

Draft minutes to be approved by the NFRT & AQPC at the June 7, 2012 meeting.

**Meeting Minutes of the
NORTH FRONT RANGE TRANSPORTATION &
AIR QUALITY PLANNING COUNCIL**

**May 3, 2012
6:00 p.m.
Larimer County
200 West Oak Street
Fort Collins, CO**

VOTING MEMBERS PRESENT:

Julie Cozad - Milliken
Sean Conway - Weld County
Tom Donnelly - Larimer County
Jan Dowker - Berthoud
Bruce Florquist - Severance
Kathy Gilliland - Trans. Comm.
Ben Manvel - Fort Collins
Andy Martinez - LaSalle
Kristi Melendez - Windsor
Troy Mellon - Johnstown
John Morris - Evans
Tom Norton - Greeley
Kevin Ross - Eaton
Joan Shaffer - Loveland

ABSENT:

Jill Grossman - Belisle - Timnath
Brian Seifried - Garden City
Mike Silverstein - AQCC

MPO STAFF:

Stan Elmquist, Aaron Fodge, Suzette Mallette, Shawn Monk, Rachael Munroe, Renae Steffen, Mary Warring.

IN ATTENDANCE:

Kathleen Bracke, Kendra Carberry, Eric Fuhrman, John Holdren, Myron Hora, Evelyn King, Dave Klockeman, Helen Migchelbrink, Molly North, Mark Peterson, Karen Schneiders, Don Taranto, Gary Thomas, Ina Zisman.

Chair Donnelly called the MPO Council meeting to order at 6:04 p.m. Donnelly recognized several new Council members in attendance. He recognized John Morris, alternate for Evans; Kistie Melendez, alternate for Windsor; Jan Dowker, MPO representative for Berthoud; Troy Mellon, MPO representative for Johnstown and Kevin Ross, MPO representative for Eaton.

Aaron Fodge, MPO staff, recognized and thanked the following students for creating GIS maps for the MPO's Regional Bike Plan: Aaron Yuhas, Colorado State University; Jared Pappert-Stockton, Colorado State University; Joshua Reyling, University of Northern Colorado and Ken Bucko, Colorado State University.

PUBLIC COMMENT:

Evelyn King, resident of Unincorporated Larimer County, addressed the Planning Council asking the MPO to write a letter to the Air Quality Control Commission prior to their hearing on May 17,2012, regarding proposed changes to Regulation 11.

King said the MPO letter should thank the State for proposing to clarify that the NFR I/M program is NOT included in the SIP (State Implementation Plan) with the EPA. There have been many presentations and hearings where this fact has been incorrectly characterized, so it is refreshing to know that the State now understands the correct information and is putting it in writing.

King said the MPO should ask the State, through this proposed amendment to Reg 11, to add the additional clarifying fact that because the NFR I/M program is NOT included in the SIP and the EPA has no enforcement of this program, the State should no longer incorrectly suggest that the Federal Government might be able to pull our Federal Highway Fuel Tax Dollars if the NFR no longer has an I/M program.

King concluded by saying the MPO should request that the NFR Cutpoints and the High Emitter Program provisions, which are being removed as obsolete, should be listed with identification as to which Parts/Sections they were removed from.

Conway said he supports King's request to write a letter.

APPROVAL OF THE MINUTES :

Donnelly asked for approval of the April 5, 2012 Minutes. The Minutes were approved unanimously.

EXECUTIVE SESSION:

Conway made a motion that the MPO Planning Council enter into Executive Session for the purpose of discussing personnel matters related to the position of the Executive Director, pursuant to Section 24-6-402(4)(f) of the Colorado Revised Statutes as well as legal advice pursuant to Section 24-6-402 (4)(b) of the Colorado Revised Statutes. Shaffer seconded the motion and it passed with unanimous vote.

Kendra Carberry, attorney for the North Front Range MPO, stated that it is her opinion that the following constitutes an attorney-client privilege communication and the recording is being turned off.

An Executive Session was held that lasted an hour and forty minutes.

Lead Planning Agency for Air Quality Agenda

COUNCIL REPORTS:

Air Quality Control Commission Report: Mallette, MPO staff, reported in Mike Silverstein's absence, Colorado Department of Health, that in response to a question last month an explanation regarding the failure rate of the I/M program in Larimer and Weld County was distributed to the Planning Council.

Regional Air Quality Council Report: Ben Manvel, MPO Representative to the RAQC, reported that CDOT Director Don Hunt was the main presenter and talked about improving processes focusing on the fact that funding is going away.

Manvel said the RAQC heard from Gary Kaufman of the Air Quality Control Commission about remote sensing and the fact that high-emitter tests do not work that well. He concluded by saying the RAQC will meet tomorrow.

Donnelly asked for further discussion on King's request for a letter to the Air Quality Control Commission regarding proposed changes to Regulation 11.

Malette clarified the content of King's requested letter stating she received an email from King with the highlights of the letter. Malette said she would draft a letter using King's email for reference.

Conway requested that the letter be drafted in a timely manner so that it is received by the Air Quality Control Commission in time for their May 17th hearing.

Donnelly asked for concurrence from the Council on sending a letter on behalf of the Planning Council.

Manvel questioned King's second claim that the NFR I/M program is NOT included in the SIP suggesting that the Federal Government might be able to pull our Federal Highway Fuel Tax Dollars if the NFR no longer has an I/M program. He said the real threat to our highway dollars comes from non-compliance.

Conway said the argument the Colorado Department of Health made in regard to SB-09-003 was that passing any type of legislation that would give local governments an opportunity, if they are in compliance with the .075EPA standard, would jeopardize highway funding which is not accurate. He said all the letter is doing is clarifying the facts.

Manvel asked is not the case that the threat to highway funding comes from not meeting the .075 standard?

Norton said if it is not in the SIP, there is no action that can be taken to not fund our program. If there is a violation, then the requirement would be to put something in the implementation program making it federally enforceable.

Manvel clarified that the State Implementation Program is only accepted by the state.

Malette said the federally enforceable SIP goes to the EPA for approval. She said in 2008 the state had a federally enforceable SIP and other things like the I/M program that were not federally enforceable that were on the state side. She said the reason they did that is because what is in the federally enforceable SIP is more stringent and more difficult to change or modify.

Donnelly asked Malette if she feels the second proposed point of King's letter is accurate.

Malette said she believes so but will double-check.

King said that the only time the federal government can revoke funds is if there is no approved SIP.

Gilliland suggested Malette research the second proposed point of King's letter and if it is accurate send it to Chair Donnelly for signature.

Chair Donnelly adjourned the Lead Planning Agency portion of the agenda.

Metropolitan Planning Organization (MPO) Agenda

Chair Donnelly opened the MPO portion of the Planning Council meeting. He recognized that Rachael Munroe resigned from the MPO and Renae Steffen will be replacing her.

Executive Director Report:

Malette, Interim Executive Director, reported that the April 18th MPO Orientation was a success and another MPO Orientation is scheduled for November 14, 2012. She said the MPO is currently interviewing for a new Financial Administrative and Operations Director as Crystal Hedberg is retiring.

CONSENT ITEM:

1. TIP Amendment – FASTER Transit

Key Points:

- City of Loveland was recently awarded \$383k of FY13 FASTER Transit – Statewide Award funds to program the Orchards Regional Bus Transfer Center – Phase 2 project.
- City of Loveland is requesting an amendment to add this project to the TIP.
- Adding a new project to the TIP in the FASTER Transit Program requires a Planning Council Amendment (aka “Policy Amendment”).

Committee Discussion / Recommendation(s):

The TAC committee unanimously recommended at its April meeting that the NFRMPO Council approve the proposed amendment.

Supporting Information:

The Colorado Department of Transportation’s (CDOT) Division of Transit and Rail (DTR) distributes FASTER Transit funds, assisting projects such as bus purchases and park-n-ride lot improvements across the state. Transportation Commission approval occurred on February 16, 2012.

A provision in the FASTER legislation provides for the allocation of funds into the CDOT State Transit and Rail Fund, which provides grants to local governments for transit projects, such as new bus stops, bike parking, maintenance facilities or multi-modal transportation centers. For FY13 there was more of an emphasis on fixing and replacing existing infrastructure, completing existing projects, and matching federal funds rather than assigning new projects.

There were two projects located in the NFRMPO that were recommended by CDOT’s DTR to receive funds. One was this Orchards Regional Bus Transfer Center – Phase 2 project for \$383k. The City of Loveland’s project will complete the bus transfer center at Orchards and was well aligned with the FY13 goals for the program.

The second involved the Transfort CNG Buses (Fort Collins) project. The FASTER Transit funds will replace with State funds a portion of the local (City of Fort Collins) match that had previously been committed for Transfort to purchase buses, a project that involves federal CMAQ funds. This exchange of funding sources for the required match does not require a TIP Policy Amendment, only an Administrative Amendment, as this project had already been programmed in the current TIP.

Advantages: This TIP amendment will allow the project to move forward.

Cozad made a motion to approve the TIP Amendment – FASTER Transit Orchards Regional Bus Transfer Center – Phase 2. Shaffer seconded the motion and it passed with unanimous vote.

ACTION ITEMS:

2. Articles of Association

Malette, MPO Staff, reported that on page 32 of the draft Articles of Association, there are several new appendices. This particular appendix, 'Conduct of Meetings', was written by the MPO Attorney, Kendra Carberry.

Malette asked the Council to look at the Order of Business. She said it currently states, "The business of the North Front Range Transportation and Air Quality Planning Council (the "Council") shall generally be conducted in the following order:

- Call Meeting to Order
- Pledge of Allegiance
- Roll Call
- Public Comment
- Approval of Minutes
- Action Items
- Presentations
- Work Session Items
- Discussion Items
- Council Reports
- Other Business
- Adjournment

Malette suggested removing "roll call" voting or say the meetings will "generally" be conducted in this order.

Shaffer asked if Council member attendance is noted in the minutes and if it is why would a roll call be needed.

Munroe said that it was.

Manvel suggested removing "roll call" and go with the word "generally."

Donnelly pointed out that the Planning Council agenda has been revised in the past few months to include a separate section for the Lead Planning Agency Agenda and a separate section for the MPO agenda.

Conway asked who suggested adding roll call to the order of business.

Malette said the suggestion was made by the Articles of Association Committee.

Cozad clarified that she made the recommendation for a meeting process and Carberry drafted the language because the Council was not following Robert's Rules of Order.

Donnelly said the order of business should follow the format of the agenda that is currently being used.

Malette suggested putting the word "generally" in the language.

Cozad said it makes sense to change the word "shall" to "generally" and delete "roll call."

Malette said there is a reference to a specific edition of Robert's Rules of Order and asked if Council wanted to specify a certain edition.

The Council agreed not to cite a specific edition of Robert's Rules of Order.

Malette said May 3, 2012 would be added as the effective date on page 36 of the Articles of Association.

Manvel made a motion to approve Resolution number 2012-10 adopting Conduct of Meetings. Martinez seconded the motion and it passed with unanimous vote.

Mallette said the next section of the document under review starts on page 6. She said subcommittees of the Council would require a Charging Statement that would serve as the written charge of the committee and would be approved by Council prior to the start of each such committee's work. The Council as a whole would determine what would be the subcommittee's responsibilities.

Mallette said last month the Air Pollution Control Division staff said they will be attending the MPO meetings and participating and voting in air quality related items only. She said the outstanding issue is whether the State Members (e.g. Transportation Commissioner) would be able to vote on the Call for Projects that awards funding in the Transportation Improvement Program (TIP): They would be able to vote on subsequent amendments.

Manvel asked for number agreement under section 1c, "Air Pollution Control Division member votes."

Gilliland said the issue before Council is whether the Transportation Commissioner should be allowed to vote on the Call for Projects.

Mallette explained that every two to four years federal transportation dollars come into the region for which local government entities can submit projects. The projects are then scored and ranked and Council ultimately decides which projects are awarded funds.

Mallette said what is being proposed by the Articles of Association Committee is that the Transportation Commissioner not be allowed to vote on the Call for Projects but would be allowed to vote on any subsequent amendments.

Gilliland said she heard there is a thought that if she votes at the state level as the Transportation Commissioner and then votes as a representative on the MPO Planning Council she is "double-dipping" in the voting process. She said this is not the case and she feels she has a better perspective on regionally significant projects as she visits with each community and tries to get a better understanding of what projects are priorities.

Gilliland feels her vote as Transportation Commissioner is justified. She said it is an anomaly for the Transportation Commissioner to have a vote on the MPO as most other Transportation Commissioners do not have a vote. However, it affects the participation of those Transportation Commissioners when they do not have a vote.

Dowker asked how it came about that the Transportation Commissioner should not have a vote.

Conway said the issue is not personal against Gilliland, it came up relating to what the appropriate role is of non-elected members of the MPO Council. Conway said all other members of the Planning Council are elected officials and the NFRMPO is the only MPO in the state that allows the Transportation Commissioner to vote. He reiterated that eliminating the state representatives vote only pertains to the Call for Projects, which would eliminate their vote only once every three to four years on the final Call for Project vote.

Donnelly stated that proponents of this change, feel elected representatives should make decisions as to how funding is allocated.

Manvel said if we are talking about a representative democracy, we really should have weighted votes on everything. He said he feels Gilliland is in a position to bring a regional perspective looking at all the communities at once instead of one community at a time.

Norton said that at the Transportation Commission, they are making state-wide decisions on allocation and funds and they have a broader view. He said that view is already considered at the state level and if

you bring it to the local view, you have “double-dipped” in that process. He said he does not agree with Manvel’s argument that everything should be a weighted vote.

Mellon said he does not see the need to strip out the Transportation Commissioner’s vote once every four years.

Shaffer said she appreciates all the comments, but she and the City of Loveland do not support taking the vote away from the state representatives.

Morris said he appreciates the Transportation Commissioner’s input, but believes votes should be for elected officials. He said he does not feel having that vote increases the transportation Commissioner’s knowledge that she brings to the table.

Shaffer said the Transportation Commissioner is appointed by an elected official, the governor of the state.

Mallette said the final point of discussion is listed on page 8 of the Articles of Association. It highlights defining how the populations are determined within the counties. It clarifies that the state representatives have one vote on the weighted vote.

Gilliland said she is fine with the Transportation Commissioner having only one weighted vote.

Donnelly said these recommendations come to the Council after nearly a year and half process of the Articles of Association Committee. He said the recommendations represent a negotiation and will honor the spirit of negotiation and support the changes.

Manvel made a motion to approve Resolution number 2012-09 adopting amendments to the Articles of Association. Conway seconded the motion.

Manvel made a motion to amend on page 7 to strike A and B and make the Air Pollution Control Division item A. Shaffer seconded the motion.

A roll call vote was conducted on the amended motion. The motion was denied with the following members in opposition: Donnelly, Dowker, Morris, Norton, Martinez, Cozad, Florquist, Conway, Melendez. The following members supported the amendment: Ross, Manvel, Mellon, Shaffer and Gilliland.

Another roll call vote was taken on the original motion to approve the amendments to the Articles of Association. The following members voted in favor of the original motion: Donnelly, Dowker, Ross, Morris, Manvel, Norton, Martinez, Cozad, Florquist, Conway, Melendez. The following members opposed the original motion: Mellon, Shaffer and Gilliland.

3. TIP Amendment – new funds (STP-Metro, CMAQ, TE)

Key Points:

- Over \$3M in newly available funds can be assigned to TIP projects in FY12 and FY13.
- A Policy Amendment of the TIP was approved by the NFRMPO Council at the April 5, 2012 meeting that increased the “NFR Not Assigned STP-Metro” funding amount, a consequence of having reduced the amount of STP-Metro funds associated with the Unified Planning Work Program (UPWP).

- Additional funds (beyond those noted above) have been made available through action by the State Transportation Commission (TC) for the STP- Metro, Congestion Mitigation & Air Quality Improvement (CMAQ), and Transportation Enhancement Activities (TE), and are now available for MPO-specific distribution.
- Funding pool reconciliation and project closures have identified unused funding that can be reassigned to projects in the STP-Metro (\$20K) and CMAQ (\$302K) programs.
- The proposed assignment of these funds would rely on the scoring and ranking from the last NFRMPO “Call for Project” process (2010-2011), as updated, implying that a new Call for Projects is not considered necessary.
- Considering that these funds are being assigned late in the fiscal year, the TAC recommended that “Extensions” associated with the TIP Project Delay Policy not be counted against the projects receiving new funds if/when funds would be rolled forward from FY12 to FY13.

Committee Discussion / Recommendation(s): TAC discussed this item during their April 18, 2012 meeting. They also reviewed the most recent unused funds identified by funding pool reconciliation and project closures process and compared it to what the NFRMPO Council had reviewed at the April 5, 2012 meeting. There were no issues and TAC recommends Council approve of the assignment of these additional funds to the projects noted below.

Project sponsors provided information to the MPO staff about project phasing by funding year and agreed to the distribution of the funds across the years.

TAC unanimously agreed due to the funding assignments occurring late in the State Fiscal Year FY12 that project sponsors who will not be able to utilize these newly released funds in FY12 will not be penalized with the count of a “1st extension” if they need to request funds to be rolled forward into FY13.

Manvel made a motion to approve Resolution number 2012-11 amending the Transportation Improvement Program (TIP) for purposes of assigning newly available funds to projects. Shaffer seconded the motion and it passed with unanimous vote.

4. Semi-Annual Project Review -Delayed Projects

Key Points:

The NFRMPO’s *TIP Project Delay Policy* calls for the status of projects funded from the following programs to be reviewed each March and September: STP-Metro, Transportation Enhancements and Congestion Mitigation & Air Quality Improvement (CMAQ) programs.

With regard to extensions of project schedules, the March 2012 results follow, the first of which requires Council action:

- Requests for 2nd Extensions of Project Schedules
 - There are three projects for which the NFRMPO has been requested to take action on extending their Ad or NTP Dates into FY13 from FY12:
 - Timnath – Harmony Rd (Timnath) Phase 2A (STP-Metro):
 - \$1,000,000 Federal
 - Timnath – Poudre River Tr – North Timnath (Transportation Enhancements):
 - \$367,000 Federal
 - Loveland- I-25/US34/Crossroads VMS (CMAQ)
 - \$370,000 Federal
- Requests for 1st Extensions of Project Schedules

During the March 2012 review, only one project had experienced delays which would have characterized it as needing a “1st Extension.” However, at the April 18, 2012 Technical Advisory Committee (TAC) meeting, the project sponsor announced that it would be advertised prior to June 30, 2012 and, therefore, no longer requires a “1st Extension.”

COUNCIL DISCUSSION:

Conway asked if the Timnath Harmony Road Phase 2 project could be separated out from the Poudre River Trail and the Loveland- I-25/US34/Crossroads Variable Message Signs project. He said he has an email to read into the record on behalf of the Mayor of Timnath who could not be present.

Donnelly asked Elmquist to explain the Delay policy.

Elmquist said the Delay Policy was amended in 2010. He said it was agreed if a project gets into trouble meeting its schedule there is an automatic one-time extension for another fiscal year. If the project fails to reach it’s “ad” or notice to proceed date the Council needs to take action for a second extension.

Donnelly said the Poudre River Trail and the Loveland- I-25/US34/Crossroads VMS project were unanimously supported at last month’s meeting. He reiterated Conway’s suggestion that the Council approve these projects and discuss the Timnath Harmony Road project separately.

Manvel made a motion to approve Resolution number 2012-12 with section 1 modified to remove the Timnath Harmony Road Phase 2 project and approving the Poudre River Trail and the Loveland- I-25/US34/Crossroads VMS project . Conway seconded the motion and it passed with unanimous vote.

Conway read the following email from Jill Grossman-Belisle, Mayor of Timnath:

“As a Council we discussed the issue at our last meeting and all concurred that we want to act collaboratively with other municipalities in the region to create a uniformed consistent approach to truck traffic now, and understand that the current weight limit Timnath had instituted by a previous council is not consistent with that spirit. Therefore, we have decided to temporarily suspend the weight restriction on Harmony Road to match what other municipalities do in the area and will ratify that decision at our next council meeting May 8th. Our traditional thought, is the temporary suspension will be in force until we can make it permanent by suggesting that we all (Fort Collins, Loveland, Windsor, Severance, Greeley, etc.) enter into a regional IGA simply memorializing that we will all maintain the same rules as it relates to weight restrictions on the major connectors such as Harmony for each municipality. I think Fort Collins may currently have the same restriction as we did, I am not positive about that or if there are others but it seems to me that it would be beneficial for us all to have the same operating rules and I am suggesting a very simple IGA to that end.”

Conway made a motion to grant the extension contingent on the fact that if the temporary restriction on Harmony Road is ever removed by the Town of Timnath, they are required to repay the MPO all of the money they get for this project which is one million dollars. Cozad seconded the motion.

Manvel said he admires Conway for raising this issue at the last Council meeting due to the fact that if you put money into a regional road you want people to be able to drive on it. He said he does have a question about what legal right the MPO has to put this condition on the money. He suggested adding “legally permissible” to the language.

Conway said his concern is Timnath’s contingency for permanently lifting the weight restriction is dependent on IGAs, which are not going to happen with the other municipalities. He said he understands this was a decision made by a previous Council and that the current mayor of Timnath wants to rectify the situation. Conway said he believes the Council can place this legal restriction on the funds.

Shaffer asked if this needs to move forward at this time as no representative from Timnath is present.

Conway said his only concern is that Timnath was looking at moving forward with this in June and the June Council meeting is scheduled for June 7th.

Mellon clarified that the drop-dead date is at the end of the fiscal year. He suggested stating the money would be released to Timnath once the IGAs were signed.

Gilliland said a representative from Timnath needs to be present at the next Council meeting in order for this discussion to move forward.

Norton said the long-term solution is a policy statement by the MPO stating the standards of a regional road.

Conway made a motion to withdraw his original motion and continue this matter until the June meeting and have staff draft a resolution giving direction to Timnath on what the Council expects moving forward. Cozad seconded withdrawing the motion and it passed unanimously.

Donnelly said the Congestion Management Report will be postponed to the June 7th Council meeting.

COUNCIL REPORTS:

Audit Committee Report: Martinez reported that the financial statement was included in the Council packet. He said there was an increase in fleet expenses. Martinez said the increases were due to accidents for which the MPO is awaiting reimbursement. Additionally, an increase in fuel cost added to the expenses.

Transportation Commission:

Transportation Commissioner Gilliland reported that Executive Director Don Hunt met with some of the business community. She said the I-70 viaduct is crumbling and needs to be replaced. The decision has been made to sink the roadway and cap it. She said the next monthly meeting will be held on May 21st in Windsor.

Gilliland concluded by saying the Transportation Commission will be in the Northern Colorado area in October.

Donnelly said the current internal controls at the MPO that require any check greater than \$500 to have two signatures. With Hedberg retiring and the executive director currently on leave, another signatory needs to be added. Donnelly said the following employees are to be signatories on the checking account at 1st National Bank : Suzette Mallette, Director of Transportation Planning and Stanley Elmquist, Senior Transportation Planner.

Manvel made a motion to approve Resolution number 2012-14 designating Suzette Mallette, Director of Transportation Planning and Stanley Elmquist, Senior Transportation Planner as signatories on the checking account at 1st National Bank. Conway seconded the motion and it passed unanimously.

Host Report: Donnelly said the worst road in Larimer County (County Road 24 E) is now being fixed due to a collaborative effort between Larimer County, Loveland and a willing landowner.

Other Staff Reports:

Mellon said that Johnstown will hosts its annual BBQ days on June 2nd.

Shaffer encouraged everyone to attend the governor's art show at the Loveland museum.

Meeting adjourned at 9:26 p.m.

Meeting minutes submitted by: Rachael Munroe, MPO Staff