

5.0 CLARIFICATIONS TO THE FEIS AND UPDATES IN REGULATIONS

5.1 CLARIFICATIONS AND CORRECTIONS TO THE FEIS

This section includes clarifications and corrections to specific items in the FEIS. These issues were identified by comments received during the public and agency review of the FEIS.

5.1.1 Clarifications and Corrections Related to Park and Recreational Resources

- ❖ The FEIS includes dog racing as one of the many recreational opportunities within Pueblo. However, dog racing was suspended in 2008 and should not have been included in the FEIS. Pueblo Greyhound Park is now used for offices and off-track video racing. Updating this information does not change the analysis or conclusions presented in the FEIS.
- ❖ The FEIS states that the detention ponds between 29th Street and 24th Street adjacent to I-25 on the west side of the highway were constructed and are owned and maintained by the City Parks and Recreation Department for the primary purpose of providing flood control and water detention. These ponds were constructed by the City and CDOT and are located within CDOT ROW and maintained by the City Parks and Recreation Department. Updating this information does not change the analysis or conclusions presented in the FEIS.
- ❖ The FEIS notes that for financial reasons, the City drained half of the lake at Mineral Palace Park and sold all of the parkland south of 14th Street in the 1930s. Additional reasons for this action also include the influence of New Deal era project design and efforts to conserve potable water. Updating this information does not change the analysis or conclusions presented in the FEIS.
- ❖ The FEIS notes that CDOT has committed to the construction of a new Benedict Park south of the existing park location between Mesa Avenue and Northern Avenue. To clarify this mitigation element, it is added that CDOT will coordinate with the City and the public to solicit feedback and address concerns related to the mitigation plan for Benedict Park before the design of the park is finalized. Updating this information does not change the analysis or conclusions presented in the FEIS.

5.1.2 Clarifications and Corrections related to Environmental Justice

Chapter 3 – Affected Environment and Environmental Consequences, Section 3.6 Social Resources, Economic Conditions, and Environmental Justice, Page 3.6-17 of the FEIS states that “[t]he implementation of Best Management Practices, development of a construction monitoring plan for particulate emissions, and other mitigation measures implemented throughout construction would reduce the severity of these [construction-related] impacts so that remaining effects would no longer be considered high and adverse. In addition, the long-term benefits provided by the project would likely outweigh the remaining short-term effects during construction.”

- ❖ CDOT has revised the terminology of the “construction monitoring plan” to “Construction Air Quality Control Plan” to more accurately reflect the scope of the plan.

Chapter 3 – Affected Environment and Environmental Consequences, Section 3.6 Social Resources, Economic Conditions, and Environmental Justice, Page 3.6-18 of the FEIS states that “[t]o address the health effects of particulate emissions during construction, CDOT will coordinate with the Colorado Department of Public Health and Environment (CDPHE) to develop a construction monitoring plan. The monitoring plan will demonstrate how well the Preferred Alternative addresses construction-related particulate emissions by measuring the effectiveness of mitigation measures in controlling or minimizing adverse effects.”

- ❖ CDOT has revised the terminology of the “construction monitoring plan” to “Construction Air Quality Control Plan” to more accurately reflect the scope of the plan. Prior to construction, CDOT will commit to coordinate with CDPHE in the development of a plan that will minimize fugitive dust and vehicle exhaust emissions during construction.
- ❖ CDOT has also replaced the last sentence describing the monitoring plan with the following: “The plan will include construction BMPs that have been demonstrated to be effective during past construction projects to reduce fugitive dust and vehicle exhaust emissions.”

5.1.3 Clarifications and Corrections Related to Noise

- ❖ The FEIS stated that noise impacts totaled seven representative receptors in the North Area under both Build Alternatives (R22, R23, R27, R28, R29, R30, and R37). The ROD updates the noise impacts in the North Area from seven to nine representative receptors (R22, R23, R24, R27, R28, R29, R30, R36, and R37). Updating this information does not change the analysis or conclusions presented in the FEIS.
- ❖ The FEIS stated that noise impacts totaled five representative receptors in the Central Area under the Existing I-25 Alternative (R4, R5, R6, R18, and R19). The ROD updates the noise impacts in the Central Area under the Existing I-25 Alternative from five to seven representative receptors (R4, R5, R6, R12, R14, R18, and R19). Updating this information does not change the analysis or conclusions presented in the FEIS.
- ❖ There is no change to the noise impacts in the South Area under both Build Alternatives or to the noise impacts in the Central Area under the Preferred Alternative.

5.1.4 Clarifications and Corrections Related to Mitigation Commitments

In responding to public and agency comments in **Appendix B** of this document, CDOT has committed to new or revised mitigation measures which are included **Exhibit 8-1** and are listed below.

- ❖ CDOT, in conjunction with the City, commits to additional coordination with the public to solicit feedback regarding the size and location of the pool prior to finalizing the design and implementing the Mineral Palace Park Restoration Plan.
- ❖ CDOT will coordinate controlled small-scale test excavations to determine the NRHP eligibility of the archaeological site where access is currently restricted. Testing will be conducted according to the procedures and permitting stipulations developed by the Office of Archaeology and Historic Preservation (OAHP), once CDOT acquires the property.
- ❖ If cultural resources are discovered during construction, work will cease in the vicinity of the site and the CDOT Cultural Resources Manager will be contacted to evaluate the significance of the find. The Section 106 Programmatic Agreement includes stipulations for archaeological data recovery excavations and testing. The Programmatic Agreement is included in **Appendix E** of this document.
- ❖ Prior to construction, CDOT will coordinate with CDPHE to develop a Construction Air Quality Control Plan to reduce fugitive dust and vehicle exhaust emissions during construction. The Construction Air Quality Control Plan will include construction BMPs that have been demonstrated to be effective during past construction projects to reduce fugitive dust and vehicle exhaust emissions. Contractors will be required to reduce fugitive dust emissions during construction by implementing BMPs, such as spraying or covering exposed soils, covering trucks when transporting material, minimizing mud tracking by vehicles, controlling vehicle speeds on construction access roads, and stabilizing construction entrances per CDOT M-208-1 requirements.
- ❖ CDOT will obtain an Air Pollutant Emission Notice and Construction Permit for demolition and emissions from units used in construction such as asphalt plants, concrete plants, or rock crushing.
- ❖ Approximately 7,660 linear feet of noise mitigation structures will be constructed by CDOT to reduce the noise impact for either of the Build Alternatives in the North Area (Phase 1). Additional noise analysis will be performed during final design to refine the final mitigation measures and dimensions. Benefitted receptors indicated their preference for the Beech Street to 3rd Street noise wall in the survey that CDOT mailed as part of the FEIS public outreach effort, and the wall will be constructed as part of the first funded construction project. Benefitted receptors indicated their preference for the Pits Park residences noise wall and North Albany Avenue/Mineral Palace Park noise wall. As individual construction projects in Phase 1 advance, CDOT will again solicit these benefitted receptors' preferences before beginning construction. CDOT will work with the Star Nursery on a noise wall design that satisfies noise mitigation requirements and is aesthetically integrated into the neighborhood context. CDOT will work to accommodate the Star Nursery animal display to the extent possible.
- ❖ During future design efforts, the location of all utilities in the I-25 corridor will be confirmed by field investigations, including locating lines below ground. During design if public or private utilities are located with the project area, the responsible utility company or agency will be contacted to avoid or minimize impacts. If relocation of utilities is required, CDOT will coordinate these efforts with the appropriate utility company or agency.

- ❖ During Senate Bill (SB) 40 Certification, CDOT will provide the Noxious Weed Management Plan to the CPW for review prior to its completion and commits to providing the CPW the opportunity to review the project's seed mix and re-vegetation plan.
- ❖ Measures to be used in all construction areas for the Preferred Alternative to prevent the spread of noxious weeds will include the following: Contractor furnished topsoil will be free of subsoil, refuse, stumps, woody roots, rocks, brush, noxious weed seed and reproductive plant parts from current state and county weed lists, heavy clay, hard clods, toxic substances, or other material that would be detrimental to its use on the project.
- ❖ Measures to be used in all construction areas for the Preferred Alternative to prevent the spread of noxious weeds will include the removal of Salt cedar and Russian olive within the construction area.
- ❖ CDOT will obtain the appropriate Section 404 permit from the USACE under Section 404 of the CWA prior to construction. The policy of CDOT and FHWA is to replace all wetlands on a one-for-one basis. A wetland mitigation plan will be prepared as part of the Section 404 permitting process to mitigate for unavoidable impacts to area wetlands and waters of the United States. While there are several potential mitigation locations within the study area, CDOT and FHWA will work with USACE staff to identify the best mitigation location and concept to replace the values of the impacted wetlands. CDOT will coordinate potential wetland mitigation locations with CPW and will provide CPW with the Section 404 permit for review.
- ❖ CDOT will develop Tier 1 BMPs because the project is considered a significant highway modification and the receiving waters are classified as sensitive waters (listed on 303(d) high quality use classification or existence of threatened or endangered species). Tier 1 BMPs require that the volume collected is based on the area of disturbance of the project in accordance with the New Development and Redevelopment Manual.
- ❖ CDOT Specification 240 will be followed to avoid impacts to migratory birds and limit construction to avoid active nests during nesting season (April 1 through August 31).
- ❖ If construction is planned during raptor nesting season (generally February 1 through July 31), nest surveys will be conducted by a qualified biologist prior to construction to determine the absence or presence of nesting migratory birds. Any unoccupied nests will be removed by CDOT in advance of construction. If an active nest is located within the limits of construction, construction will be suspended and the United States Fish and Wildlife Service (USFWS) and CPW will be contacted to develop a plan of action. Raptor nest surveys will be conducted during the appropriate nesting season to evaluate the presence of active raptor nests. Seasonal buffer zones or monitoring may be established around active nests during construction to avoid disturbance while nesting, if deemed necessary.
- ❖ When construction occurs in residential areas or other noise-sensitive areas, such as parks or hospitals, temporary noise impacts from construction will be mitigated by restricting construction to daylight hours when possible and requiring contractors to use well-maintained equipment. CDOT will limit night construction in residential areas, when and where feasible. Upon request, CDOT will provide hotel vouchers for impacted residents during periods of nighttime construction.

In responding to public and agency comments in **Appendix B** of this document, CDOT also committed to new or revised mitigation associated with impacts in future project phases. This mitigation commitment will be included in a future ROD.

- ❖ CDOT commits to meeting with Evraz once funding for Phase 2 is identified and commits to involving Evraz in the design process. At that time, CDOT will work with Evraz to better understand the impacts associated with the Preferred Alternative and will mitigate those impacts appropriately.

CDOT evaluates mitigation commitments against performance measures to determine the enforceable and quantifiable nature of each individual commitment. In particular, a mitigation measure should have five performance measures "specific, measurable, achievable, results oriented, and timely" to be considered for inclusion in decision document. In evaluating the proposed mitigation measures against the five aforementioned performance measures, the following mitigation commitments have been deleted.

- ❖ **Mitigation Commitment #14:** As part of its environmental ethic and policy, CDOT encourages its staff, consultants, and contractors to identify opportunities and methods to reduce the impact of projects and programs on environmental resources. This encouragement includes a commitment to allow innovative programs and flexibility in project planning, construction, and maintenance for the use of sustainable processes and materials. This may include such concepts as natural resource conservation, waste minimization, materials reuse, minimal use of native virgin materials, conservation and efficient use of

water and energy, air pollution prevention, preference for “green” purchasing (including recycled and minimally processed items), and preference for locally available resources. (Deleted for lack of measurable or achievable performance measures).

- ❖ **Mitigation Commitment #16:** CDOT encourages the identification and incorporation of proven materials that are longer lasting and require less maintenance when use of such materials is consistent with CDOT’s ability to meet its primary obligations of providing a safe and efficient transportation system. Alternative materials and practices can and must meet the performance goals of CDOT construction specifications, demonstrate legitimate expenditure of public funds, and comply with all other applicable laws and regulations. (Deleted for lack of measurable or achievable performance measures).
- ❖ **Mitigation Commitment #37:** The design of any selected alternative will comply with Executive Order (EO) 11988, “Floodplain Management.” In addition, State of Colorado drainage design standards will be applied to achieve results that will not increase or significantly change flood elevations and/or limits. (Deleted for lack of specific or results-oriented performance measures).
- ❖ **Mitigation Commitment #170:** Based on final design, commitments will be modified or adapted as needed to mitigate for both construction and operational effects of a Preferred Alternative. A Mitigation Monitoring and Implementation Plan will be developed during final design; any commitments to mitigation will be based on a higher level of design and can be considered preliminary at this stage of design. (Deleted for lack of specific or measurable performance measures).

Additionally, the following mitigation commitments were deleted because they were repeated in several instances in **Exhibit 8-1**. The mitigation commitment contained within the parentheses contains the same mitigation commitment as the commitment that is being deleted and remains in **Exhibit 8-1**.

- ❖ **Mitigation Commitment #119 and 123:** For City-owned properties, acquisitions would likely take place through transfer of title from the City to the State of Colorado rather than through monetary compensation. These properties would be secured for construction of the Build Alternative, and a clear delineation of responsibility and ownership would be established prior to the transfer of ownership. These properties are considered mutually beneficial, and the MOU between CDOT and the City specifies the future land exchange, ownership, and maintenance responsibilities (see *Appendix F – Memorandum of Understanding Between the City of Pueblo and Colorado Department of Transportation* of the FEIS). A future Intergovernmental Agreement will address ownership of excess ROWs (Mitigation Commitment #113 remains in **Exhibit 8-1** for the committed to mitigation).
- ❖ **Mitigation Commitment #128:** These properties are considered mutually beneficial, and the MOU signed between CDOT and the City specifies the future land exchange, ownership, and maintenance responsibilities (see *Appendix F – Memorandum of Understanding Between the City of Pueblo and Colorado Department of Transportation* of the FEIS). A future Intergovernmental Agreement will address ownership of excess ROW. Mitigation is described in more detail in *Chapter 3 – Affected Environment and Environmental Consequences, Section 3.4 Right of Way and Relocation* of the FEIS (Mitigation Commitment #113 remains in **Exhibit 8-1** for the committed to mitigation).
- ❖ **Mitigation Commitment #130:** Additional surveys will occur prior to final design and construction to identify additional opportunities to avoid and minimize impacts to sensitive species and habitat (Mitigation Commitment #133 remains in **Exhibit 8-1** for the committed to mitigation).
- ❖ **Mitigation Commitment #141:** Wildlife surveys will be completed prior to construction (Mitigation Commitment #138 remains in **Exhibit 8-1** for the committed to mitigation).

5.2 NOISE PREFERENCE SURVEYS

According to the CDOT *Noise Analysis and Abatement Guidelines* (CDOT, 2011a), for noise mitigation to be implemented it must be considered feasible and reasonable and meet the following minimum criteria described below:

- ❖ **Feasibility:** For abatement to be feasible, both of the following criteria must be successfully met:
 - Barrier design must achieve a perceptible noise reduction of at least 5 dBA at one or more receptors; and
 - Constructability factors such as barrier height, safety, topography, drainage, utilities, and access issues must meet normal engineering requirements and standards.

- ❖ *Reasonable*: For abatement to be reasonable, all three of the following criteria must be successfully met:
 - The abatement measure must provide a design goal minimum reduction of 7 dBA noise reduction at a minimum of one benefitted receptor;
 - A cost-effectiveness index for the abatement measure must be less than \$6,800 per residence per decibel reduced; and
 - If the barrier is determined to meet the design goal and be cost-effective, the opinion of benefitted property owners and residents of the benefitted receptors must be solicited to determine the desire for building the noise barrier.

Phase 1 contains three noise walls that were found to meet the feasibility criteria and the first two reasonableness criteria: 24th Street to 29th Street; Mineral Palace Park Towers to North Albany Avenue; and Beech Street to 3rd Street. To determine the third criterion of reasonableness and as part of the FEIS, CDOT mailed preference surveys to the property owners and/or current residents who would be benefitted by the one of the three proposed Phase 1 noise walls to vote for or against the construction of a noise wall. Under the CDOT *Noise Analysis and Abatement Guidelines* (CDOT, 2011a), CDOT considers a “benefitted receptor” to be a property that experiences a 5 dBA or greater reduction in traffic noise as a result of noise mitigation. A home may have a view of a barrier, but if the home does not experience a 5 dBA traffic noise reduction, it would not be considered “benefitted” and would therefore not receive a survey.

In order to take both owner and resident desires into account, each dwelling unit was provided two votes – one for the owner and one for the resident. For owner-occupied dwellings, both votes would be cast by the same individual. The decision to build or not build a noise wall is decided by a simple majority (consisting of more than 50 percent) of the property owners and residents providing responses to the survey.

Benefitted receptor surveys were mailed to residents and property owners in September 2013. The voting period occurred from September 15, 2013 through October 15, 2013. Respondents had the option to mail in their survey or to cast a vote in person at the Rawlings Public Library in Pueblo on October 3, 2013 from 4:30 p.m. to 5:30 p.m. prior to the FEIS public hearing. A total of 396 surveys were mailed to residents and property owners benefitted by the three proposed Phase 1 noise walls. **Exhibit 5-1** summarizes the noise survey results. Results indicated preference for constructing all three of the proposed Phase 1 noise walls. As schedules are identified for individual construction projects in Phase 1, CDOT will again solicit benefitted receptor preferences before beginning design and construction of the Pits Park noise wall and the North Albany/Mineral Palace Park noise wall. The noise wall benefitting the Kelly Avenue and Bradford Street residences is approved for design and construction under the Ilex Bridge to 1st Street on I-25 construction project, which has identified a design and construction schedule to begin in the summer of 2014.

EXHIBIT 5-1

Phase 1 of the Preferred Alternative: Noise Wall Preference Survey Results

| | Surveys Mailed | Surveys Received | Response Rate | Vote to Construct | Vote Against Construction | Abstain from Responding | Noise Wall Recommended for Construction? |
|--|----------------|------------------|---------------|-------------------|---------------------------|-------------------------|--|
| Kelly Avenue Residences (Beech Street to 1st Street and East of I-25); Bradford Street Residences (Beech Street to 1st Street and East of I-25) (R22 and R23) | 102 | 43 | 42% | 23 | 9 | 11 | Approved for design and construction |
| Pits Park Residences (24th Street to 29th Street and West of I-25) (R37) | 142 | 61 | 43% | 50 | 2 | 9 | Yes |

EXHIBIT 5-1

Phase 1 of the Preferred Alternative: Noise Wall Preference Survey Results

| | Surveys Mailed | Surveys Received | Response Rate | Vote to Construct | Vote Against Construction | Abstain from Responding | Noise Wall Recommended for Construction? |
|---|----------------|------------------|---------------|-------------------|---------------------------|-------------------------|--|
| N. Albany Avenue Residences (20th Street to 21st Street and West of I-25), Mineral Palace Park, Mineral Palace Park Towers (R27 and R30) | 152 | 101 | 66% | 52 | 44 | 5 | Yes |

I-25 = Interstate 25

5.3 UNRESOLVED ISSUES FROM THE FEIS

The following issues are unresolved following the FEIS and will be resolved prior to construction of project improvements as noted below. Additional detail is included in **Appendix F** of this document as noted below.

- ❖ **Section 106 Historic Mitigation** – Adverse effects to historic properties are resolved through the mitigation measures outlined in the Section 106 Programmatic Agreement (see **Appendix E** of this document). The Section 106 Programmatic Agreement identifies specific categories of mitigation that can be selected for impacts to particular properties as projects are identified and funded. The Section 106 Programmatic Agreement also establishes requirements for ongoing coordination with SHPO and the consulting parties as mitigation measures are developed and implemented. The Section 106 Programmatic Agreement sets forth a process by which CDOT will re-evaluate effects to existing and new cultural resources as construction projects are funded and design is refined. Such a process is needed to address the time that may lapse between the signing of this ROD and the implementation of the Preferred Alternative.
- ❖ **Air Quality Analysis for Phase 2 Project Impacts** – Comments received from Evraz Rocky Mountain Steel Mills during the FEIS review process expressed their concern regarding the potential impact of property acquisition on Evraz’s operating air emission permits with the CDPHE. Improvements adjacent to Evraz Rocky Mountain Steel Mills are planned for Phase 2 for which funding and a timeline for construction have not been identified. At the future time that this segment of I-25 is considered for construction, a new ROD and/or technical re-evaluation could be necessary to assess changed conditions and comply with new regulations. FHWA may at that time initiate renewed interagency consultation regarding air quality and revise the required NEPA-based air quality analysis accordingly.
- ❖ **Existing I-25 Bridge Over the Arkansas River** – Historic analyses were not conducted for this bridge structure, which is included as an exception to the interstate highway exemption. Prior to a Phase 2 ROD and subsequent construction, Section 106 and Section 4(f) analyses will be conducted for this bridge as discussed in the memorandum included in **Appendix F** of this document. As discussed in **Appendix F** of this document, this Phase 1 ROD does not include the section of highway that this bridge falls within. Both fully analyzed alternatives are still available after Phase 1 is completed for the section of I-25 that includes this bridge. In either case the decision being made for this Phase 1 ROD does not change the opportunities to minimize or avoid the use of this bridge.
- ❖ **Air Quality Monitoring During Construction** – CDOT has committed to ongoing coordination with CDPHE and EPA regarding PM₁₀ emissions during construction of the Preferred Alternative (see **Appendix B** of this document).

- ❖ **Hazardous Materials** – As identified in the FEIS, the United States Environmental Protection Agency (EPA) is currently investigating the extent and types of contaminants associated with the Colorado Smelter Site (located near the Eiler Heights Neighborhood) to determine if the site should be listed on the National Priorities List (NPL) for cleanup. EPA will consult with the public and local agencies before making a decision to list the site on the NPL and will publish that decision in a ROD separate from the CDOT New Pueblo Freeway project. Highway improvements in this area are planned for Phase 2 for which funding and a timeline for construction have not been identified. At the future time this segment of I-25 is considered for construction, a new ROD and/or technical re-evaluation could be necessary to assess changed conditions caused by the EPA NPL listing process and any associated site cleanup activities.