



STATE OF
COLORADO

Hogle - CDOT, Andrew <andrew.hogle@state.co.us>

Fwd: Ray Scott letter to CDOT Transpo Commission

1 message

Karsian - CDOT, Andrew <andy.karsian@state.co.us>

Mon, Jan 3, 2022 at 10:54 AM

To: "Hogle - CDOT, Andrew" <andrew.hogle@state.co.us>

CORA Dialog case #90628: #2

Andy Karsian

State Legislative Liaison



COLORADO
Department of Transportation
Office of Policy and Government Relations

C 303.883.9381

2829 W. Howard Pl, Suite 562 Denver, CO 80204

----- Forwarded message -----

From: Karsian - CDOT, Andrew <andy.karsian@state.co.us>

Date: Mon, Nov 8, 2021 at 2:37 PM

Subject: Re: Ray Scott letter to CDOT Transpo Commission

To: Rachel Zenzinger <senatorrachelz@gmail.com>

Thank you. The story went in a more productive way than Sen Scott had hoped (productive for CDOT not him).

Didn't need you for a quote, but we will need you during the session to help explain the nuances of transportation policy to your colleagues who know little!

Always grateful for your help!

AK

Andy Karsian

State Legislative Liaison



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Department of Transportation
Office of Policy and Government Relations

C 303.883.9381

2829 W. Howard Pl, Suite 562 Denver, CO 80204

On Mon, Nov 8, 2021 at 1:55 PM Rachel Zenzinger <senatorrachelz@gmail.com> wrote:

I saw the story in the Post today. It doesn't look like you need me anymore, but let me know if something changes. Thx!

Sen. Rachel Zenzinger

Senate District 19

200 E. Colfax Ave, Denver, CO 80203

303-866-4840

www.rachelforcolorado.com

On Wed, Nov 3, 2021 at 9:29 AM Karsian - CDOT, Andrew <andy.karsian@state.co.us> wrote:

Here is the letter I just spoke to you about.
AK

Andy Karsian

State Legislative Liaison



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Department of Transportation
Office of Policy and Government Relations

C 303. 883. 9381

2829 W. Howard Pl, Suite 562 Denver, CO 80204



STATE OF COLORADO

Hogle - CDOT, Andrew <andrew.hogle@state.co.us>

Fwd: AK's Tues

1 message

Karsian - CDOT, Andrew <andy.karsian@state.co.us>
To: "Hogle - CDOT, Andrew" <andrew.hogle@state.co.us>

Mon, Jan 3, 2022 at 11:02 AM

CORA Dialog case #90628: #4

Andy Karsian

State Legislative Liaison



COLORADO
Department of Transportation
Office of Policy and Government Relations

C 303.883.9381
2829 W. Howard Pl, Suite 562 Denver, CO 80204

----- Forwarded message -----

From: Karsian - CDOT, Andrew <andy.karsian@state.co.us>

Date: Tue, Nov 23, 2021 at 5:52 PM

Subject: AK's Tues

To: Sally Chafee - CDOT <sally.chafee@state.co.us>, Herman Stockinger - CDOT <herman.stockinger@state.co.us>

finalizing edits on JBC answers and slide deck. Final walkthrough tomorrow. I think Sally looked through the written answers already and if you have time Herman, I'd appreciate it.

spoke with Grier. He's talking with McCluskie about a bill that would give CDOT a greater share of the PFAS funding. CDPHE would keep their \$4M and we would get another few million to make our share equal. CDPHE would remain whole, but wouldn't be getting the future revenues, instead that would go to CDOT's Freight Office and help pay for hazmat cleanups on highways. I told him that the money would be going towards an important issue, however, CDPHE will balk at the idea and two departments don't fight like that. He'd be bringing McCluskie something we couldn't support.

Exit 205 meeting with Sally, Goolsby and Keith. I think an email with the timeline attached will provide the right context for McCluskie. It shows CDOT being patient over three years. They don't like what we're saying but the facts back us up. I'll talk with her before the hearing for sure. I'll send out the email tomorrow.

SL met with Hansen at the JBC. Discussed

- Scott TC bill and audit req (Hansen: 'that won't happen')
- HPTTE low income program,
- Main St,
- \$10M for Burnham - didn't mention FRRail,

- EJM:IT \$
- there's a business tax credit for employee transit bill
- IJA - not that much new money but all kinds of new grant
- said he's considering running for Mayor along with everyone else

most interesting part was his desire to get a buried transmission line from SLValley, over La Veta pass on SH160, and connected to the grid for solar power coming out of the valley. IT's something that has eluded the development of solar there because Louis Bacon won't let lines go through his land. He asked if there was any statutory authority we needed to make it happen - we didn't think so, but of course it would need quite a bit of planning. I'll get a sense of what we're looking at and let him know.

Andy Karsian

State Legislative Liaison



COLORADO
Department of Transportation
Office of Policy and Government Relations

C 303.883.9381
2829 W. Howard Pl, Suite 562 Denver, CO 80204



STATE OF COLORADO

Lew - CDOT, Shoshana <shoshana.lew@state.co.us>

Legislative Audit Committee update

2 messages

Karsian - CDOT, Andrew <andy.karsian@state.co.us>

Mon, Oct 25, 2021 at 4:38 PM

To: Shoshana Lew - CDOT <shoshana.lew@state.co.us>, Sally Chafee - CDOT <sally.chafee@state.co.us>, Herman Stockinger - CDOT <herman.stockinger@state.co.us>, "Harelson - CDOT, Stephen" <stephen.harelson@state.co.us>, Bob Fifer - CDOT <bob.fifer@state.co.us>

Today the LAC met and discussed upcoming audits. In a fairly unconventional move, they had Sen Scott get up and testify in person on his audit request. He spoke briefly about his reasons for asking for the audit, but did not go into much detail about the specifics. He spoke for about ten minutes, again, mostly high level rhetoric about the need.

The committee then voted unanimously to allow staff to research the audit request. Rep Roberts clarified the motion from the Chair to make sure this was just the research portion and not approving an audit. I do not believe the initial request for staff research is voted down very often.

Next steps will include staff reaching out to CDOT, I'll ask them to go through me at least initially, to set up a virtual meeting with relevant CDOT experts to discuss what Sen Scott proposed. This is possibly our best chance to nix the audit by communicating that this will be a use of staff time and resources that the Auditor's staff has little to spare (which the staffers mentioned today again at the hearing - not related to Scott's request).

After the staff researches the request, they will likely hear the staff recommendations at their December hearing (12/6).

There was no mention of the request to audit our fiber permitting process within state right of ways, which is a good sign. Bob and I are meeting with the Chair of the Audit committee on Nov 1st at Bob's shop to discuss his work and the audit request. We're lucky to have this one on one time with her before the next audit committee.

AK

Andy Karsian

State Legislative Liaison



COLORADO
Department of Transportation
Office of Policy and Government Relations

C 303.883.9381
2829 W. Howard Pl, Suite 562 Denver, CO 80204

Stockinger - CDOT, Herman <herman.stockinger@state.co.us>

Mon, Oct 25, 2021 at 4:51 PM

To: "Karsian - CDOT, Andrew" <andy.karsian@state.co.us>

Cc: Shoshana Lew - CDOT <shoshana.lew@state.co.us>, Sally Chafee - CDOT <sally.chafee@state.co.us>, "Harelson - CDOT, Stephen" <stephen.harelson@state.co.us>, Bob Fifer - CDOT <bob.fifer@state.co.us>

Thanks Andy for the update.

Herman Stockinger, Deputy Director and Director of Policy
P 303.757.9077 | C 720.810.6934
Herman.Stockinger@state.co.us



COLORADO
Department of Transportation
Office of the Deputy Executive Director

[Quoted text hidden]

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock, Rm 256 Denver, Colorado, 80202	DATE FILED: August 5, 2021 6:37 PM CASE NUMBER: 2020CV31028
<hr/> Plaintiff: Hamon Infrastructure, Inc. d/b/a Hamon Infrastructure v. Defendant: Colorado Department of Transportation	<hr/> ▲ COURT USE ONLY ▲ <hr/> Case Number: 2020CV31028 Courtroom: 269
Order Regarding Plaintiff's Motion for Partial Summary Judgment	

This Matter is before the Court on Plaintiff's Motion for Partial Summary Judgment, filed May 19, 2020. After the Motion was filed, Briefing was stayed as the Court ruled on Defendant's Motion to Dismiss, and other procedural issues. Briefing then resumed with Plaintiff's Supplement to Motion for Partial Summary Judgment, filed March 1, 2021. Defendant's Response was filed March 19, 2021 and Plaintiff filed a Reply on April 2, 2021. The Court has reviewed the Motion, the Supplement, Defendant's Response, the Reply, and has considered argument of counsel at the April 9, 2021 hearing. The Court now Finds, and Orders as follows:

I. Background Summary

In summary,¹ the parties are contractually involved in an extremely large highway construction project for the expansion of interstate 25 governed by a complex contract. The contract provides an elaborate dispute resolution process. Pursuant to the dispute resolution provision, if there is a dispute regarding the project, the parties must go through a non-binding process before bringing the issue to a court for resolution. A central feature of the dispute resolution process is the Dispute Resolution Board (“DRB”), which is made up of three members. One of the members is chosen by the contractor, another by CDOT, and the third member is selected by the first two DRB members. If either contractor or CDOT has issues with any of the DRB members, they must make their objection known. Plaintiff argues that the DRB is the most significant stage, because it is the only independent part of the process. The stages before and after the DRB are staffed by CDOT officials. At a most basic level, Plaintiff alleges that CDOT has violated the contract and dispute resolution procedure by never making known their serious misgivings about DRB member William Hinton (“Mr. Hinton”), and improperly engaging in *ex parte* communications with him in an attempt to influence the DRB and never intending to abide by any DRB decision that was not in CDOT’s favor.

¹ The background summary is taken nearly exclusively from the Court’s summary in its order regarding Defendants Motion to Dismiss.

Plaintiff brings three claims for relief: 1) Breach of Contract against Defendant for *ex parte* communications with the DRB chair, Mr. Hinton; 2) Breach of Contract—Breach of the Implied Covenant of Good Faith and Fair Dealing and for damages, for how CDOT exercised its discretion under the contract in a manner inconsistent with the expected process by attempting to improperly influence the DRB; and 3) Declaratory Judgement, asking the Court to find and order that Plaintiff is excused from complying with the contract dispute resolution process for any additional disputes.

Hamon's Motion for Partial Summary Judgment asks the Court to rule in its favor on the Breach of Contract Claims, declare that Hamon is excused from the dispute resolution process and, to leave for trial, a jury determination of its monetary damages.

Defendant objects and argues that Plaintiff's factual allegations are untrue, that its claims fail as a matter of law, or, at the least, that genuine issues of material fact exist.

II. Standard of Review or Applicable Law

Summary judgment is a drastic remedy and should be granted only if it has been clearly established that the moving party is entitled to a judgment as a matter of law. *Clementi v. Nationwide Mut. Fire Ins. Co.*, 16 P.3d 223, 225-26 (Colo. 2001). The court may grant a motion for summary judgment when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if

any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. C.R.C.P. 56(c); *Bebo Constr. Co. v. Mattox & O'Brien, P.C.*, 990 P.2d 78, 83 (Colo. 1999). Summary judgment may not be granted when pleadings and affidavits show material facts in dispute. *GE Life & Annuity Assurance Co. v. Fort Collins Assemblage, Ltd.*, 53 P.3d 703, 706 (Colo. App. 2001).

A material fact is one that will affect the outcome of the case. *Struble v. Am. Family Ins. Co.*, 172 P.3d 950, 955 (Colo. App. 2007); *Krane v. St. Anthony Hosp. Sys.*, 738 P.2d 75, 76 (Colo. App. 1987). The moving party has the initial burden of showing no genuine issue of material fact exists; the burden then shifts to the nonmoving party to establish that there is a triable issue of fact. *AviComm, Inc. v. Colo. Pub. Utils. Comm'n*, 955 P.2d 1023, 1029 (Colo. 1998). If the moving party meets its burden, the non-moving party must set forth specific facts demonstrating the existence of a real controversy. C.R.C.P. 56(e). To survive summary judgment, the non-moving party must present sufficient evidence to demonstrate that a reasonable jury could decide in its favor. *Andersen v. Lindenbaum*, 160 P.3d 237, 239 (Colo. 2007). A court is to “view all evidence properly before [it] in the light most favorable to the nonmoving party, give the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the evidence, and resolve all doubts as to the existence of a material fact against the moving party.” *Wilson v. Prentiss*, 140 P.3d 288, 290 (Colo. App. 2006).

III. Analysis

Breach of Contract—Breach of the Implied Covenant of Good Faith and Fair Dealing

The contract at issue here is specifically the agreement regarding the dispute resolution board and the process for resolving disputes. It does not address any alleged breach for actual construction work that is involved in the other matter, 2020CV31722.

The Court begins its analysis with Plaintiff's second claim for relief as this is where the Motion for Partial Summary Judgment begins.

In order to prevail on its claim for breach of contract, Hamon must prove: (1) the existence of a contract; (2) that [it] performed [its] duties under the contract (or that [it] was justified in failing to do so); (3) that [CDOT] failed to perform the contract; and (4) resulting damages. *W. Distrib. Co. v. Diodosio*, 841 P.2d 1053, 1058 (Colo. 1992); *Long v. Cordain*, 343 P.3d 1061, 1067, 2014 COA 177, ¶ 19 (Colo. App. 2014).

Plaintiff argues that the purpose of the DRB is to provide an independent and impartial board that would fairly resolve disputes at the contract level in a timely manner. While the DRB decisions are not binding, and are a step in the dispute resolution process, they are designed to resolve issues before reaching litigation and related expenses. The integrity of the process, however, is not so much how the

DRB may resolve a particular issue, but the willingness of the parties to abide by its decisions, especially when they are unfavorable.

Plaintiff argues that the evidence shows that CDOT violated the contract because it had grave reservations about Mr. Hinton, which it never disclosed. The contract requires the parties to participate in the DRB process. The DRB process for selection of its members requires a party to object to a member if a party is uncomfortable with a nominee. By failing to object to Mr. Hinton, Plaintiff argues, CDOT was never going to abide by any of his decisions in Hamon's favor, given CDOT's belief that he was biased. CDOT disputes that it had concerns about Mr. Hinton. In fact, it argues, CDOT project engineers Abra Geissler, Jason Lucerna, and Andrew Stratton believed that Mr. Hinton would be an asset to the DRB and advantageous to both parties because of the experience that he had from an earlier segment of the project. Also, even assuming Mark Straub, the manager of the DRB program, was unhappy with Mr. Hinton, he was not the entirety of CDOT and, in fact, his concerns were ignored because Mr. Hinton was accepted in spite of Straub's objections. Additionally, CDOT argues that the DRB policy cited by Plaintiff was not part of the contract, and that pursuant to § 105.23(b)(5) of the contract, CDOT could only object to Hinton if it had a conflict of interest. Because they did not have a conflict, they had no discretion and, therefore, no violation of good faith and fair dealing.

The contemporaneous emails provided as exhibits show a clear concern by CDOT regarding Mr. Hinton. In November of 2015, for example, Mr. Straub wanted to “pull Mr. Hinton’s pre-approved status as a potential DRB member. At a minimum I think we could put him on some kind of probation.” Pl.’s Mot. for Partial Summ J. Ex 8. Plaintiff’s Reply lists multiple other examples of CDOT’s concerns with Hinton’s perceived bias which the Court will not restate here. See Pl.’s Reply at 5. While the three project engineers may have been confident in Mr. Hinton, their superiors, such as Stephanie Alanis, resident Engineer, and Mr. Staub were not. See Pl.’s Exs. 6, 8, 9. Mr. Staub was the manager of the DRB program and while Defendant argues that CDOT basically ignored him, he had tremendous influence over the DRB process. Indeed, at Staub’s urging, and with consultation of the “Chief Engineer and the AG office,” Mr. Hinton was removed from the DRB prequalification list for future DRBs. Pl.’s Mot. Ex. 22. Mr. Straub also informed Mr. Hinton of discussions regarding “re-instating” him on the list. Pl.’s Mot. Ex. 23.

Defendant argues that the DRB was not biased in CDOT’s favor and, in fact, ruled in favor of Hamon in disputes before the board. However, this misses the point of Plaintiff’s breach of contract claim. It is not so much the DRB that Plaintiff objects to, rather, it is the compromised process. Hamon’s concern is that given CDOT’s lack of trust in Mr. Hinton, that it was never going to abide by his decisions, if they were unfavorable to CDOT because he was perceived as biased in favor of

contractors. The contract, and process of DRB member selection, requires a system of trust and transparency. If the most fundamental aspect of the process of DRB hearings is undermined by CDOT's lack of confidence in the chair of the DRB, the entire dispute resolution process is compromised. It is uncontested that Hamon was unaware of the lack of confidence that CDOT had in Mr. Hinton. It is unexplained why such a view of Mr. Hinton was not communicated to Hamon.

CDOT's argument that it had no discretion under the contract to object to Mr. Hinton, because it did not have a conflict of interest, rings hollow. At the very least the provision requiring an objection to a DRB member is incorporated into the contract by implication, because the parties assume it is the process everybody will follow. A simple disclosure to Hamon of the history of concerns CDOT had with Mr. Hinton would surely have resulted in another selection by Hamon. Additionally, Hamon's rejection of a board member, without objection by CDOT, was not due to a conflict of interest. Finally, because the DRB Disclosure Requirement, even if not expressly incorporated into the contract, guides the parties' conduct under the contract, in the Court's view, failure to voice the concerns regarding Mr. Hinton was a breach of the covenant of good faith and fair dealing. The expectation of the parties was that both sides would choose only DRB members that they had complete confidence in and reject those they didn't have confidence in, so that the process would be neutral, have integrity, and would be

fair. Here, however, CDOT asks Hamon, and the Court, to simply ignore the serious, multiple concerns it had regarding a DRB member for whom they had little confidence, and were actively sanctioning. All without disclosure to Hamon, and while he was actively sitting on the DRB charged with resolving their disputes. It is incomprehensible to the Court how the integrity of the DRB cannot, objectively, be seen as compromised under these circumstances.

Breach of Contract against Defendant for *ex parte* communications with the DRB chair, Mr. Hinton

Plaintiff's next basis for Breach of Contract is *ex parte* communications with Mr. Hinton. CDOT argues that there has been no breach because the communications between it and Mr. Hinton were merely administrative. There is no factual dispute that there were extensive communications between CDOT and Mr. Hinton and no dispute regarding the content of those communications, the divide is over the nature of those communications, and whether they in fact constitute *ex parte* communication vis a vis the contract.

The Court finds that they do.

The contract provides that, there shall be no *ex parte* communication with the DRB at any time. §105.23(b)6, Ex. 1 (Part 1) at 4. While CDOT diminishes the importance of these conversations with regard to the contract at issue here as administrative, they are clearly

communications which include topics that any reasonable, objective observer would expect both parties to the contract to be a part of, or at least, made aware that the communications were occurring. For example, a criticism of Mr. Hinton was his allowance of “new information” in hearings and his application of the U. S. Supreme Court’s *Spearin* doctrine which provides that the owner impliedly warrants the accuracy and suitability of the plans and specifications it provides to a contractor. *United States v. Spearin*, 248 U.S. 132 (1918). While Mr. Hinton was sitting as the head of the DRB, CDOT, unbeknownst to Hamon, was threatening to sanction him. Even if only “administrative,” how would Hamon not be alarmed that one of the three persons charged with resolving costly disputes was under threat of sanction by the opposing party? These were not communications about such mundane issues like scheduling, or administrative forms that needed completion. Rather, the communications with Mr. Hinton directly related to the conduct of DRB hearings and contemplated his removal from the DRB approval list if he did not adhere by CDOT guidelines during hearings.

Defendant argues that neither Mr. Straub, nor Mr. Hinton himself believed that their communications were improper or *ex parte*. However, such a subject view of the communications, to the extent it is relevant to a breach of contract claim, does not resolve the issue. The fact is that the communications regarding the handling of DRB hearings occurred without Hamon being informed. An objective view of the

communications casts doubt on the integrity of the dispute resolution process, which includes post-DRB decisions by CDOT to abide by the findings or not. Additionally, as is illustrated by Exhibit 7 of Plaintiff's Motion for Partial Summary Judgment, in March of 2015, in response to very similar communications from CDOT's Mark Straub on an earlier project with a different contractor, Mr. Hinton states, "It is not proper for me to discuss this with you without at least one person from Kiewit also participating. The easiest way to proceed would be for you to set up a conference call where a person from Kiewit can participate." Now arguing that a substantially similar communication was not *ex parte* is simply not credible.

The Court finds that CDOT was in breach of the contract with regard to the DRB process, and that Hamon may seek damages, to be determined at trial. In the Court's view, damages are appropriate, not because a different result would have occurred without the issues discussed above, but rather, as Hamon argues, damages are related to the expense of preparing for and conducting DRB hearings that were compromised before they began.

Declaratory Judgment

For all the above reasons, the Court also grants summary judgment on Hamon's third claim for relief, Declaratory Judgment, and finds that,

based on the above breaches, Hamon is excused from complying with the contract's dispute resolution process in ongoing and future disputes.

Conclusion

Plaintiff's Motion for Partial Summary Judgment is Granted.

The Jury Trial currently scheduled for January of 2022, shall be limited to the issue of damages.

So Ordered: August 5, 2021

BY THE COURT:



Michael J. Vallejos
District Court Judge

cc: Parties via electronic filing



COLORADO

Department of Transportation

REGULATORY ANALYSIS FOR RULES GOVERNING STATEWIDE TRANSPORTATION PLANNING

September 9, 2021

OVERVIEW

The proposed "Rules Governing Statewide Transportation Planning Process and Transportation Planning Regions" will set a greenhouse gas standard for state and regional transportation plans. The purpose of the Proposal is to ensure ongoing greenhouse gas emissions reductions from Colorado's transportation sector, which helps achieve the reduction goals set by HB19-1261. This rule also responds to a requirement in SB21-260, directing CDOT and the Transportation Commission to address GHGs through transportation planning.

C.R.S. 24-4-103 (4.5)(a) and (c) states that, "upon request of any person" the agency shall issue a regulatory analysis of the proposed rule, and the analysis "shall be made available to the public at least 5 days prior to the rulemaking hearing." It requires the regulatory contain the following information:

1. A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons;
3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;
4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction;
5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule; and
6. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

(b) Each regulatory analysis shall include quantification of the data to the extent practicable and shall take account of both short-term and long-term consequences.

Much of the information required in the Regulatory Analysis of this rule is contained in the more comprehensive Cost Benefit Analysis that CDOT has completed for this rule. The [“Cost-Benefit Analysis for Rules Governing Statewide Transportation Planning”](#) (CBA) may be found through the hyperlink provided.

1. A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

The proposed rule is a transportation planning rule, and the implementers of the rule include the Colorado Department of Transportation (CDOT) and the five Metropolitan Planning Organizations (MPOs) in Colorado. This rule will positively impact the way transportation projects are planned for and selected in the state.

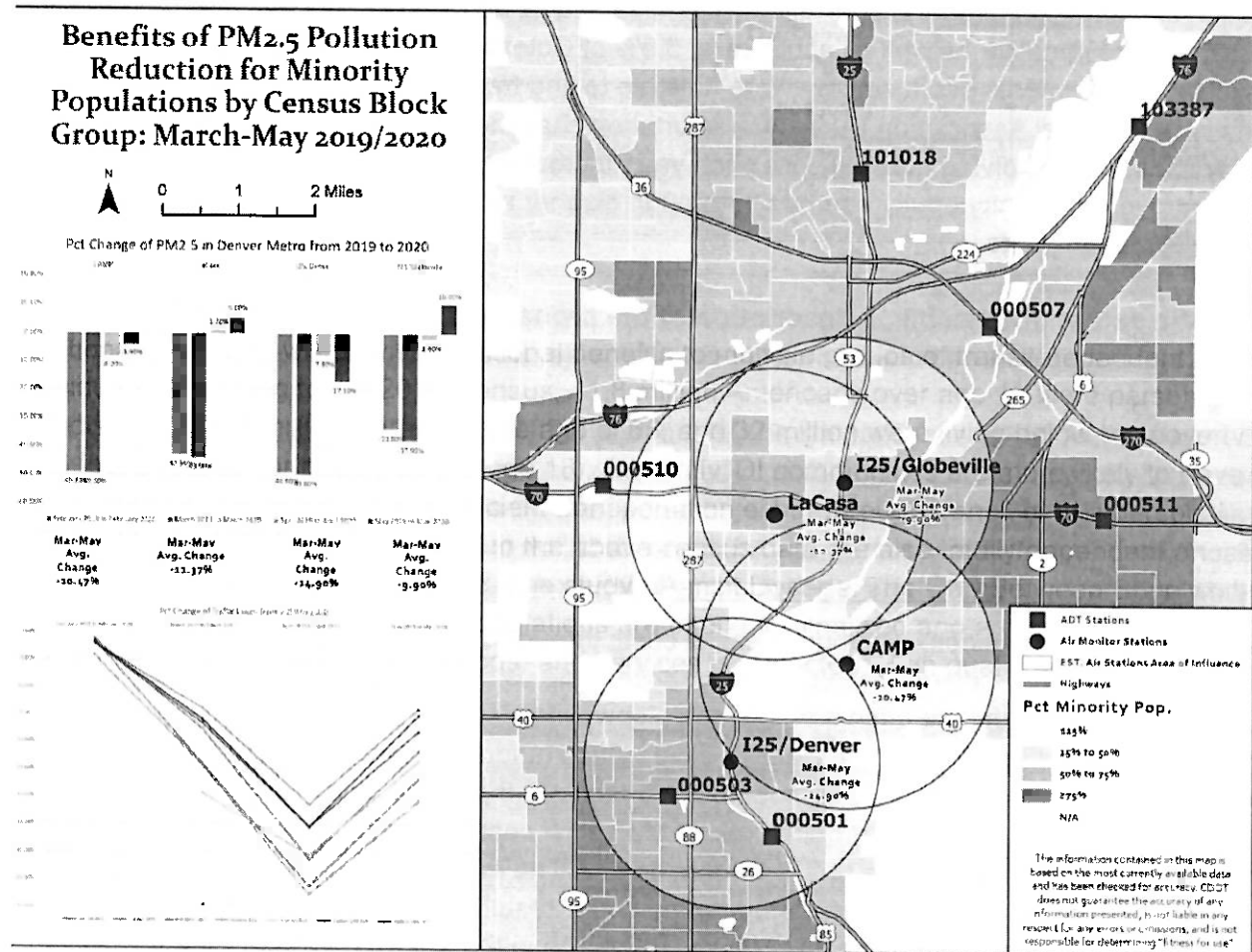
But more broadly, this is a statewide rule that will have an impact on transportation for virtually every class of individual in Colorado in some way, and the environmental benefits of the rule have a further benefit to persons living in Colorado. Because the rule is expected to shift some amount of funds to multimodal options, the rule has a particular benefit to individuals that must rely on a well constructed and maintained transit system. This includes disproportionately impacted communities.

Further, by reducing Greenhouse Gas (GHG) emissions and abating climate change, the rule will have an even greater positive impact on Disproportionately Impacted (DI) communities as those communities generally face a greater impact from climate change. This is well documented in studies and reports, including the following:

- “Populations including older adults, children, low-income communities, and some communities of color are often disproportionately affected by, and less resilient to, the health impacts of climate change.” Source: [The Fourth National Climate Assessment](#).
- “Minorities are most likely to currently live in areas where the analyses project the highest levels of climate change impacts with 2°C of global warming or 50 cm of global sea level rise.” “Those with low income or no high school diploma are approximately 25% more likely than non-low income individuals and those with a high school diploma to currently live in areas with the highest projected losses of labor hours due to increases in high-temperature days with 2°C of global warming.” Source: [EPA’s Climate Change and Social Vulnerability in the United States](#).

Work in Colorado also has demonstrated the local, disproportionate impacts on communities due to climate change. The Colorado Department of Public Health and Environment has developed a [climate equity data viewer](#) that uses population and environmental factors to calculate a climate equity score for every census block group in Colorado. A higher value indicates a worse score.

Another way to consider this question is to consider the co-benefits of this rule to air quality. Efforts that reduce GHGs from transportation also directly reduce other emissions, including particulate matter and ozone precursors. The map below shows the proximity of minority neighborhoods in the Denver metro area to interstate highways. This graphic also shows the reductions in fine particulate matter as measured by air quality monitors during the height of the Covid outbreak (a period of less vehicle travel) as compared to a pre-Covid time period.



Source: CDOT GIS Analysis

Additionally, this rule will provide additional benefits to multiple groups of transit-dependent individuals. According to the 2010 Census, 41.8 million Americans over age 18 were persons with disabilities, 40 million were over the age of 65, and 32 million were living below the poverty level (poverty level for people above age 18). Currently, DI communities are more likely to have limited access to high quality and efficient transportation either through transit or in a personal vehicle. Many of the individuals cited in the above census data are also totally dependent on transit due to physical abilities or age. The study "Transit Deserts: The Gap Between Supply and Demand," reflected that these populations are often marginalized and are especially vulnerable if their access to jobs, goods, and services is restricted. High quality and easily

accessible modes of transportation- frequently transit- are especially important to protect and elevate these populations.

A 2015 study from Harvard found that Individuals who do not have reliable access to any type of transportation mode struggle to reach jobs and services and as a result their opportunity for upward economic mobility is limited. DI individuals who lack reliable transportation are more likely to be unemployed or underemployed with more chronic health issues. The Colorado Health Institute examined transportation disparities and its negative impact on individuals trying to access preventative as well as acute care. 5.5% of Coloradoans reported difficulty getting to doctor's appointments because they were not able to find transportation. According to the American Hospital Association (AHA), transportation challenges prevent more than 3.6 million Americans from receiving medical care each year. Increasing access to more modes of travel will improve community equity and health through cleaner air, higher wages, and better access to healthcare services.

2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons;

There are a number of expected impacts of the rule, both quantitative and qualitative. Many of these impacts are benefits that accrue to businesses and individuals alike (e.g. a reduction in crashes leads to less lost work time). Listed below, and detailed further in answer #4, is a description of some of those impacts. Additional detail on the assumptions underlying these estimates of economic impacts is provided in Appendix A of the Cost Benefit Analysis.

Table 1 shows the projected change in social costs through 2025, 2030, 2040, and 2050 respectively, for full implementation of the proposed rule using the illustrative mix of strategies. The net benefits reflect the effects of reduced highway investment as well as increased investment in GHG-reducing projects. Negative values (shown in parentheses) represent a net cost savings. Future savings are discounted at a rate of 2.5 percent, consistent with Colorado Senate Bill (SB) 21-260 which requires use of the social cost of carbon dioxide (CO₂) and other pollutants using a discount rate of 2.5 percent or less. The most substantial benefits are from reduced crashes and reduced vehicle operating costs, resulting from reduced VMT. The net present value of total social benefits is roughly \$8 billion in the 2026-2030 timeframe and \$17 billion between 2031 and 2040.

Table 1
Economic Benefits (Cost Savings)
(Net Neutral Investment Levels after Mode Shift)
(net present value, millions of 2021 dollars)

Timeframe	Vehicle Operating Cost	Social Cost of Carbon	Air Pollution	Safety (Crashes)	Traffic Delay	Physical Inactivity	Total Social Cost Savings
2022 - 2025	\$(372)	\$(60)	\$(21)	\$(481)	\$(774)	\$(17)	\$(1,724)
2026 - 2030	\$(1,781)	\$(258)	\$(82)	\$(2,332)	\$(3,098)	\$(75)	\$(7,626)
2031 - 2040	\$(4,670)	\$(589)	\$(125)	\$(7,183)	\$(4,693)	\$(237)	\$(17,497)
2041 - 2050	\$(4,210)	\$(323)	\$(42)	\$(9,027)	\$397	\$(289)	\$(13,494)

A brief description of each of these economic benefits and how they were quantified is provided below. With the exception of physical inactivity, which is related to increased bicycling and walking, all of these economic benefits are derived from reductions in VMT and/or traffic delay.

- Vehicle operating cost – Fuel and maintenance costs per mile driven. Costs per mile change over time consistent with projected changes in fuel prices and the mix of the vehicle fleet including conventional fuels (e.g. gasoline and diesel) versus zero emission vehicles (e.g. electric and hydrogen). Vehicle cost savings provide travelers with more out-of-pocket money that they can spend on other goods and services of higher value to them. Businesses also save money for work travel and goods movement expenses. These savings benefit the state’s economy.
- Social cost of carbon – Global climate change is expected to result in a variety of negative economic effects to the world and national economy, including Colorado. Examples include costs of flood prevention and mitigation, health care costs associated with excessive heat, and fire prevention, control, and damages. Carbon emissions are valued based on guidance issued by the Biden Administration at a discount rate of 2.5 percent, consistent with Colorado Senate Bill (SB) 21-260. The social cost increases over time, from \$83 per metric ton of CO₂ emissions for emissions occurring in 2025 to \$116 per metric ton of CO₂ for emissions occurring in 2050.
- Air pollution – Costs associated with air pollution include higher health care costs, as well as damage to structures and natural systems. Values per ton of particulate matter

(PM) and oxides of nitrogen (NOx) reduced are based on modeling conducted in support of Federal rulemakings on vehicle tailpipe emission standards.

- Safety (crashes) – Costs associated with crashes resulting in fatalities or injuries include higher medical costs, insurance costs, vehicle property damage, and lost workplace productivity. These costs impact Colorado's economy. Motor vehicle crash reductions are estimated based on national average fatality and injury crash rates per VMT, and are valued based on federal guidance on the value of a statistical life and average value of injury crashes.
- Traffic delay -- Traffic delay results in increased travel time for "on-the-clock" business travel and freight movement, as well as more time spent traveling for commuting, errands, and other personal travel. These time losses negatively impact Colorado's economy. To estimate delay reduction associated with emissions-reducing transportation investments, hours of traffic delay reduced (per VMT reduced) are derived from Texas Transportation Institute studies of national traffic congestion and mitigation measures including transit expansion. For highway capacity expansion projects, which reduce delay, hours of delay reduced are based on modeled relationships between volume, capacity, and travel time. Capacity expansion projects consider the effects of "induced demand", or increased traffic that is observed to result over time after roads are expanded. This increased traffic may lead to net increases in greenhouse gas emissions as a result of the project, and may offset to some degree the delay reduction benefits.
- Physical inactivity -- A lack of physical activity is associated with increased mortality and other negative health outcomes, increasing health care costs. Investments in walking and bicycling infrastructure and transit services increase physical activity, reducing those associated costs. Physical inactivity in this analysis is valued based on health care cost savings per mile of walking and bicycling activity.

Additionally, there are several categories of benefits from mitigation measures that are real, and may be quite large, but are difficult to quantify and therefore are not reflected in the Cost Benefit Analysis. These include:

- Reduced vehicle ownership costs - to the extent that areas comply with the GHG requirements by making land use decisions that reduce the need to travel long distances, make areas more walkable and bikeable, and add transit service, it is likely that this will enable more households to reduce their vehicle ownership, for example going from from a 2 car to a 1 car family. This is particularly true for land use changes, where there is a strong correlation between average number of vehicles per household and land use types. While the analysis above captures reduced vehicle operating costs, it does not capture the reduced costs from lower levels of vehicle ownership, including depreciation of vehicle value due to reduced use per vehicle owned, lower cost due to owning fewer vehicles, etc.. Nationwide, researchers have found that households within 1/2 mile of transit stations own on average 0.9 cars, while households in the rest of the metropolitan regions owned, on average, 1.6 vehicles. According to AAA, the annual fixed cost to own a vehicle - including depreciation, insurance, license and registration

fees, and finance charges - was on average \$6,200 in 2019, though these costs can range based on the cost and type of the vehicle, and household size.

- Downtown/main street economic revitalization - policies that support dense, walkable downtowns and main streets tend to spark significant economic vitality in those areas, providing customers for restaurants and small businesses. Investments in transit also spur economic benefits such as increased property values and agglomeration benefits from more efficient land use. These benefits are real, but difficult to quantify and are not included in this analysis.
- Increased access to jobs - Because Colorado already has a very complete roadway network, households that have access to cars have the ability to access employment by driving. By contrast, for residents who do not own cars or have disabilities that preclude driving, many jobs are essentially inaccessible. A more robust transit network will increase access to jobs for these residents, and will provide a larger pool of potential employees for businesses. As an example, within the DRCOG region 6% of households do not have cars and 9% of residents have mobility disabilities. While it is not quantified in this analysis, greater access to employment for these individuals could bring significant economic and equity benefits.

3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

In terms of regulatory implementation, one reason why the Transportation Commission, rather than the Air Quality Control Commission, is pursuing this rule is in order to optimize overhead and streamline implementation resources within the organizations that already house transportation planning functions and expertise.

However, there will be some administrative costs associated with implementing this policy change, especially within the initial years of implementation. Within the state, the Colorado Department of Transportation (CDOT) is largely relying on existing staff positions to support the Transportation Commission's rulemaking, however, CDOT expects to hire three new positions to focus on functions related to implementation. This likely amounts to a cost of up to \$350,000 per year including employee benefits and other costs. Over time, it is possible that the Colorado Department of Public Health and the Environment's Air Pollution Control Division could hire an additional staff modeler to support confirmation and verification of pollution reduction analytics. This cost would amount to roughly another \$125,000-\$150,000 (including benefits).

Moreover, it is expected that some metropolitan planning organizations (MPOs) may require additional staff members dedicated to emissions modeling, as well as additional modeling software. CDOT is exploring options to streamline these overhead expenses and achieve economies of scale, especially as relates to centralizing certain modeling and software capabilities for use as shared services between the state and MPOs. The recently passed state legislation, SB 260, updates the Multimodal and Mitigation Options Fund (MMOF) to allow funds directed into this program to be used for modeling support.

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The following sections summarize a cost/benefit analysis assuming full implementation of this rule. This complete work is provided in the rule docket. As described in this analysis, because changes in transportation investments are assumed to be absorbed into current transportation plan budgets, the projected costs of the rule are limited to agency administrative costs (new staff) and some costs to the two industries directly affected by reductions in VMT -- gasoline and diesel sales and automotive maintenance and repairs. Logically then, these costs, if assumed to be avoided, become the "benefits" of inaction. Likewise, the costs of inaction are best represented by the benefits if the rule is not implemented. The dollar value of these benefits is summarized in Table 1 above.

Summary of the Costs and Benefits of Rule Implementation

Full implementation of this rule is expected to result in significant economic benefits in the form of cost savings to travelers and to the general public. Travelers will benefit from reductions in vehicle operating costs as a result of expanded travel options (e.g., transit service, tele-travel, walking and bicycling), travel time savings, and the need to use personal vehicles less because of being provided with more options through state and regional transportation planning. Implementation of the rule will also reduce economic costs associated with carbon emissions, air pollution, motor vehicle crashes (road safety), and the health consequences of physical inactivity.

Businesses are also expected to receive a share of the economic benefits. Examples include congestion reduction that saves travel time for "on-the-clock" business travel, and reduced health care costs for employees as a result of reduced air pollution, motor vehicle crashes, and physical inactivity. They may also experience increased worker retention and satisfaction as a result of employees having expanded commute or work from home options.

Additionally, policies that facilitate and reward downtown density tend to have a markedly positive impact on "main street" small businesses such as restaurants and locally-owned retail. While these benefits can be somewhat difficult to quantify in the aggregate and are thus not fully accounted for in this analysis, results from the Colorado Department of Transportation's "Revitalizing Main Street" program indicate that they are significant and widespread across the state. Well over 100 grants awarded to more than 70 communities have largely supported projects including downtown street repurposing and parklets, sidewalks and crosswalks, park and street improvements, shared streets between cars and pedestrians, and wayfinding and signage improvements. Many recipients have affirmed to CDOT that these grants significantly improved business and saved jobs during the COVID-19 pandemic, and, when surveyed, 67 percent of respondents said they would not have implemented these innovations without the program. Though grants supported many projects on a pilot basis, survey results showed that 81 percent of projects are likely to be maintained or repeated on a seasonal basis given their success. This data provides qualitative indication of the economic development benefits associated with many of the project types that this policy would encourage.

As indicated above, Table 1 shows the projected change in social costs through 2025, 2030, 2040, and 2050 respectively, for full implementation of the proposed rule using the illustrative mix of strategies. The net benefits reflect the effects of reduced highway investment as well as increased investment in GHG-reducing projects. Negative values (shown in parentheses) represent a net cost savings. Future savings are discounted at a rate of 2.5 percent, consistent with Colorado Senate Bill (SB) 21-260 which requires use of the social cost of carbon dioxide (CO₂) and other pollutants using a discount rate of 2.5 percent or less. The most substantial benefits are from reduced crashes and reduced vehicle operating costs, resulting from reduced VMT. The net present value of total social benefits is roughly \$8 billion in the 2026-2030 timeframe and \$17 billion between 2031 and 2040.

Anticipated Costs

The answer contained in item #3, above provides an analysis of agency implementation costs, which reflect additional FTE that will be necessary to comply with the rule. The resulting transportation planning changes are net neutral -- representing some shift in how dollars are prioritized rather than an overall change in the amount of spending on transportation. For example, some, but by no means all, dollars would shift from highway capacity expansion projects to other types of transportation investment including but not limited to bus rapid transit lanes or queue jumps as part of road projects; walking and bicycling facilities; additional transportation services, including expanded transit service and ridesharing options; and/or consumer incentives to reduce travel or encourage travel by more efficient, lower-emissions modes (such as ridesharing or telecommuting incentives). Importantly, it is anticipated that all costs shifted towards these types of investments will themselves result in mobility benefits and economic development, as well as improvements to air quality and pollution reduction.

Importantly, as detailed in Table 2, it is assumed that only a portion -- roughly a quarter to a third -- of capital program dollars are shifted towards projects that also serve as mitigation, in addition to providing mobility benefits of their own. This means that the most critical capacity projects are assumed to advance, likely paired with mitigation and significant investment in achieving and maintaining a state of good repair for roads, bridges, tunnels, and other transportation infrastructure assets across Colorado.

Table 2
Net Neutral Investment Levels and Dollars Shifted to Multimodal Transportation and other Environmentally Beneficial Transportation Investments
(net present value, millions of 2021 dollars)

Years	Total RTPs + 10-Year Plan	Total Shift to Mitigation	Percent Shift
2022-2025	\$3,842.07	\$417.90	11%
2026-2030	\$4,802.59	\$974.90	21%
2031-2040	\$9,605.17	\$2,655.80	28%
2041-2050	\$9,605.17	\$2,691.50	28%

It is worthy of note that additional federal investment could augment overall resources, and especially those resources geared towards transit and multimodal investments. For example, the Senate-passed Infrastructure Investment and Jobs Act would expand transit formula funds over the next five years by about \$39.5 billion, a 43% increase over the FAST Act. Under current FTA funding formulas, Colorado could receive more than \$900 million over the course of 5 years, an increase of approximately \$40 million a year. The Act also contains \$66 billion for Amtrak while Colorado continues to work towards passenger rail along the front range.

Businesses are not expected to incur significant direct costs to comply with the rule under the proposed implementation of the rule. As noted previously, there are a variety of social benefits (cost savings) that will be realized by the rule, some of which will accrue to Colorado's businesses. Importantly, this rule does **not** require that businesses implement trip reduction strategies that would have been required in a separate rulemaking recently withdrawn by the Air Quality Control Commission (AQCC). While businesses are encouraged to pursue employee trip reduction on a voluntary basis, and MPO's and CDOT through their Travel Demand Management (TDM) programs are able to help and encourage businesses in this effort, nothing in this rule requires it.

Lastly, both the benefit and cost assumptions within the rule assume that implementing agencies come into full compliance with the rule over the period of performance. However, the way that the rule is structured, the enforcement mechanism for non-compliance requires that a portion of an agency's capital funds -- which for MPOs are only those funds sub-allocated via the state as well as those specifically noted in Senate Bill 260 as being conditioned in this manner -- become restricted to projects that are demonstrated to reduce pollution and improve mobility. The recipient retains discretion over what pollution reducing investments are made, so long as those investments are approved as mitigations pursuant to the process set forth in the proposed rule. No entity would lose funds as a result of the enforcement provisions becoming effectuated by not hitting the targets in totality. The goal of this policy is to perpetuate serious conversation and planning for how the choices that planning entities make can provide consumers with the choices that are needed to reduce pollution and improve quality of life, not to diminish the ability of any entity to invest these dollars in mobility solutions for Coloradans.

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

Earlier this year, Colorado released its Greenhouse Gas Pollution Reduction Roadmap, which provides multiple strategies to meet the state's climate targets in 2025, 2030 and 2050. The Roadmap, which found that transportation is now Colorado's largest source of GHG emissions, listed multiple measures within the transportation sector to reduce emissions. One of those actions is to make transportation planning, investment and land use planning changes that provide more travel choices for Coloradans. That is what this rule attempts to do. It works to accomplish a share of the overall pollution reduction target for transportation with a new planning standard that refines the roles of the state and regional governmental agencies that are already in charge of transportation planning, making the implementation of the rule

unobtrusive to everyone that does not already have a governmental role in overall transportation planning.

Further, the rule does not place requirements on individuals, the traveling public, or businesses. The rule is expected to reduce GHG by utilizing existing transportation funds programmed by government entities to expand multimodal transportation options such as transit and bicycle commuting for consumers to choose from, while still increasing road capacity for the most critical corridors where it makes the most sense.

Lastly, it is worth noting that this rule complies with a direct requirement in SB260 directing CDOT to implement GHG requirements for transportation planning.

6. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

An important aspect of this rule is that it does not require a specific set of measures to be implemented by the State and its MPOs to achieve the rule's targets. Those decisions are left to the implementing agencies who will also have ongoing opportunity to propose new mitigation measures for modeling to ensure that they result in emission reductions. Thus, in order to conduct this analysis, CDOT developed illustrative policy choice packages that assume implementation of three broad categories of VMT reduction measures: (1) expansion of transit service; (2) policies to encourage compact land use that reduces the need to drive by making it possible for travelers to access more of their preferred destinations easily within denser areas, in a manner that also facilitates strong and economically vibrant downtowns; and (3) various programs that expand travel choices through a variety of different approaches that could include investing in bicycle and pedestrian infrastructure and micro mobility services that assist with "first and last mile" connections to transit facilities; investments (e.g. in digital infrastructure) that help support tele-travel as an alternative to physical travel and also offer more workplace flexibility to employees in many work environments; or programs that encourage non-work travel by modes other than a single occupancy vehicle (e.g. a jurisdiction that provides transit passes to its residents).

Two specific alternative methods for achieving the purpose of the proposed rule were considered, including:

Alternative 1: A lower level of pollution savings based on modeling assumptions that only factored in savings associated with travel choices: Programs to encourage non-work travel by non-single occupancy vehicle modes; programs to support and encourage tele-travel (e.g., on-line health care, education, and shopping) as a substitute for physical travel; investment in bicycle and pedestrian infrastructure and micromobility services; and reduction of transit fares. Essentially, this regulatory alternative achieves the lowest cumulative pollution reduction targets and assumes fewer illustrative choices by agencies to meet them.

Alternative 2: A pollution reduction scenario at a level where the model assumed an illustrative set of actions including travel choices and expanded transit service. Notably, since most of the costs assumed in the rule relate to the ongoing cost of transit operations, this scenario would reflect most of the costs associated with the current proposal.

In contrast to the illustrative package of policy choices used to evaluate the proposed rule, these alternatives do not include additional land use policies to reduce vehicle travel. As a result, they are less likely to achieve the required greenhouse gas reduction targets and therefore to support overall state goals for GHG reduction and climate change. Once again, none of these scenarios prescribe specific choices for regulated entities, rather they establish stringency levels based on illustrative modeling options that contemplate various orders of magnitude.

The economic benefits (reductions in social costs) from these alternatives are presented in Table 3. The "travel choices" alternative (Alternative 1) achieves the lowest greenhouse gas emission reductions. The "travel choices + transit" alternative (Alternative 2) results in additional social cost savings and greenhouse gas reductions. The proposed alternative for this rule (which includes travel choices, transit, and land use policies) results in a further increase in greenhouse gas benefits. These considerations resulted in proposing this alternative to analyze the effects of the final rule. As with the base alternative, the net costs of implementing the rule to the public sector would assume similar levels of overhead (staffing) at implementing agencies but would otherwise assume that topline funding remains the same with some portion shifted from planned highway expansion into other, emissions-reducing modes and services.

Table 3
Net Present Value of Economic Benefits (Cost Savings) for Alternatives (\$millions)

Scenario	Alternative 1: Travel Choices	Alternative 2: Travel Choices + Transit
2022 - 2025	\$(1,527)	\$(1,644)
2026 - 2030	\$(6,776)	\$(7,268)
2031 - 2040	\$(14,852)	\$(16,102)
2041 - 2050	\$(10,603)	\$(11,397)