

VOLUME II, SECTION VI. B.
STATE REQUIREMENTS FOR TRANSPORTATION PLANNING: COLORADO

INTRODUCTION

The Constitution and statutes of the State of Colorado provide the legal bases for the formation and operation of regional commissions. Until the promulgation of ISTEA in 1991, these state requirements were general in nature, merely empowering the various governmental entities and their political subdivisions to form and maintain cooperative organizations for the performance of multiple functions, in an effort to promote their respective interests and welfare, and to jointly exercise their functions and capacities—including the authority to impose taxes.¹ Since their enactment in 1991, state statutes impose more explicit restrictions and obligations on transportation planning, as engaged in by Colorado MPOs.

In addition to the constitutional and statutory requirements relating to Colorado MPOs and their transportation planning processes, are the mandates imposed by the Memorandum of Agreement Regarding the Urban Transportation Planning Process (1997 MOA.) This MOA continues to govern the 3-C transportation and comprehensive land use planning process for the Denver-Boulder Standard Metropolitan Area.

STATUTORY REQUIREMENTS

By virtue of legislation passed in 1991 and thereafter, several explicit requirements are imposed on Colorado’s MPOs relating to transportation planning. Those requirements include the imposition of the 20-year regional transportation plan requirement, to include:

- New and expanded transportation facilities and services required to meet the estimated demand for transportation in the region over the 20-year period;
- Time schedules for completion of the projects included in the transportation plan;
- Funding needed and sources thereof;
- Expected environmental, social and economic impacts of the recommendations in the plan, including an evaluation of “the full range of reasonable transportation alternatives” including traffic system and travel demand management strategies as well as other modes of transport “in order to provide for the transportation and environmental needs of the area in a safe and efficient manner”;
- Assistance to other agencies in developing transportation control measures to satisfy federal requirements and comport with the state implementation plan, and means of achieving clean air objectives;
- Fiscal needs to maintain mobility and identify what can be expected reasonably to be implemented with likely available revenue.²

¹ Insert cite to constitutional and non-profit org. statutory provisions predating 1991.

² C.R.S. § 43-1-1103(1)(2).

The plan may also prioritize transportation improvements.

As a matter of law, CDOT must then integrate the regional transportation plan into its comprehensive statewide transportation plan, which must, in turn, include the following:

- An emphasis on multi-modal transportation, with connectivity between modes;
- Coordination with county and municipal land use planning, with an examination of the impact of land use decisions on transportation needs, and the preservation of transportation corridors; and
- Development of areawide multi-modal management plans.³

Additionally, the legislation established Transportation Planning Regions [TPRs], specifying that the state's five then existing MPOs would constitute five of the 15 TPRs allowable by law, thereby grandfathering them in.

Lending great influence to MPOs in the transportation planning process under Colorado law, the metropolitan Denver transit authority, [the "Regional Transportation District" RTD] may take no action relating to the construction of a fixed guideway mass transit system until such system has been approved by the designated MPO (DRCOG), which must approve each component part or corridor of the system, as well as its financing and technology.⁴ The Colorado Department of Transportation [CDOT] is also required to cooperate with the MPO to develop a procedure for the fair and equitable distribution of funds distributed under the Urban Mass Transportation Act of 1964⁵ and progeny.⁶

MEMORANDUM OF AGREEMENT REQUIREMENTS

Pursuant to federal regulations, in 1977, DRCOG, RTD, and the State of Colorado entered into a Memorandum of Agreement Regarding the Urban Transportation Planning Process [1977 MOA]. The 1977 MOA designates DRCOG as the MPO, and charges it with ensuring cooperative planning among the staffs of DRCOG, CDOT, and RTD through the Transportation Committee [TC].⁷

The MOA requires that the planning process be consistent with the State of Colorado's *Action Plan*, approved March 22, 1974, as amended.⁸ That *Action Plan*

³ CRS § 43-1-1103(4)(5).

⁴ C.R.S. § 32-9-107.7 (1997).

⁵ Pub. L. No. 880365; 49 U.S.C. § 1601 et seq.

⁶ C.R.S. § 43-1-901.

⁷ Memorandum of Agreement Between the Denver Regional Council of Governments and the State Department of Highways and the Regional Transportation District Regarding the Urban Transportation Planning Process of January 28, 1977 [hereinafter 1977 MOA], at 6-7.

⁸ 1977 MOA, at 5-6.

established a process for transportation planning with a philosophy of planning from the local level upward through the structures of government.⁹

The region covered by the MOA includes the entire geographic areas of Adams, Arapahoe, Boulder, Clear Creek, Douglas, Gilpin, and Jefferson Counties, and the City and County of Denver.¹⁰ The purposes of the 1977 MOA are:

- To satisfy the transportation planning requirements established by federal law so as to qualify for federal capital and operating assistance;
- To integrate transportation planning with other elements of comprehensive areawide planning;
- To develop, update and adopt transport plans to reflect changing needs; and
- To translate these plans into action items with priority recommendations for transportation system improvement.¹¹

The 1977 MOA delineates the structure of the planning organization and its administration.¹² First, the DRCOG Council is the Policy Body of the MPO, and must include three non-voting representatives of the State, who are appointed by the Governor.¹³ Second, a generalized process must be followed for approval of documents that relate to the comprehensive regional planning process.¹⁴ Third, the TC manages urban planning in accordance with the *Action Plan* and the applicable federal regulations.¹⁵ The TC policy recommendations require an affirmative vote of 7 members of the Committee.¹⁶ With concurrence of the TC, DRCOG must appoint a Director of Transportation Planning to serve as Executive Secretary of the TC.¹⁷ The TC must consist of the following voting members:

- DRCOG
- Council Chairman
- Chairman of the Program Committee
- Executive Director
- Council's Designee
- State of Colorado

⁹ 1977 MOA, at 2-3. The federal requirement for an "Action Plan" has lapsed, however, and no state "Action Plan" currently exists. There are several other anachronisms in the MOA reflecting the fact that it has not been updated since originally drafted in 1977, despite the promulgation of major federal legislation in the field. For example, FTA is referred to as "FHWA". Federal public involvement requirements have also changed considerably since 1977. Freight planning is now recognized as a priority, and is nowhere discussed in the 1977 MOA.

¹⁰ 1977 MOA, at 22.

¹¹ 1977 MOA, at 5-6.

¹² 1977 MOA, at 12-15.

¹³ 1977 MOA, at 12.

¹⁴ 1977 MOA, at 12-13.

¹⁵ 1977 MOA, at 4, 13.

¹⁶ 1977 MOA, at 14.

¹⁷ 1977 MOA, at 14.

- Chairman of the Highway Commission
- Member of the Highway Commission designated by the Governor
- Executive Director CDH
- RTD
- Chairman of the Board
- Executive Director
- Board's Designee

The TC's responsibilities include the following: (1) direct work activities identified by the Unified Work Program; (2) review and approve items for submission to the Policy Board (DRCOG Council); (3) approve all plans, programs, documents, and annual endorsements; and (4) review and monitor planning activities carried out by the staff of participating agencies under the Unified Work Program.¹⁸

The 1977 MOA lays out a process for accomplishing these goals. It calls for the creation of five primary documents:

1. *Prospectus*. Updated in each annual transportation report, the Prospectus spells out the transportation issues facing the area, the status and anticipated accomplishments of each element, a description of procedures to be employed in carrying out each element, and a description of the functional responsibilities of each participating agency.¹⁹
2. *Annual Transportation Report*. The Transportation Report documents the status and anticipated activities with regard to the planning requirements imposed by federal law,²⁰ as well as the status of Transportation Improvement Program [TIP] and implementation and performance of the transportation system in meeting the region's goals.
3. *Transportation Plan*. The transportation plan includes a Transportation Systems Management Element, and a Long-Range Element, both to be updated annually. It includes an evaluation of projects completed or being implemented to assess their productivity and overall benefit to the region.
4. *Transportation Improvement Program*. An annual TIP will be completed as a five-year plan by deleting the annual element of the previous year, adding a new program

¹⁸ 1977 MOA, at 14-15.

¹⁹ Both a Regional Review Team and a Transportation Advisory Committee must be established pursuant to the Prospectus. The Transportation Advisory Committee must include representatives from municipalities, counties, and the implementing organizations within the MPO region. Local offices of federal and state agencies may send non-voting representatives. The committee reviews the transportation planning process and advises on methods of planning and implementation and reviews and provides comments on plans as they are developed. 1977 MOA, at 22.

²⁰ There are ten major elements identified from federal regulations: Air Quality; public involvement; civil rights; socio-economic impacts; energy conservation; transit for the elderly/ handicapped; existing conditions; projections; monitoring development; activity coordination/ organization. 1977 MOA, at 8.

for the fifth year, and updating intermediate years as appropriate. The TIP will also finalize the Annual Element, including local and federal funds for implementation.

5. *Unified Work Program.* A two-year Unified Work Program is established to organize planning activities for the transportation/land use process.²¹

To facilitate and coordinate comprehensive planning and land use, the 1977 MOA outlines a 19-step process, as summarized below:

1. *Planning Meeting.* First, the MPO staff calls a planning meeting of the Regional Review Team and all other agencies or organizations expected to participate in preparation or review of the reports being prepared.
2. *Schedule and Responsibility.* At the planning meeting, the MPO staff proposes a timetable and responsibilities for preparation of the document.
3. *Agreement on Approach.* If at the Planning Meeting, the agencies involved are unable to agree on a proposed schedule and responsibilities, the disputed issues are presented to the TC, which resolves them.
4. *Resolve Schedule/ Responsibility Differences.* Where such an agreement cannot be reached, the MPO staff must generate a report outlining the grievances, and at least one representative from each aggrieved agency shall be present at the subsequent TC meeting. The TC then makes a final resolution and distributes a ruling to all parties for implementation.
5. *Minor Revisions.* Whether there are or are not disputed issues to be resolved, the TC determines whether suggested changes or modifications to any document are “major” or “minor.” If major revisions are contemplated, the full comprehensive planning process proceeds. If minor revisions are involved, the MPO staff prepares appropriate material for TC review and approval.
6. *Staff Input.* Based on the schedule and responsibilities determined above, the staff of each participating agency carries out the necessary planning studies and submits the results to the MPO staff.
7. *First Draft.* The MPO assembles the information provided by the agencies and prepares a first draft of the report. The MPO staff submits the draft to each participating agency for their staffs’ review and comment.
8. *Staff Review.* The MPO staff compiles and summarizes the written comments and proposes revisions to the second draft.

²¹ 1977 MOA at 8-10.

9. *Second Draft.* Based on the comments received, the MPO staff revises the first draft and prepares a second.

10. *Agency Review.* The MPO staff then distributes the second draft to each participating agency for a second round of review and comment. Comments must be submitted to the MPO in writing.

11. *Summarize Comments and Propose Resolutions of Differences.* All submitted comments are summarized by MPO staff, and proposed revisions to the second draft, in response to those comments, is developed.

12. *TC Review and Resolution.* The TC must review agency comments and the proposed resolution of differences that were summarized by MPO staff. The TC directs the staff in its revisions of the second draft until a final draft is approved by the TC. Where seven members do not vote affirmatively for a document after 90 days, that draft receiving the highest number of votes will be approved and submitted to the MPO.

13. *MPO Staff Assemble Final Draft.* The MPO staff assembles the final draft. Upon its receipt and review by the MPO policy body, that Body may approve it or direct its revision.

14. *MPO Policy Board Approval/ Endorsement.* The MPO policy body reviews the final draft during regularly scheduled monthly meetings until final approval is achieved.

15. *Review of Policy Board Revisions.* If the document is approved without revision, it is submitted to the appropriate state and federal agencies for their review or action. If revisions are made, copies are sent to all participating agencies for their review.

16. *Participating Agency Concurrence.* The agencies shall forward their concurrence or non-concurrence in writing to the MPO for its review.

17. *Final MPO Review.* The MPO reviews written comments filed by the participating agencies. Where an agency formally objects to an item in the Final Document, that document shall not be submitted for state or federal review until the item is removed or issue resolved between the MPO Policy Body and the dissenting agency.

18. *Submit Documents.* The MPO staff submits the approved/ endorsed document to appropriate state or federal agencies for review and action. All planning documents submitted to the FHWA must be routed through CDH.

19. *Federal Review/ Action.* After receipt of the Final Document from the MPO, the relevant federal agency will review it and take appropriate federal action consistent with its regulations.

In addition to the requirements outlined above in the 19-step planning process, the MOA requires citizen involvement at all levels of planning. This includes appropriate provisions for citizen advisory committees, presentation, and public hearings that must be incorporated into the Prospectus and Unified Work Program.²²

The 1977 MOA supersedes all previous MOAs, and all modifications of the 1977 MOA must be agreed to in writing by all parties. Any party may terminate its interest and its obligation under the MOA by giving at least 60 days' notice, in writing, to all other parties.²³

²² 1977 MOA, at 22.

²³ 1977 MOA, at 23.