

## 7.0 FEDERAL, STATE, AND LOCAL PERMITS AND APPROVALS

Transportation projects must comply with a wide range of federal and state environmental laws and regulations, permits, reviews, notifications, consultations, and other approvals. The following discussion contains descriptions of the federal, state, or local approvals that CDOT has received prior to the publication of this document or will seek prior to beginning construction of Phase 1 of the Preferred Alternative. FHWA and CDOT will monitor this project to ensure that permits, approvals, and mitigation measures contained in this document (and subsequent permits) are implemented. Copies of this document will be provided to responsible public agencies and CDOT project personnel. Commitments within this document will be implemented through the inclusion of these measures in the construction plans for the project.

### 7.1 AIR QUALITY

#### 7.1.1 Project Level Air Quality Conformity for Phase 1 of the Preferred Alternative

No project-level conformity analysis was required or performed for the project because Pueblo County, which is located within the PACOG MPO, is currently in attainment for all of the National Ambient Air Quality Standards (NAAQS) criteria pollutants. A conformity analysis is required to be conducted in nonattainment areas or maintenance areas to demonstrate that a project will not increase concentrations of nonattainment pollutants and will not interfere with the area becoming in attainment.

#### 7.1.2 Regional Air Quality Evaluation for the Preferred Alternative

No regional-level analysis was required or performed for the project because Pueblo County, which is located within the PACOG MPO, is currently in attainment for all of the NAAQS criteria pollutants. Although not required for conformity purposes, a qualitative analysis was performed for carbon monoxide (CO) and PM<sub>10</sub> because these pollutants are of concern for transportation projects. The New Pueblo Freeway project as a whole will improve intersection operations and the Preferred Alternative is not expected to cause a violation of the CO NAAQS. Because measured PM<sub>10</sub> levels are well below the NAAQS, PM<sub>10</sub> is not expected to be exceeded under the Preferred Alternative.

#### 7.1.3 Regional Air Quality Conformity for Phase 1 of the Preferred Alternative

No regional-level analysis was required or performed for the project because Pueblo County is currently in attainment for all of the NAAQS criteria pollutants. Phase 1 of the Preferred Alternative is incorporated into the PACOG *Fiscally Constrained Plan 2035 Long Range Transportation Plan Amendment*, as amended (PACOG, 2013).

### 7.2 SECTION 106 CONSULTATION

In compliance with Section 106 of the National Historic Preservation Act, CDOT consulted with the SHPO and consulting parties on determinations of NRHP eligibility and effects to historic properties, per 36 CFR 800.8(c). CDOT submitted survey reports and site forms, including eligibility determinations, to the SHPO and other Section 106 consulting parties. Concurrence on eligibility was received from the SHPO on several dates in 2008 and 2009. Concurrence on effects to historic properties was received from the SHPO on several dates in 2010. The FEIS provided the formal documentation for consultations on eligibility and effects for the Build Alternatives in *Appendix B, Agency Consultation and Coordination* of the FEIS.

Mitigation measures for impacts to cultural resources are included in this document as **Appendix E**. The Programmatic Agreement was executed between FHWA, SHPO, and CDOT in July 2012. CDOT will explore options to relocate the Steel Mill stack and stoves; investigate an interpretive mitigation plan focused on historic properties of special significance to the history and identity of Pueblo; and/or ensure archival documentation of properties that will be demolished.

### 7.3 SECTION 6(f) OF THE LAND AND WATER CONSERVATION FUND ACT

Section 6(f) of the Land and Water Conservation Fund Act of 1965 (LWCF Act) protects recreational properties that have been purchased or improved with assistance from the Land and Water Conservation Fund (LWCF). The LWCF Act requires that prior

to the conversion of Section 6(f) properties, the agency proposing the conversion must ensure that “all practical alternatives” to converting Section 6(f) properties have been evaluated. Any proposed conversion of Section 6(f) property must be approved by the DOI. Where no practical alternative exists to a conversion, the LWCF Act requires that replacement property be acquired for those lands to be converted. Proposed replacement lands must be of reasonably equivalent usefulness, monetary value, and location to those being converted.

Five properties within the project corridor were developed with LWCF grant assistance: Fountain Creek Park Land (which includes a portion of the Fountain Creek Trail), Runyon/Fountain Lakes State Wildlife Area (which includes a trail system and the Arkansas River Pedestrian Bridge), Runyon Field Sports Complex, Benedict Park, and JJ Raigoza Park. Of these, the Preferred Alternative would require the conversion of LWCF assisted property from Fountain Creek Park Land (Phase 1), Runyon/Fountain Lake State Wildlife Area (Phase 2), and Benedict Park (Phase 2). Impacts to Section 6(f) Resources and proposed mitigation measures are detailed in *Chapter 3 – Affected Environment and Environmental Consequences, Section 3.3, Parks and Recreation* of the FEIS.

CDOT met with CPW in February 2012 to discuss the New Pueblo Freeway project and its compliance with Section 6(f) of the LWCF Act. The anticipated conversion of properties protected under Section 6(f) and the locations proposed for replacement were discussed and agreed upon. Planning to minimize harm to parks has been an integral focus of the New Pueblo Freeway project. The Section 6(f) properties affected by the project are also protected by Section 4(f) of the Department of Transportation Act, which requires a thorough analysis of avoidance alternatives.

The FEIS and Section 4(f) Evaluation prepared by CDOT and FHWA was published for agency and public review on September 13, 2013. The DOI responded on October 24, 2013 indicating their concurrence with the Section 4(f) Evaluation, and agreement with the overall assessment of impacts to Section 6(f) Resources and proposed mitigation measures (see **Appendix D** of this document). The FHWA and CDOT will continue to coordinate with the CPW and DOI during the ROW acquisition process to determine the fair market value of the affected Section 6(f) Properties and proposed replacement sites, at which time an official request for conversion will be submitted.

## 7.4 CDOT 1601 PROCESS

The CDOT Transportation Commission manages the location, design, operations and maintenance of interchanges on the state highway system. It is the policy of the CDOT Transportation Commission that all requests for new interchanges and major improvements to existing interchanges on the state highway system be reviewed and evaluated in a fair and consistent manner, that sufficient information be available to make an informed decision, and that duplicative analytical, regulatory, and procedural requirements be minimized. Proposals for new interchanges on the state highway system with a functional classification of Interstate or Freeway (Type 1) are submitted to the Transportation Commission for action. The process outlined in CDOT Policy Directive 1601 requires, among other things, that the interchange:

- ❖ Be consistent with an approved fiscally constrained Regional Transportation Plan and Statewide Transportation Plan, and included in a Transportation Improvement Program (TIP) and/or STIP.
- ❖ Be the subject of approved Intergovernmental Agreements that address the funding of the application development and review process, timeline and analytical expectations, and an Intergovernmental Agreement covering construction, operations, maintenance, and replacement of the interchange.
- ❖ Have sufficient environmental, operational, and other studies performed consistent with FHWA interchange approval and NEPA requirements.

The steps in the 1601 interchange approval process include:

- ❖ Step 1: 1601 Pre-Application Meeting(s)
- ❖ Step 2: Initial Intergovernmental Agreement Approval
- ❖ Step 3: System Level Study Preparation

- ❖ Step 4: System Level Study Approval
- ❖ Step 5: MPO/Transportation Planning Region Board Approval
- ❖ Step 6: Design and NEPA Approval Process
- ❖ Step 7: Final Intergovernmental Agreement

CDOT will complete the steps in the 1601 interchange approval process prior to construction of Phase 1.

## **7.5 SECTION 404 PERMIT**

Issuance of a Section 404 permit from the USACE is required by the Clean Water Act whenever construction projects or maintenance activities require filling that would occur below the ordinary high water line in any body of water considered a water of the United States (navigable waters of the United States and adjacent wetlands; all tributaries to navigable waters and adjacent wetlands; interstate waters and their tributaries and adjacent wetlands). Formal concurrence from the USACE has been received for the following items:

- ❖ Agreement with Purpose and Need
- ❖ Agreement that the Preferred Alternative appears to be the LEDPA
- ❖ Preliminary Jurisdictional Determination of the Waters of the United States

CDOT will seek approval for a Section 404 individual permit prior to any construction impacting waters of the United States. The USACE will provide concurrence on the wetland mitigation plan as part of the Section 404 permitting process.

## **7.6 BIOLOGICAL OPINION**

FHWA and CDOT prepared a Biological Assessment in accordance with Section 7 of the Endangered Species Act. Consultation under Section 7 of the Endangered Species Act occurs during the NEPA process if listed species or their critical habitats would be affected by the proposed action. The six federally-listed threatened or endangered species potentially occurring in the study area are not known to occur due to lack of suitable habitat. FHWA and CDOT find the project would have no effect on the black footed ferret (federal endangered species), Canada lynx (federal threatened species), Preble's meadow jumping mouse (federal threatened species), greenback cutthroat trout (federal threatened species), whooping crane (federal endangered species), and Mexican spotted owl (federal threatened species). Therefore, formal Section 7 consultation with the USFWS was not required.

## **7.7 SENATE BILL 40 CERTIFICATION**

Senate Bill 40 Certification would be required by the CPW for the crossing of streams or adjacent stream banks to avoid adverse effects to waterways, stream banks, or associated tributaries. Senate Bill 40 was legislated to protect fishing waters and to recognize the importance of the entire stream ecosystem, including wetland and riparian areas. A SB 40 wildlife certification application would need to be submitted to CPW 60 days before construction begins.

In following SB 40 Wildlife Certification guidelines, CDOT will notify CPW of all planned construction efforts before construction begins, regardless of whether the action is covered by the Programmatic SB 40 certification or requires formal SB 40 certification from CPW.

## 7.8 FLOODPLAIN PERMIT

A Conditional Letter of Map Revision (CLOMR) and Final Letter of Map Revision for 100-year floodplain encroachments from the Federal Emergency Management Agency (FEMA) are required for work in Fountain Creek floodplain being conducted by Phase 1 of the Preferred Alternative. The CLOMR will be prepared during final design. The Final Letter of Map Revision will be prepared after construction is completed.

## 7.9 MONITORING AND ENFORCEMENT

Permits required for the project will be coordinated with the appropriate jurisdiction and obtained prior to construction. Required permits and approvals for Phase 1 are likely to include those shown in **Exhibit 7-1**, Summary of Permits and Approvals. Additional local permits may be required in concert with activities such as:

- ❖ Erosion control/grading
- ❖ Utility access, relocation, or surveying
- ❖ Construction, slope, and utility easements
- ❖ Access and authorizations

Additional permits and/or approvals may be needed for future phases; a more comprehensive list is included in *Chapter 3 – Affected Environment and Environmental Consequences, Section 3.24, Required Permits and Approvals* of the FEIS.

### EXHIBIT 7-1

#### Summary of Permits and Approvals

Agency	Division	Activity
FHWA		<ul style="list-style-type: none"> <li>❖ Issuance of a ROD</li> <li>❖ Issuance of an “Only Practicable Alternative” finding in regards to floodplain encroachment (EO 11988)</li> <li>❖ Issuance of an “Only Practicable Alternative” finding in regards to construction in wetlands (EO 11990)</li> <li>❖ Approval of an Interstate Access Request for a new or modified interchange on an interstate highway</li> </ul>
USACE		<ul style="list-style-type: none"> <li>❖ Issuance of a Section 404 permit for discharge (dredge or fill material) within waters of the United States, including wetlands</li> </ul>
FEMA		<ul style="list-style-type: none"> <li>❖ Floodplain encroachment with possible CLOMR or LOMR</li> </ul>
CDPHE	Water Quality Control Division	<ul style="list-style-type: none"> <li>❖ Clean Water Act Section 401 certification for impacts to water quality resulting from fill or discharge into waters of the United States</li> <li>❖ Clean Water Act Section 402 permit for dewatering (COG07000)</li> <li>❖ CDPS Stormwater Discharges Permit Associated with Construction Activities (COR030000)</li> </ul>
	Hazardous Materials and Waste Management Division	<ul style="list-style-type: none"> <li>❖ Coordination and approval of Materials Management Plan</li> </ul>
	Air Pollution Control Division	<ul style="list-style-type: none"> <li>❖ 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</li> <li>❖ Fugitive Dust Control Plan for construction</li> </ul>
CPW		<ul style="list-style-type: none"> <li>❖ Senate Bill 40 Certification for alteration of stream banks, stream channels, and riparian areas</li> </ul>

**EXHIBIT 7-1**

## Summary of Permits and Approvals

Agency	Division	Activity
History Colorado Office of Archaeology and Historical Preservation		❖ National Historic Preservation Act Section 106 effects determination for impacts to cultural resources
Colorado Public Utilities Commission		❖ License or easement for construction of grade-separated railroad crossing
UPRR		❖ Temporary Occupancy License/agreement
City of Pueblo		❖ CDOT will coordinate with the City for temporary occupancy of public ROW during construction.

CDPHE = Colorado Department of Public Health and Environment  
 CDPS = Colorado Discharge Permit System  
 CLOMR = Conditional Letter of Map Revision  
 CPW = Colorado Parks and Wildlife  
 EO = Executive Order  
 FEMA = Federal Emergency Management Agency

FHWA = Federal Highway Administration  
 LOMR = Letter of Map Revision  
 MS4 = Municipal Separate Storm Sewer System  
 ROD = Record of Decision  
 ROW = right-of-way  
 USACE = United States Army Corps of Engineers