

BOARD OF COUNTY COMMISSIONERS
RESOLUTION #19-01

**AREAS AND ACTIVITIES OF STATE INTEREST CASE #SI2018-0002
CONCERNING THE SITE SELECTION OF ARTERIAL HIGHWAYS AND INTERCHANGES AND
COLLECTOR HIGHWAYS
LOCATED IN THE UNINCORPORATED PORTIONS OF THE I-70 RIGHT-OF-WAY
BETWEEN MILEPOST 232 AND MILEPOST 243**

WHEREAS, CRS 24-65.1-101(2)(b) provides that: "Local governments shall be encouraged to designate areas and activities of state interest and, after such designation, shall administer such areas and activities of state interest and promulgate guidelines for the administration thereof"; and

WHEREAS, the Clear Creek County Board of Commissioners has adopted regulations as per Resolution #06-92, pertaining to Review for Areas and Activities of State Interest pursuant to specified procedures including proper public notice; and

WHEREAS, the Colorado Department of Transportation (CDOT), applicant, has applied for a 1041 Permit for site selection of arterial highways and interchanges and collector highways [*Guidelines and Regulations for Matters of State Interest, Chpt 1(D)(2)(a)(iv)*] to add a peak period shoulder lane (PPSL) and associated signage between approximately milepost 232 and milepost 243, in the westbound direction, in order to provide westbound operational improvements to relieve traffic congestion during peak periods when westbound traffic volumes are highest ("Project"); and

WHEREAS, the Project is the construction and operation of a temporary operational improvement on I-70 that is not intended to be used beyond the year 2035 as provided the Amended and Restated Memorandum of Understanding (MOU) by and between the Federal Highway Administration, United States Department of Transportation (Division), Colorado Department of Transportation (CDOT) and Colorado High Performance Transportation Enterprise (HPTE), pending execution (Amended and Restated MOU), a copy of which is attached hereto identified as "Appendix A"; and

WHEREAS, the Project includes the specific operational limitations set forth in the Amended and Restated MOU, paragraph d; and

WHEREAS, the Board of County Commissioners, pursuant to public notice published 12 December 2018, held a public hearing at their regularly scheduled meeting on 22 January 2019, and continued to 5 February 2019, to consider the request for a 1041 Permit for the site selection of arterial highways and interchanges and collector highways.

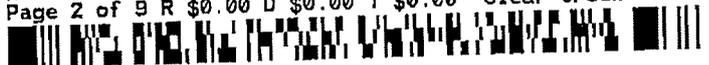
NOW, THEREFORE, based upon the application and the other evidence presented at the hearing, the Board of County Commissioners finds the following facts:

FINDINGS OF FACT

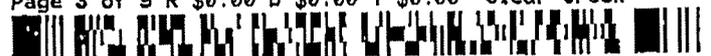
1. The proposal has shown it has obtained all necessary property rights, permits, and approvals. To assure that the proposal operates with all of the necessary rights, permits and approvals throughout its life, and to assure that the proposal ceases to exist when corresponding permits and approval cease to exist, Conditions #1, 2, 3, 4, 9, and 10 are necessary.
2. The applicant has the necessary expertise and financial capability to develop and operate the project consistent with all requirements and conditions.



3. The project is technically and financially feasible. Condition #11 is necessary to assure that this criterion is met throughout the life of the proposal.
4. The project will not impair property rights held by others.
5. The project will not have an adverse effect on the capability of local governments affected by the Project to provide services, or exceed the reasonable capacity of service delivery systems and public utilities as long as Condition #6 is implemented to provide the County the information necessary for the County to be prepared for the applicant's traffic management operations and incident management process.
6. The project will not create a financial burden on existing or future residents of the County. Condition #11 is necessary to assure that this criterion is met throughout the life of the proposal.
7. The benefits accruing to the County and its citizens from the Project outweigh the losses of any natural, agricultural, recreational, grazing, commercial or industrial resources within the County, or the losses of opportunities to develop such resources.
8. The project will not significantly degrade any current or foreseeable future sector of the local economy as long as Condition #6 is implemented to provide the County the information necessary for the County to be prepared for the applicant's traffic management operations and incident management process.
9. The project will not have a significant adverse effect on the quality or quantity of recreational opportunities and experience.
10. The project is consistent with local, regional, and state master and comprehensive plans including the County endorsed I-70 Mountain corridor environmental Impact Statement Preferred Alternative, and will not have a significant adverse effect on desired local and community land use patterns.
11. The project avoids areas subject to natural hazards.
12. It is reasonably anticipated that the project will not significantly degrade air quality. However, air quality was not measured in the proposal area, therefore, in order to assure that this finding remains throughout the life of the project, Condition #5(c) is necessary.
13. It is reasonably anticipated that the project will not increase water pollution levels in violation of applicable federal, state, and local surface water and groundwater quality control standards, will not result in a net loss of wetland values and functions, will not significantly degrade terrestrial or aquatic life or its habitats, and will not significantly degrade terrestrial plant life or plant habitat if constructed and operated in a manner designed to mitigate effects, after construction and operation, on water quality. To assure that this finding remains the case for the life of the project Condition #5(a) is necessary.
14. The project will avoid significant adverse impact on critical wildlife habitat.
15. The project does not degrade areas of paleontological, historic, or archaeological importance and will have no adverse impact on cultural resources.
16. The project will not degrade soils or geologic conditions.
17. The planning, design and operation of the project reflects principles of resource conservation, energy efficiency and recycling, and does not degrade existing visual quality.
18. Xeriscaping concepts and water conservation has been demonstrated for landscaping and the project meets the standards of the County's Best Management practices for control of stormwater runoff. Plant species that the County has determined are invasive, noxious, or otherwise a nuisance are prohibited. To assure noxious weeds are not used or brought into the County by this proposal, Condition #7 is necessary to be implemented.
19. The project will not cause a nuisance and will not result in an unreasonable risk of releases of hazardous materials as long as Condition #6 and Condition #12 is implemented to provide the County the information necessary for the County to be prepared for the applicant's traffic management operations, and incident management process.
20. The project does not impede or interfere with existing mining operations, nor is there an



- adverse impact on mineral resources in the County.
21. Adequate legal and physical access has been demonstrated.
 22. The project is located so that local traffic needs are met and will preserve at grade access from locally-maintained roads.
 23. The project is located in a corridor for which a clear and reasonable local and regional need for such facility has been demonstrated.
 24. Reasonable alternative modes of transportation have been incorporated into the proposal. To assure this finding; condition # 8 is necessary.
 25. The proposed location and access limitation of the Project will not permanently isolate community neighborhoods from public facilities.
 26. The proposed location and access limitations will not permanently restrict access via other roadways, mass transit facilities, pedestrian walkways, and bikeways to local commercial services, business, and employment centers, and public facilities.
 27. The project does not create safety hazards to motorists, pedestrians, or bicyclists by causing or contributing to overuse, improper use, or congestions, or cause unnecessary diversion or regional traffic onto local roadways or inappropriate or inadequate connections to pedestrian and bicycle routes.
 28. The project is located so as to complement the compact and efficient extension of planned public services, utilities, urban-density commercial and residential development, and development in general to full-service communities.
 29. The project will adhere to the plan, process, procedure, and requirements of the State of Colorado and the Federal Highway Administration and such construction, expansion, or modification will be included in the Denver Metropolitan Regional Transportation Plan.
 30. The benefits of the Project outweigh the social, fiscal, and environmental impact and the loss of any scenic, historical, archeological, or natural resources rendered unavailable as a result of the location of the Project if the conditions are met continuously while the Project is constructed and operated.
 31. The use of the Project will not increase air pollution levels beyond applicable federal or state ambient air standards and will conform to the vehicle emissions budget of the State Implementation Plan.
 32. Noise levels caused by the Project (that is, while the peak period shoulder lane is being used) reasonably are predicted to not exceed 55 decibels as measured by a 24-hour Equivalent Sound Level metric at any residence, noise-sensitive public facilities such as schools, museums, courts, libraries, etc., or other noise-sensitive location, recognizing, however, that CDOT did not evaluate noise aspects of the Project because it is partly federally funded and does not qualify for design to meet noise goals or standards under FHWA standards. Because noise impacts show that noise already exceeds this criterion, it is necessary for noise monitoring to occur to assure that this condition will be met for the life of the proposal. Therefore, Condition #5(b) that requires noise monitoring is necessary.
 33. Visual Quality/Scenic Resources
 - a. The Project will be designed to avoid or minimize visual impacts, including views of the highway or interchange from residential areas, and to blend into the surroundings. Interchanges will be attractively landscaped with natural species suitable for the elevation and climate of the immediate area, and will identify major gateways in the County that are identified in the Clear Creek County 2017 Community Master Plan.
 - b. Further, the Project shall be designed to minimize the alteration of significant natural landforms and to preserve, wherever practical, distinctive natural features. Placement of interchanges and alignments of arterial and collector highways shall respect the existing contours of the land and the natural environment.



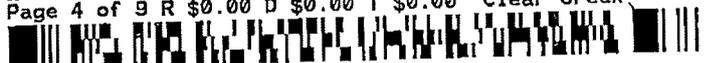
34. Alternatives

The Project is justified in relation to other possible expansion and modification alternatives and not solely in relation to the no-build alternative of no expansion or modification.

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners hereby **APPROVES** Activities and Areas of State Interest Case #SI2018-0002 for a 1041 Permit to construct and operate a temporary operational improvement on I-70 subject to CDOT complying with the following conditions:

STIPULATIONS AND CONDITIONS

1. The Project shall cease operation no later than the end of year 2035. Nothing herein bars CDOT from applying for an amendment to this permit or a new 1041 or other permit, as applicable, to extend the period of this Permit. An application for a new 1041 Permit or to amend this 1041 Permit, as appropriate, shall be considered by the Permit Authority in conformance with the County's 1041 Regulations.
2. CDOT (including HPTE) shall continuously operate the Project in compliance with the operational limitations set forth in paragraph d of the Amended and Restated MOU, the Categorical Exclusion, and the I-70 WB Peak Period Shoulder Lane Business Rules, as of the date of the approval of this Permit.
3. The Amended and Restated MOU refers to the "corridor" when agreeing to collect data in order to provide a view of total performance of it. The corridor is defined as that portion of I-70 located within Clear Creek County.
4. CDOT shall provide the County (in care of the Planning Department) the certification, and the performance data underlying it, that it provides FHWA pursuant to paragraph b of the Amended and Restated MOU at the time it provides it to FHWA.
5. Environmental Conditions
CDOT will track and document its implementation of all environmental mitigation commitments found in Table 7 of the Project's Categorical Exclusion. These commitments were identified in conjunction with Clear Creek County representatives and other various stakeholders during the Project's development.
 - a. Water Quality
CDOT shall measure and track the performance of all permanent sediment control BMP structures installed for this Project by measuring and tracking the amount of sediment/debris being captured by each structure and report such data to Clear Creek County annually by June 15 of each year.
 - b. Noise
Noise monitoring shall continue, at all of the locations required by the Eastbound PPSL Project (BOCC Resolution #14-044) and additional monitoring shall occur at the Dumont schoolhouse (a community center for D-L-D area). To maintain consistency in reporting at these monitoring locations, the locations shall not be changed. All monitoring, including that monitoring required by the Eastbound PPSL Project, shall conform to the following. The first monitoring shall occur before construction begins. After construction is complete and operations begin, an additional three (3)-year monitoring shall occur at said locations,

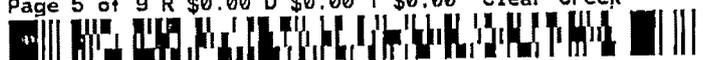


and then monitoring shall occur every five (5) years unless perceptible increases (4dbA) are seen at half or more of the locations during the initial three (3) years.

Noise shall be measured by a 24-hour Equivalent Sound Level metric or as otherwise approved by the Community Development Director. After construction, CDOT will measure noise during both off-peak traffic periods and peak traffic periods (when the Project is open to traffic) and twice per year; once during the busy periods of the ski season and once during the busy periods of the summer season.

CDOT shall report such data to the Clear Creek County Planning Department annually by June 15 of each year.

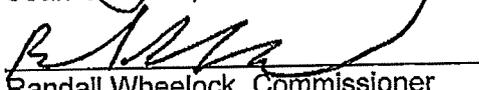
- c. CDOT will provide two (2) air monitoring stations to Clear Creek County to be placed at locations specified by the County. The County will be responsible for collecting data and shall provide said data to CDOT by June 15 of each year.
 - d. Review
CDOT will report all of the data collected regarding the environmental mitigation commitments, and all other environmental data collected in the Project area to the Clear Creek County Planning Department by June 15 of each year. The data will be reviewed by the 1041 Permit Administrator and a report will be provided to the Permit Authority. If the Administrator determines a public hearing with the Permit Authority is appropriate to evaluate the data and compliance with this Permit, or if the Permit Authority requests it, the Permit Authority will schedule one.
6. An Incident Management Plan must be approved by the County Manager after staff review. The Plan shall be submitted for County Staff review and action by the County Manager within two (2) weeks of submittal.
 7. The Noxious Weed Management Plan must conform to the County's Noxious Weed Management Plan and be approved by the County Manager after staff review. The Plan shall be submitted for County staff review and action by the County Manager within two (2) weeks of submittal.
 8. CDOT shall construct all of the alternative projects as described in the INFRA Grant Application for the I-70 Westbound Peak Period Shoulder Lane, or as otherwise agreed to by Clear Creek County and in the approved Clear Creek County list of Assurances.
 9. At the conclusion of the operation of the PPSL, all signage and visible sign infrastructure shall be removed within six (6) months after the Project ceases. Nothing herein bars CDOT from, at the conclusion of the Project, applying for an amendment to this permit or a new 1041 or other applicable permit to retain some or all of the signs and/or visible sign infrastructure. Any such application must be filed before the deadline for removal and include among responses to other requirements, an evaluation following the CSS process of the safety, mobility and other relevant benefits that could be obtained by preserving such signs and sign infrastructure. An application for a new 1041 Permit or to amend this 1041 Permit, as appropriate, shall be considered by the Permit Authority in conformance with the County's 1041 Regulations.
 10. Consideration and approval of this Permit is based on the following specific submittals;
 - a. 1041 Permit Application Executive Summary (Nov. 12, 2018)
 - b. Final Categorical Exclusions for a) Westbound PPSL (Oct. 29, 2018, signed Nov. 1, 2018),

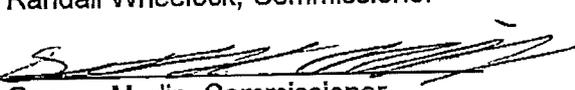


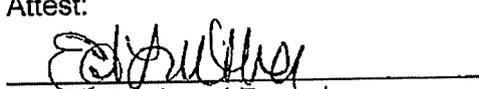
- and b) Fall River Road Bridge (signed Oct. 11, 2018)
 - c. Draft Amended and Restated Memorandum of Understanding (MOU) between FHWA, CDOT, and HPTE
 - d. Final Concept of Operations Report (Oct. 19, 2018)
 - e. I-70 WBPPSL Business Rules (Jan. 30, 2019)
 - f. Final Traffic Incident Management Plan for the I-70 Corridor in Clear Creek County (Aug. 2018)
 - g. Final EBPPSL Traffic Incident Management Plan (Dec. 2015)
 - h. FOR 90% Plans and Specs (Nov. 1, 2018)
 - i. Document of Assurances (as submitted in the application on Nov. 12, 2018)
- Therefore, any change to any of the submittal items, made prior to or after a 1041 Permit approval, which is not specifically acknowledged and approved in advance of such change by the Permit Authority (County Commissioners) will constitute a violation of the permit.
11. The financial report regarding the tolling facility shall be provided in writing to the BOCC at the same time the annual certification report is provided.
12. Specific water treatment facilities and/or technologies, and repositories for regulated solid waste shall be identified and reported to the Board of County Commissioners prior to start of construction.

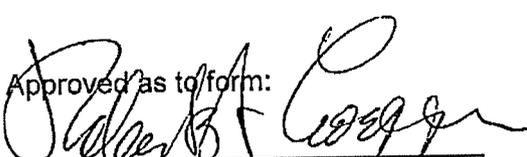
ADOPTED this 5th day of February, 2019 at a regularly scheduled meeting of the Clear Creek Board of County Commissioners.

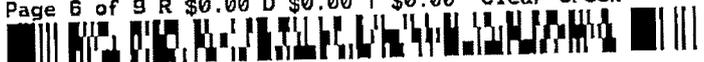

 Sean C. Wood, Chairman


 Randall Wheelock, Commissioner


 George Marlin, Commissioner

Attest:

 Deputy Clerk and Recorder

Approved as to form:

 Robert Loeffler, County Attorney



**AMENDMED AND RESTATED
MEMORANDUM OF UNDERSTANDING (MOU)
By and between the
FEDERAL HIGHWAY ADMINISTRATION,
UNITED STATES DEPARTMENT OF TRANSPORTATION (Division)
AND
COLORADO DEPARTMENT OF TRANSPORTATION (CDOT)
AND
COLORADO HIGH-PERFORMANCE TRANSPORTATION ENTERPRISE (HPTE)**

WHEREAS, CDOT has constructed both the *I-70 Eastbound and Westbound Peak Period Shoulder Lane Projects* (hereinafter referred to as the "Project"); and

WHEREAS, the Division, CDOT and HPTE previously entered into an MOU for the Project on April 22, 2014, and subsequently entered into Amended MOU on September 22, 2017 that allowed for added operation flexibility following the commencement of operations; and

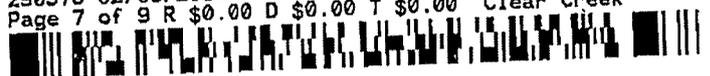
WHEREAS, this Second Amended MOU is intended to supersede and replace the MOU dated September 22, 2017; and

WHEREAS, CDOT and HPTE desire to continue tolling during periods of high traffic volumes on the eastbound inside shoulder from MP 230 to MP 241 and on the westbound inside shoulder from MP 242 to 230.5 (hereinafter collectively referred to as the "Toll Facility"); and

WHEREAS, the Division, CDOT and HPTE recognize the seasonality of the traffic demand experienced by the Toll Facility and therefore agree that for purposes of data collection, operational assessments, performance measures and reviews, the Toll Facility reporting period shall be the twelve month operating year from November 1st to October 31st, inclusive; and

WHEREAS, the following are conditions of the design variance required for the Project:

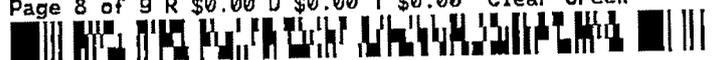
- a. CDOT and HPTE agree to collect sufficient Toll Facility data and adjacent GP Lanes data to provide a complete view of the total corridor performance.
- b. The following data on the Toll Facility and adjacent GP Lanes are to be collected during each operating year to assemble the following performance measures that are based upon the Project's Concept of Operations. The Project's Concept of Operations, recommended performance measures areas follows:
 1. Interstate 70 Travel Time Reliability;
 2. Interstate 70 Traffic Volume and Traffic Type;
 3. Interstate 70 Safety and Crash Data, during operational and non-operational periods including the location of the incident;
 - a. Included as a performance measure will be an evaluation of incidents that occur in the Toll Facility when the Toll Facility is in the closed state; and
 - b. Evaluation of signing and striping related to safety and operations of the facility.
 - c. Outreach to emergency responders for feedback on the safety and operations of the facility.
 4. Incident clearance times (as measured from the time of dispatch of Courtesy Patrol to when all emergency responders have left the scene).



The information provided by the performance measures shall be assembled into a report that provides an assessment of the operating year's performance with recommendations as needed for the upcoming operating year. If needed, as a part of the operating year assessment, CDOT or HPTE will conduct a review of the functionality of the Toll Facility or components of the Toll Facility. The accuracy and findings of the report shall be certified by CDOT and HPTE and submitted to the Division, within two months of the end of the operating year. One certified report shall be sufficient to satisfy the requirements of this paragraph so long as both parties are bound by such certification. CDOT and HPTE agree to provide Clear Creek County (CCC) results of the Project's ongoing assessment as a part of CDOT/CCC Quarterly Coordination Meetings.

- c. CDOT will maintain the striping to ensure the striping remains of high quality for the facility.
- d. CDOT and HPTE agree to limit the use of the Toll Facility according to the following operational limitations:
 1. The Toll Facility operations shall be limited to peak periods of congestion, which based on modeling and historic data, are projected to be on Saturdays and Sundays in the eastbound direction, and Fridays, Saturdays, and Sundays in the westbound direction from December through March, and July through September.
 2. The Toll Facility shall operate during holiday associated traffic and planned special events throughout the year, both which are anticipated to generate a large, concentrated number of return trips from the I-70 Mountain Corridor to the Denver Metropolitan Area.
 3. In order to balance the semi-predictable nature of the I-70 Mountain Corridor traffic peaks with the uncertainties that come from adverse weather and tight geometry, HPTE and the CDOT Transportation Management Center (CTMC) operations center will have the flexibility to determine when congestion levels have risen to a level that warrants opening the Toll Facility. It is anticipated that the Toll Facility will normally be operated between the hours of 6:00am and 8:00pm.
 4. When necessary, the Toll Facility shall be allowed to operate during emergency closures of the general purpose lanes. A toll may not be charged for use of the Toll Facility during emergency closures. If a toll is not charged, these hours of emergency use will not be counted when calculating whether the Toll Facility's annual operational limits set forth in Paragraph 6 below apply.
 5. The Toll Facility operations are weather dependent.
 6. 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
 7. 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.
 8. 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.
 9. 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 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.



IN WITNESS THEREOF, the parties hereto have caused this Amended MOU to be duly executed, on the date of the last signature below.

COLORADO DEPARTMENT OF TRANSPORTATION

BY: _____
Michael P. Lewis, Executive Director

DATE: _____

COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

BY: _____
David I. Spector, Director

DATE: _____

**FEDERAL HIGHWAY ADMINISTRATION
COLORADO DIVISION**

BY: _____
John M. Cater, Division Administrator

DATE: _____

DRAFT

