

**High Performance Transportation Enterprise  
Board of Directors Meeting Minutes  
CDOT Headquarters Building, Auditorium  
June 15<sup>th</sup>, 2011**

**PRESENT:** Charlotte Robinson  
Trey Rogers  
Doug Aden  
Dan Cleveland  
Tim Gagen

**ABSENT:** Heather Barry  
Stan Matsunaka

**ALSO PRESENT:** Michael Cheroutes, HPTE Director  
Jeanne Erickson, Transportation Commissioner  
Tim Harris, Chief Engineer  
Jennifer Finch, Director DTD  
Ben Stein, CFO  
Laurie Freedle, Manager OFMB  
Tony DeVito, Director Region 1  
Johnny Olson, Director Region 4  
John Schwab, Region 6 US 36 Project Director  
Lizzie Kemp, Region 6 Environment & Planning  
Angie Drumm, Government Relations  
Rebecca White, Government Relations  
Kathy Young, HPTE Counsel  
Marina Krasny, HPTE Accountant  
Kari Grant, HPTE Program Deputy  
Jane Hickey, HPTE Executive Assistant  
Toni Kelly, Executive Assistant to the Transportation Commission

**AND:** Other staff members, organization representatives and public.  
All supporting documents are filed in the HPTE office.

**1. Call to order and Roll Call**

Chairwoman Robinson convened the HPTE Board of Directors regular meeting at 10:05 a.m.

**2. Public Comment.**

No Public Comment.

**3. Board Members' Comments.**

Director Aden spoke about the Mileage Based User Fee Symposium attended by himself, Chairwoman Robinson, Director Gagen and HPTE Program Deputy Kari Grant. He was impressed by the quality of the programming and attendees, which included international participants. He said up until recently, MBUF was discussed in mostly academic settings, but now practical applications are being made in some states, including Oregon which is seeking enabling legislation for MBUF applications for electric vehicles. He asked the other board members and Director Cheroutes to think about what role the HPTE might play in this regard in the state of Colorado. He noted the political sensitivity of the topic. He said the Mileage Based User Fee Alliance is leading research and applications, and that since by statute the HPTE is directed to explore innovative financing, the HPTE ought to consider membership.

Director Gagen concurred, noting the state of the art research being done to solve equity issues. Chairwoman Robinson said that there was good discussion about an MBUF pilot project being conducted by CDOT, and she requested a presentation to the Board in July on this project.

Director Mike Cheroutes said the common understanding on this issue is that for MBUF to be successful, it has to be implemented on a national scale by federal leaders. Director Aden said that was a major area of discussion at the symposium, and that the consensus of the participants was that it is already being led by state efforts with the idea that it will evolve to a national program.

#### **4. HPTE Director Report.**

Mike reported he and other CDOT representatives will be going to Seattle next week to learn about Washington's tolling system. He said we are also starting work on a comprehensive tolling policy, and are working with DRCOG and other stakeholders to surface and understand tolling policy issues. Mike also reported on the InfraAmericas P3 Conference in New York, which he said generated quite a bit of interest in potential P3 projects in Colorado. He noted that in the last year interest in P3 structures has grown tremendously, as have managed lane activity and projects in metropolitan areas.

#### **5. Discuss and Act on the Regular Meeting Minutes for May 18<sup>th</sup>, 2011.**

Chairwoman Robinson asked for consideration of the May 18<sup>th</sup>, 2011 HPTE regular meeting minutes. Director Rogers moved for adoption of the meeting minutes. Director Gagen seconded the motion and on the vote of the Board, the minutes for May 18<sup>th</sup>, 2011 meeting were adopted. The motion passed unanimously.

#### **Resolution Number HPTE-44**

BE IT HEREBY RESOLVED, the High Performance Transportation Enterprise Board of Directors' Regular Meeting Minutes for May 18<sup>th</sup>, 2011 are hereby approved.

## **6. Discuss and Act on HPTE Budget for FY 2012.**

CDOT CFO Ben Stein and HPTE Accountant Marina Krasny were on hand to walk through the proposed budget and answer questions. Marina noted there were new items on the revenue side to consider. Mike said we've been successful building in new revenue streams this year, but still must be careful with expenditures, and need to keep an eye on repaying the original loan from the Transportation Commission.

Director Gagen said it will be important to track time spent on services on various future projects so we will know what our fee for service charges should be. Director Aden noted the importance of finding additional sources of revenue if the HPTE is to operate as a sustainable business. He asked Marina if there is sufficient money in the budget for membership in the MBUF Alliance, and she said there was.

There followed some general discussion about joining the Alliance. Mike said there would be some internal staff discussions about HPTE or CDOT becoming a member, and that he'd come back to the Board with a recommendation in July.

Director Aden moved for approval of the proposed FY 2011-2012 budget for the HPTE Operating Fund and the Special Revenue Fund, Director Rogers seconded the motion and on the vote of the Board, the proposed FY 2011-2012 budget was approved.

## **Resolution Number HPTE-45**

BE IT HEREBY RESOLVED, the Proposed Budget for the Fiscal Year 2011-2012 is approved by the High Performance Transportation Enterprise Board of Directors.

## **7. Update on P3 Analysis.**

Mike introduced the topic, noting that the HPTE has been working with consultants Vince Dolan and Lisa Fenner of KPMG to build a business case for the third segment (or Phase 2) of US 36. He asked Vince to come today to present where we are in that process and schedule.

Vince Dolan said KPMG is HPTE's P3 advisor, and they are assessing P3 options for both Phase 1 and Phase 2 of the US 36 Managed Lanes project. He said their evaluation approach keys on three areas:

- Developing market interest: It is essential for P3 developers to understand what the HPTE is, and the details of the US36 project. Mike has already generated a good amount of interest through his presentation at the InfraAmericas conference.
- Financial analysis: KPMG has developed a matrix of 24 scenarios for analysis.
- Technical analysis: This includes costs and revenue estimates and project scoping, and is iterative with the financial analysis.

Out of these efforts will come a project delivery recommendation for a P3 effort, anticipated late this summer or early September. Vince explained the short-term project schedule, noting they are working with Wilbur Smith Associates on the traffic and revenue analysis, and with Jacobs on the operations and maintenance analysis. Mike noted that TIFIA requested additional T&R information on Segments 1 and 2, and that WSA was at the same time developing analysis for Segment 3, and that he thought it was efficient to work with WSA in this manner.

Vince said that there will be an industry forum this summer to provide information to P3 stakeholders about US 36, and also to hear back if there are any concerns from them. He said it is important to create market interest in potential opportunities to stimulate competition among potential bidders for projects. Investors must be convinced that their investment in the project will be successful, and that there is in place the political will and support for it. Vince noted the recent visit by Fitch ratings officials sends a good message to potential P3 partners. Mike noted the industry forum will likely take place the last week of July.

There are a number of key decisions facing the HPTE in the near future. These include what is the optimal scope for a P3 project, should the project be procured through Availability Payment or a Concession structure, and coordination with RTD to support both BRT and HOT components.

Vince spoke about an illustrative P3 procurement schedule. He noted of all the steps, the financial modeling and evaluation of public policy positions is the lengthiest. He highlighted the bid evaluation step, saying it is highly critical because the partners we choose will be our partners for 40 or more years. In all, the procurement schedule will take about a year to close.

Mike asked Vince to describe the difference between an Availability Payment approach and a Concession approach. He said the Availability Payment approach is based on successful road operation – that the developer designs, builds, operated and maintains the road, but does not toll it. The HPTE tolls the lanes, receives the revenues, and assumes the toll risk. The Concession structure is where the developer designs, builds, operates, maintains and tolls the road. The developer in this case assumes the toll risk and the toll revenues. For example, RTD's Eagle P3 is based on an Availability Payment structure.

There being no other questions, Director Rogers expressed thanks to the KPMG consultants for their work.

## **8. Discuss and Act on P3 Procurement Guidelines.**

Mike said we have working for the past six weeks to develop a set of guidelines that would allow the HPTE to solicit proposals and accept unsolicited proposals. Draft guidelines were posted on the website in May, and for two weeks written comments were accepted. Mike said several industry professionals responded, and their comments were helpful and

helped focus the process. He introduced David Scott of Hogan/Lovells, the legal consultant who helped craft the guidelines.

David Scott said that with a project-oriented enterprise like the HPTE, it is essential to have an architecture to communicate with the industry about how proposals will be solicited and accepted. The desire at the outset was to have a relatively simple set of guidelines that would focus on providing competition, transparency, and fairness.

The guidelines are divided into two main parts:

- Unsolicited Proposals: This outlines how the HPTE will decide whether or not to consider unsolicited proposals. There is a modest initial fee for unsolicited proposals to cover the costs of consideration and evaluation. There are also specifications for a flexible path for a competitive process initiated by unsolicited proposals.
- Solicited Proposals: This specifies the public process, documentation and evaluation of proposals sent in response to a solicitation by the HPTE.

The draft guidelines had been posted for comment in May, and David said he was very encouraged by the quality of feedback supplied by the industry. A working group including Counsel to the HPTE made changes to the draft, based on these comments. What is before the Board now is a clear set of guidelines that have the input and support of the industry. David noted that the Board has the ability to make amendments as needed in the future to this document.

Mike said many industry comments regarding the specificity of the guidelines were the result of experiences in other states that were not as committed to transparency of the process. He said he is confident that these guidelines set an assumption of openness with the industry, and that it is important for the Enterprise to keep the door open, and that all stakeholders need to be on the same page regarding expectations.

Director Aden said he was comfortable moving forward with these guidelines, and thanked David Scott and the working group for their efforts. He also thanked the industry for their response to the draft. Director Cleveland concurred, saying the thought the revisions to the draft were good. He moved to approve the proposed Project Proposal Guidelines, and Director Rogers seconded the motion, and on a vote of the Board the proposed guidelines were adopted unanimously.

#### **Resolution Number HPTE-46**

BE IT HEREBY RESOLVED, the Proposed Project Proposal Guidelines are approved by the High Performance Transportation Enterprise Board of Directors.

Mike noted that we are in the process of developing a list like CDOT's Bidders List for people who wish to be notified of HPTE solicitations and announcements. He said that a notice about this will be posted on the HPTE website.

## **9. I-70 Mountain Corridor ROD Update.**

Tony DeVito, Director of Region 1 was on hand to update the Board on the status of the I-70 Mountain Corridor Programmatic EIS Record of Decision. He noted the dedicated work by many CDOT professionals, consultants and citizens over the ten years in which the EIS was being developed. He said the ROD summarizes the multi-modal approach and provides direction for improvements and mitigation strategies. He highlighted that this is CDOT's first Collaborative Effort with stakeholders with consensus on how to move forward.

On June 16, the entire CE has been invited to the ROD signing ceremony at CDOT Headquarters, followed by a meeting to talk about next steps on I-70. Director Gagen asked Tony to talk about the phased approach to moving forward, noting that a series of projects will be implemented in a 50-year timeframe. Tony said it will be a 3 phase approach, including the implementation of noninfrastructure components, an Advanced Guideway System feasibility study, and the implementation of key highway improvements, such as the Twin Tunnels solutions.

Tony also said that the ROD specifies triggers for flexibility in planning, and that project staff will be able to convene the CE to evaluate and refine implementation of various project components. Director Gagen noted that I-70 presents unique challenges, and is very different from the usual CDOT project. Tony noted a significant recent opportunity has been the formation of the HPTE, which can help sort through innovative financing options.

## **10. US 36 Project Update.**

John Schwab noted he is now dedicated 100% to the US36 Managed Lanes project, that he has hired staff, and co-located to the offices of Jacobs Engineering. He said the RFQ was issued in May, and that Statements of Qualifications are due on June 24. He thought he'd receive eight to ten statements, and that evaluations would be complete about mid-July. He said they would shortlist three or four firms to receive the RFP. He and his team are developing the RFP, which should be ready in late September. The proposals are due in February, 2012, a selection would be made in March, and they would be ready to begin construction in July of 2012.

John also described recent scan tours of facilities in other state to glean lessons learned and gather other applicable ideas.

Chairwoman Robinson asked if Mike will be involved with the solicitation and evaluation. Her concern was one of coordination. Kathy Young said Mike will be involved via the Executive Oversight Committee. John welcomed Mike's participation.

Mike then spoke about the day-and-half meeting with Fitch Ratings staff. Part of that was a tour of the corridor, and a meeting with a business leader from Conoco Phillips and corridor mayors. Mike noted the meetings and tour went well, and was helpful to the Fitch staff. He said he was confident regarding the final investment grade rating. Chairwoman Robinson said she was present for most of this, and complimented Mike and the staff for their efforts.

#### **11. Discuss US 36 O & M Backup.**

CFO Ben Stein said he is drafting an agreement that is a key financial element of the TIFIA application. It addresses how CDOT will operate and maintain the US 36 Managed Lanes project and also have sufficient revenues to pay the debt service. Operations and maintenance are crucial to keep the facility producing revenues, and TIFIA is very interested in how we propose to do that.

The still-draft operations and maintenance backup plan is based on innovation, with the idea to pre-fund an O & M account with excess revenues from the I-25 Express Lanes, which are pledged to pay the US 36 O & M, which in turn allows revenues from US 36 to go toward debt service.

Ben explained that next month, he will seek a Resolution approving a shell document by the HPTE and the Transportation Commission. This document will address the “what if” I-25 excess revenues aren’t sufficient to cover O & M. In such case, CDOT would backfill the insufficiency by making a loan to HPTE. The Enterprise would then pay back the loan when I-25 revenues recover, or using US 36 revenues after payment of debt service. Ben described the backup arrangement as a “belt and suspenders” approach to making sure US 36 operations and maintenance and debt service are made.

By pre-funding the O & M Account now with I-25 excess revenues, this approach creates a cushion against any uncertainty about revenues during the ramp up of US 36. Ben said this is a very strong structure, and he projects that there would still be I-25 excess revenues over \$1 million after paying US 36 O & M.

Ben said at an upcoming meeting, the Board would see a Resolution, a form of the loan agreement with the Commission, and final numbers. Mike said the loan agreement would be approved as part of the Master Trust Indenture by separate Resolution, possibly at the August meeting.

Director Aden noted there is currently enough money from I-25 to pre-fund the O & M account. Director Gagen said this kind of leveraging makes sense, and could set a precedent for future uses of I-25 excess revenues. Mike said this is the kind of issue that needs to be worked through as we draft a comprehensive tolling policy.

Chairwoman Robinson asked Johnny Olson if he had any comments from the Region 4 perspective. He said that Mark Gosselin is working closely with John Schwab, and that he felt things were going well

**12. Other Matters.**

No other matters.

**13. Adjournment.**

Chairwoman Robinson adjourned the meeting at 11:35 a.m.