

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE COLORADO DEPARTMENT OF
TRANSPORTATION AND THE COLORADO DEPARTMENT OF
NATURAL RESOURCES DIVISION OF PARKS AND WILDLIFE**

Whereas, the Colorado Department of Transportation, hereinafter referred to as CDOT, is charged under the laws of the State of Colorado with the construction and maintenance of the state's highways, and

Whereas, a significant number of aquatic and terrestrial wildlife inhabit or cross highway rights-of-way under the administration of CDOT, and

Whereas, the Department of Natural Resources Division of Parks and Wildlife, hereinafter referred to as CPW, is charged under the laws of the State of Colorado with the management and enhancement of the state's wildlife resources, and

Whereas, it is the mutual desire of these agencies to manage aquatic and terrestrial wildlife within highway rights-of-way in a cooperative manner to satisfy their respective charges for the best interests of the people of Colorado and its visitors, and

Whereas, on August 21, 2019, Colorado Governor Jared Polis signed Executive Order D 2019 011, *Conserving Colorado's Big Game Winter Range and Migration Corridors* directing CDOT and CPW to develop and Memorandum of Understanding (MOU) outlining their collaboration and support for the Wildlife and Transportation Alliance and the implementation of big game crossings over and under roadways in Colorado.

Now Therefore, CDOT and CPW agree:

Background:

CDOT exists to ensure that Colorado has a safe and efficient highway system by building and maintaining interstates, U.S. highways and state highways. CPW's mission is to perpetuate the wildlife resources of the state, to provide a quality state parks system, and to provide enjoyable and sustainable outdoor recreation opportunities that educate and inspire current and future generations to serve as active stewards of Colorado's natural resources. It is for the economic, social, cultural and recreational benefit of Colorado's citizens and visitors that CPW and CDOT collaborate for the common purpose of maintaining and improving Colorado's transportation systems while simultaneously protecting and managing Colorado's fish and wildlife resources and their associated habitats. This MOU embodies the idea that these goals are not mutually exclusive and so establishes a program of cooperation between the agencies.

This MOU supersedes the previous MOU (1980), entitled, "*Memorandum of Understanding between the State of Colorado Departments of Highways and Natural Resources Divisions of Highways and Wildlife.*" It does not invalidate any other MOUs or other agreements between CPW and CDOT regions.

Authority:

This MOU is entered into pursuant to the authority of Colorado Revised Statutes Sec. 33-1-105(e) & 43-1-105, and Colorado Governor Executive Order (EO) D 2019 011.

SPECIFIC AREAS OF COLLABORATION:

Implementation of EO D 2019 011, *Conserving Colorado's Big Game Winter Range and Migration Corridors*

Both parties agree:

1. To cooperate to determine possible mitigation for Wildlife-Vehicle Collisions (WVCs) during all phases of transportation planning and transportation project implementation.
2. To Identify priority areas for the implementation of big game crossings over and under roadways in Colorado using the best available science.
3. To continue to support the Wildlife and Transportation Alliance (Alliance), and to use the Alliance to raise awareness, forge partnerships, and identify potential public and private funding opportunities to construct new wildlife crossing structures.

Wildlife/Vehicle Collisions (WVC)

CDOT shall:

1. Have primary responsibility for removal and disposal of roadkill elk, deer, and antelope from federal and state highways in Colorado (see CDOT Procedural Directive 1005.1).
2. Remove from the road prism to avoid attracting public attention roadkill bear, mountain lion, bobcat, lynx, bighorn sheep, mountain goat, moose, wolverine and wolf. Within 24 hours of removing one these species from the road prism and prior to moving the carcass off site, CDOT maintenance staff shall report to local CPW staff the species and location, and coordinate with CPW on proper carcass disposal.
3. Report animals killed on the roadway to the nearest 1/10 mile by the most efficient and accurate means available, and entered into its statewide database quarterly.
4. Encourage a photo be taken of unknown, but identifiable, roadkill and sent to CDOT's Regional or HQ biologist for positive identification, particularly if one of the aforementioned species is suspected.
5. Provide CPW Regional Managers and Terrestrial Section Manager (Appendix B Contacts) an electronic copy of CDOT's Quarterly Roadkill Report.
6. Inspect and repair any deficiencies found in existing wildlife fencing or other wildlife mitigation feature within 30 calendar days or as conditions allow.

CPW shall:

1. Remove from federal and state highways roadkill elk, deer and antelope first discovered by CPW staff that present a clear hazard to human health and safety. Locations of roadkill elk, deer and antelope removed by CPW staff shall be reported to CDOT to the nearest 1/10 mile for its statewide roadkill tracking database.
2. Coordinate with local CDOT staff on reports of roadkill bear, mountain lion, bobcat, lynx, bighorn sheep, mountain goat, moose, wolverine and wolf.
3. Inform the appropriate CDOT Region or HQ Biologist of deficiencies in existing wildlife fencing or other wildlife mitigation feature(s).

Data Access and Information Sharing

CDOT shall:

1. Respond to individual requests from CPW for transportation system information within 30 calendar days unless otherwise coordinated.
2. CDOT HQ biologist will respond to individual requests from CPW for roadkill information collected by CDOT's maintenance crews and law enforcement agencies within 2 weeks unless otherwise coordinated.
3. Upon request, include individuals from CPW on the distribution of quarterly and annual roadkill reports.
4. Map and share individual requests for animal/vehicle conflict areas.
5. Inform the appropriate CPW Regional Manager, or designee, of future projects which have the potential to obstruct wildlife movement beyond current baseline levels, and provide the opportunity to comment or advise on possible measures to mitigate the impacts.
6. Comply with the terms of the data sharing agreement provided in Appendix A when utilizing project-specific data provided by CPW.

CPW shall:

1. When information or data is available, identify and share wildlife seasonal ranges and migration corridors that may affect CDOT activities on a statewide basis.
2. Upon request, cooperate in the development of best-management-practices to minimize CDOT's impact on wildlife and their habitat.
3. Respond to individual requests from CDOT for wildlife related information within a reasonable time, not to exceed thirty calendar days. Unless otherwise coordinated, these requests will not pertain to currently unpublished data, on-going research data, or other data with restricted access as noted by CPW.
4. Upon request, CPW shall provide CDOT with annual GIS-based maps of known raptor nests and necessary buffer zones. Given the statutory duty under CORA to protect information related to private lands that would identify, or allow to be identified, landowners or lands, CPW will share the requested data related to private lands with CDOT because, as a state agency, it shares with CPW the duty to protect such information.
5. Respond to CDOT's request for comment on future projects, which have the potential to obstruct wildlife movement beyond current baseline levels within a reasonable time not to exceed thirty calendar days. An indication of 'no comment' is acceptable.

Both parties agree:

1. Unless impractical, sharing data electronically is preferred over hard copy.

Communication and Coordination

Both parties agree:

1. Meet annually to discuss topics of mutual concern. Potential substantive topics include but are not limited to vegetation management, fencing, SB40, Statewide Transportation Improvement Program (STIP), carcass removal, and habitat connectivity.
2. A principle representative(s) will be appointed for each agency and will be responsible for the coordination and continuation of the meetings throughout the lifespan of this MOU.

3. Review and update on an annual basis, a roster of relevant Agency contact information, as listed in Appendix B.
4. Meeting notes will be taken and distributed to CDOT RPEMs, CDOT Maintenance Superintendents, CDOT HQ wildlife program, CPW Regional Managers, Terrestrial and Aquatic section heads and CPW Statewide PIO.
5. Continue to champion the Colorado Wildlife and Transportation Alliance as co-chairs. Both agencies will identify resources to ensure its momentum, relevance and success.
6. Look for opportunities to coordinate at both a regional and statewide basis.

Public and Media Relations

Both parties agree:

1. When issuing a press release which may impact or affect the other agency, the affected agency will be given advance notice and provided an opportunity to offer input on the draft press release, before it is released to the public.
2. In situations where media contact is immediate and does not afford communication with the other agency, any statements given in respect to the other agency will be relayed to that agency and an opportunity to clarify those statements to the press will be given.
3. Both agencies agree to use common language and overall speaking points to provide consistency and continuity with the Colorado Wildlife and Transportation Alliance efforts.
4. If promoting work, outreach or information through a variety of communication channels to include social media, traditional press and/or web platforms the primary agency will tag, mention or link to the partnering agency's platforms when appropriate.
5. For all of the above, both parties will coordinate with their respective Director of Communications or designee. See Appendix B.

Training

CDOT shall:

Consider training CPW employees who interact with CDOT on topics that would improve communication and understanding (e.g. development and review of transportation construction plans and specifications, efficacy of wildlife crossing structures for various species, etc.).

CPW shall:

Consider training CDOT employees who interact with CPW on topics that would improve communication and understanding (e.g. track identification).

Nothing in this MOU by and between CDOT and CPW shall be construed as limiting or expanding the statutory or regulatory responsibilities of either agency or any involved individual acting on behalf of the agency or in performing functions granted to them by law; or as requiring either agency to expend any sum in excess of its respective appropriation. Each and every provision of this MOU is subject to the laws and regulations of the State of Colorado and the United States.

Nothing in this MOU shall be construed as expanding the liability of either party. In the event of a liability claim, each party shall defend their own interests. Neither party shall be required to provide indemnification of the other party. This MOU does not in any way restrict any entity from participation in similar activities with other public or private agencies, organizations, and individuals.

The memorandum of understanding shall become effective when signed by the designated representatives of the parties hereto and shall remain in force until terminated by mutual agreement, or by any party upon thirty days notice in writing to the others of its intention to do so. Amendments to and deviations from this agreement may be proposed by any party and shall become effective upon approval of written supplemental agreements by all parties.

This MOU shall remain in force for ten years from the date of the last signature unless it is mutually extended or formally terminated by either party after thirty (30) calendar days written notice to the other party.

Colorado Department of Transportation

By 
Chief Engineer

Date 10 Dec 2019

Colorado Parks and Wildlife

By 
Director

Date 12/9/2019

Appendix A:

Agreement allowing use of Colorado Parks and Wildlife Information by the Colorado Department of Transportation for Conservation Purposes

1) Colorado Parks and Wildlife (CPW) will provide information on wildlife locations and migration, as requested by Undersigned, to the Colorado Department of Transportation (CDOT) for the purposes of planning for the avoidance of impacts and mitigating the effects of project-specific transportation infrastructure projects on wildlife, wildlife migration and wildlife habitat connectivity.

Data to be provided by CPW upon request (to the extent available) includes:

- GPS and/or satellite telemetry data from research previously published by CPW and from previous and ongoing unpublished management studies statewide;
- census data and/or density mapping (where available);
- big game, small game, and other fish and wildlife resource areas of occurrence, seasonal habitats, and known migratory movements and migration routes mapped by CPW; and
- other data as requested and determined to be a necessary part of CDOT project planning by CDOT and CPW.

CPW will provide data in raw and/or processed form (e.g., Brownian bridge movement models, etc.), as available and as determined in consultation with CDOT and its subcontractors.

This information will be used solely by CDOT, its employees, and subcontractors employed specifically to work on planning transportation infrastructure projects and for no other purpose, and are not to be distributed to any other party, including other governmental entities. Any information transmitted by CPW will be labelled "confidential" and "do not distribute" by CDOT and its subcontractors.

2) CPW considers this information confidential and sensitive due to the species' vulnerability to intentional or unintentional disturbance, or due to state statutory requirements and agreements made with individual landowners to protect their privacy. With specific regard to information collected or maintained by CPW per CR.S. § 24-72-204(3)(a)(XXI), CPW is prohibited from disclosing all records, including, but not limited to, analyses and maps, compiled or maintained pursuant to statute or rule by the department of natural resources or its divisions that are based on information related to private lands and identify or allow to be identified any specific Colorado landowners or lands; except that summary or aggregated data that do not specifically identify individual landowners or specific parcels of land shall not be subject to disclosure.

However, the Colorado Open Records Act (CORA) defines "official custodian" as "any officer or employee of the state ... or political subdivision of the state and the definition of "political subdivision" in CORA includes "every county, city and county, city, town, school district, special district, public highway authority, regional transportation authority and housing authority within the state. Given the statutory duty under CORA to protect information related to private lands that would identify or allow to be identified landowners or lands, CPW will share the requested data related to private lands with CDOT because, as a state agency, it shares with CPW the duty to protect such information.

3) CPW will participate with CDOT, its employees and subcontractors in determining the scope of intended uses of, and use limitations prior to providing data, and will be allowed to review draft products developed from these data.

4) I, the Undersigned, represent that I am authorized to bind CDOT and on behalf of CDOT acknowledge that the information noted above is sensitive and confidential, and agree to the terms and conditions set forth herein:

- The raw and/or processed information described above will be accessible only to CDOT, its employees and subcontractors working on the project described above, and to no other party; nor will it be made available in any manner for public viewing or distribution. CDOT represents that it and its employees and subcontractors working for them are not subject to the federal Freedom of Information Act or that it, its employees or subcontractors could otherwise be required to disclose the information to any other part.
- The raw information may not be transcribed or reproduced in any manner, unless authorized in writing by CPW. CDOT, and/or its subcontractors, may display locations spatially only if necessary to the stated conservation purpose or as part of an internal process. CDOT, and/or its subcontractors, may display point locations spatially if necessary to their stated conservation purpose, but agrees to do so in a manner and at a scale where specific locations cannot otherwise be derived.
- The raw information will be used for the conservation purpose described in the data request and for no other purpose. The information provided through this agreement will be immediately returned (and all copies destroyed) upon completion of the applicable project and purpose described above or upon termination of this Agreement. This Agreement is terminable at will by CPW. CDOT will require its employees and subcontractors to comply with the terms and conditions listed herein.
- Requests involving biological interpretation or use of the information beyond the stated conservation purpose will be referred to CPW.
- CDOT acknowledges that the information represents data and features that are variable both over time and over the landscape and that CPW makes no warranties, express or implied, regarding the use of the information for any particular purpose.

Remedies and Enforcement

This Agreement shall be governed by Colorado law and CPW has all remedies available to it in law or equity to enforce the terms and conditions of this Agreement.

Colorado Department of Transportation

Signature

Title

Please Print

Date

Colorado Parks & Wildlife

Signature

Title

Please Print

Date

Appendix B

Agency Contacts

CDOT

Subject Matter	Name	Title	Email	Phone
Communications	A current list of CDOT Regional Communication Managers can be found at https://www.codot.gov/news/documents/region-communication-managers			
Biologists	Jeff Peterson	HQ Wildlife Program Manager	jeff.peterson@state.co.us	303-512-4959
	A current list of CDOT Regional Biologists can be found at: https://www.codot.gov/programs/environmental/contacts-region.html			
Regional Planning & Environmental Managers	A current list of CDOT Regional Environmental Staff can be found at: https://www.codot.gov/programs/environmental/contacts-region.html			

CPW

Subject Matter	Name	Title	Email	Phone
Communications	Ferrell, Rebecca	Public Information & Website Manager	rebecca.ferrell@state.co.us	303-866-3203 X4604
NW Region	JT Romatzke	NW Region Manager	jt.romatzke@state.co.us	970-255-6179
SW Region	Cory Chick	SW Region Manager	cory.chick@state.co.us	970-375-6710
NE Region	Mark Leslie	NE Region Manager	mark.leslie@state.co.us	303-291-7203
SE Region	Brett Ackerman	SE Region Manager	brett.ackerman@state.co.us	719-227-5209
Terrestrial Biologist	Brian Dreher	Terrestrial Section Manager	brian.dreher@state.co.us	303-291-7461
Aquatic Biologist	Matt Nicholl	Aquatic Section Manager	matt.nicholl@state.co.us	303-291-7356
GIS	Seth Mclean	GIS Unit Supervisor	seth.mcclean@state.co.us	303-291-7163