and on a few shoulder season days, it is a de-facto full-time highway, delivered in an unsafe design and without proper mitigation. We need further discussion, and to know the FHWA definition of “full-time”. What is the safety standard? What is the community impact standard?*
- b. When asked, CTIO did not know how many of those days had only 1-3 hours at its trigger levels of volume. In summary, we need 365 day/24-hour data to evaluate this request.*
- c. In addition, CDOT staff attending the presentation said a cost-benefit analysis was needed to determine the minimum number of hours that would justify the cost of opening. This is material information that we also need to evaluate the request.*

3. **Safety:** CTIO provided crash counts showing no appreciable difference between when the PPSL is opened or closed. CTIO asserted that it means opening the PPSL's is not a safety compromise, because it does not make the highway less safe. Our initial comments:

- a. *While that can be rationalized, it's also true that the comparison is between two modes of operation on the same substandard, non-FHWA-compliant design. It does not compare to a compliant 2 or 3 lane design with full 8'-12' right-hand shoulders, left hand shoulders and shy distances.*
 - b. *Both CDOT and FHWA asserted throughout the projects' CSS design processes that they were less safe than FHWA-compliant designs and used that logic as justification to press for more width. Which assertion is true?*
 - c. *The current CTIO assertion does not take into consideration that safety involves more than crash data, and that when the lanes are in operation during congested times, emergency response on the highway is delayed because there is not even a shoulder on which an emergency vehicle can make progress.*
 - d. *One may also infer that if the data shows that opening the lane is neither a safety improvement nor a safety compromise, it is therefore inconclusive.*
4. **Environmental Impacts:** CTIO stated that no additional analysis was required under the CATEX documents, and that the 1041 permits did not require annual noise monitoring.
- a. *The PPSLs were delivered as CATEX projects because they were for temporary, part time and most importantly restricted use, and as such did not require mitigation. This project would never have been approved by local jurisdictions as a long-term solution with which we would be saddled for decades.*
 - b. *Among those mitigations forgone were reasonable aesthetic standards, in order to save those investments for long-term solutions. In effect, we sacrificed quality in the short term, trusting our partners to respect a long-range vision for the quality of our future conditions. This project would never have been approved by local jurisdictions as a long-term solution with which we would be saddled for decades.*

Other Presentation Representations By CTIO:

- 1. **FHWA Approval:** CTIO stated that it had been working on this request for 6 months before coming to us and had already received "Agreement in principle with FHWA staff on the changes to the MOU."
 - a. *Conditions #9 and #10 of the WB 1041 permit states that any amendment to the permit, or new permit, shall be in accordance with the County's 1041 Regulations and must be the result of a CSS process in accordance with the 2011 ROD. To have sought FHWA approval in advance is the opposite of a CSS process. FHWA would have been but one stakeholder in the process.*
 - b. *We have heard nothing from FHWA and don't know the level of formality of its approval, nor the depth of its process to determine it. In any case, if it*

was determined without County involvement, it was not a CSS process.

2. **Legality:** CTIO stated that it had already consulted with the Attorney General's office and had determined that this change would not require a new 1041 permit.
 - a. *Condition #9 and #10 of the WB 1041 permit states that any amendment to the permit, or new permit, shall be in accordance with the County's 1041 Regulations and must be the result of a CSS process in accordance with the 2011 ROD. To have sought a legal opinion disallowing County 1041 authority before contacting the County is the opposite of CSS and suggests an intent to circumvent the 1041 requirement.*
 - b. *The County's legal counsel believes differently than the AG office, that in fact 1041 amendments or reissuance(s) are required for this request to change the operational limitations of the PPSL.*

3. **Seeking Corridor Support:** CTIO told the I-70 Coalition on Wednesday, 9/11/24 that CTIO would be seeking letters of support from the Coalition and its members. CTIO stated it would make that request within the month.
 - a. *Condition #9 of the WB 1041 permit that any amendment to the permit, or new permit must follow a CSS process to achieve approval of that change. To have sought individual stakeholder approval in advance of a more transparent and inclusive outreach is the opposite of CSS process.*

Summary

In our meeting between CTIO and our County transportation team on Monday, 9/9/24, we requested the full underlying data for the cited days of congestion supporting the snapshots and graph summaries provided in the CTIO presentation. CTIO stated that it would provide that data for us to study, but we have not received it. This is our written request asking again for that information.

We also believe that the need to fast-track this decision is not warranted and hold that the CSS process we require must be followed. The calendar year for PPSL days is just now about to roll over, which means CTIO will soon have its full annual allotment of hours and days for the PPSLs under the current permit. That should allow time to follow the prescribed CSS process.

Thanks again for CTIO material to date. We look forward to receiving more, and to meeting with CTIO on Tuesday, October 1. We think it would be constructive at that meeting to first resolve our differences of opinion about whether a new or amended 1041 permit is required to process the CTIO request.

Regards,

CLEAR CREEK BOARD OF COUNTY COMMISSIONERS



George Marlin, Chair



Randall Wheelock, Commissioner



Mitch Houston, Commissioner

CC: Margaret Bowes, Ryan Hyland (I-70 Coalition)
Abbie Modafferri, Greg Hall, (Collaborative Effort)
Chuck Harmon, Andy Marsh (Idaho Springs)
Sean Cutting (FHWA)
Speaker Julie McCluskie
Senator Dylan Roberts
Representative Judy Amabile
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