

Record of Decision 4: Appendix D

Section 404 Permit

April 2017



**DEPARTMENT OF THE ARMY
SECTION 404 PERMIT**

Project: North I-25 Transportation Improvement Project
Corps File No: NWO-2004-80110-DEN
Applicant: Colorado Dept. of Transportation, c/o Mr. Myron Hora (970) 350-2177
Issuing Office: Corps of Engineers, Omaha District, Denver Regulatory Office (303-979-4120)
Waterway: Cache la Poudre River, Big Thompson River, Little Thompson River, St. Vrain River, Little Dry Creek, Big Dry Creek, Spring Creek, and Fossil Creek

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1. GENERAL INFORMATION, SIGNATURE BLOCKS

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer. You are authorized to perform work in accordance with the terms and conditions specified below.

1. **Congressional Authorities:** You have been authorized to undertake the activity described above pursuant to:

- () Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
- () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. **Limits of this authorization.**

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

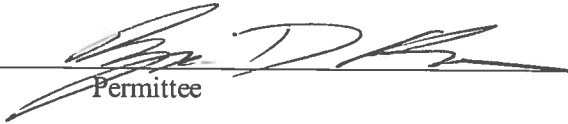
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. The time limit for completing the work authorized ends on **May 31, 2035**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.


Permittee

5-16/13
Date

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Joel R. Cross
Colonel, Corps of Engineers
District Commander

17-MAY-13
Date

BY: 
J. Scott Franklin
Chief, Denver Regulatory Office

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

Transferee Signature

Date

Transferee (Print or Type)

Title

Organization or Company (Print or Type)

Address (Print or Type)

Phone

2. DETAILED DESCRIPTION OF AUTHORIZED WORK

In accordance with the terms and conditions of this Department of the Army permit, Colorado Dept. of Transportation is granted authorization by the Secretary of the Army to excavate and place fill material into waters of the US to construct a transportation improvement project along the North I-25 Corridor. The project runs through Larimer, Weld, Boulder, Broomfield and Adams Counties. The project will service numerous municipalities including Fort Collins, Loveland, Berthoud, Mead, Erie, Johnstown, Greeley, Longmont and the north Denver metropolitan area. Maps and drawings are attached. Issuance of this permit and the description of the project are based on documents submitted in the original permit application received by the Denver Regulatory Office on August 31, 2011.

2.1. Location.

The North I-25 Transportation Improvements Project is located along the current I-25 Corridor and runs through Larimer, Weld, Boulder, Broomfield and Adams Counties.

2.2. Background and Existing Conditions.

The purpose of the project is to meet long-term travel needs between the Denver Metro Area and the rapidly growing population centers along the I-25 corridor north to Fort Collins/Wellington area. To meet long-term travel needs, the project must improve safety, mobility and accessibility, and provide modal alternatives and interrelationships.

The need for the project can be summarized in the following four categories:

1. Increased frequency and severity of crashes
2. Increasing traffic congestion leading to mobility and accessibility problems
3. Aging and functionally obsolete infrastructure
4. Lack of modal alternatives

The project needs relate differently to highway and transit components of the solutions. Highway alternatives were evaluated in addressing all four of these needs. Transit alternatives were evaluated in addressing two of the needs: increasing traffic congestion leading to mobility and accessibility problems, and lack of modal alternatives.

The original wetland survey boundary included approximately 63 miles of I-25 and a 1,000-foot buffer on each side of the highway. This original boundary was modified on July 29, 2005 and reduced to about 53 miles extending from Denver Exit 217 (US 36) to Fort Collins Exit 269 (Mulberry St/SH 14). The boundary width was variable and was typically about 765 feet wide (440 feet on one side and 325 feet on the other side of the centerline), with expanded areas near highway exits.

In the North I-25 Preferred Alternative project area, 534 acres of wetlands were identified and determined to be under USACE jurisdiction. Approximately 139 acres (26 percent) of PSS wetlands and 395 acres (74 percent) of PEM wetlands were identified.

2.3. Description of Work.

I-25 would be widened with general purpose lanes and Tolled Express Lanes (TELS) and substandard interchanges would be reconstructed or upgraded to accommodate future travel needs. Preferred Alternative also includes commuter rail transit service from Fort Collins to the anticipated FasTracks North Metro end-of-line. Service to Denver would travel through Longmont and along the FasTracks North Metro Corridor. A connection

to Boulder would also be made with a transfer to Northwest Rail at the Sugar Mill Station in Longmont. Nine commuter rail stations and a commuter transit maintenance facility are included in the Preferred Alternative. The commuter rail would consist of a single track with occasional passing tracks at four locations. The BNSF railroad is requiring that commuter rail utilizing BNSF track upgrade BNSF facilities to include a maintenance road where maintenance access is not available. Preferred Alternative includes a maintenance road parallel to the BNSF line between Longmont and Fort Collins. Commuter rail track that is not within the BNSF right-of-way does not include a maintenance road.

Express bus service would operate in the TEL to connect northern Colorado communities to downtown Denver and DIA and serve 13 stations along Harmony Road, US 34, and I-25. Commuter bus service along US 85 would connect Greeley with downtown Denver with five stops at the communities along the route. A bus maintenance facility would be constructed to accommodate both express buses and commuter buses.

A bus maintenance facility serving both the I-25 express bus and the US 85 commuter bus would be located at 31st Street and 1st Avenue in Greeley.

Local bus service would be provided to enable local riders to access the commuter rail and express bus regional services.

The recommended commuter rail maintenance facility site included in the Preferred Alternative is located at LCR 10 and LCR 15 in Berthoud. The commuter rail maintenance facility would require a minimum of 30 acres, including facilities for vehicle maintenance, cleaning, fueling and storage; track maintenance; parts storage; and vehicle operator facilities.

Construction of the Preferred Alternative is expected to begin as early as 2015 and proceed in at least three phases until approximately 2075. CDOT would prefer the Section 404 permit cover the entire Preferred Alternative. However, because of the length of time required, even though there is one permit, subsequent modifications will be required for each new phase. Record of Decision Phase 1 would begin in 2015 and is planned for completion in 2030 depending on funding. Phase 1 of the Preferred Alternative would include:

- Widening I-25 between SH 14 and SH 392 (approximately seven miles). This improvement would include full reconstruction of the existing cross section plus pavement to accommodate the Preferred Alternative TELs. While the additional pavement would ultimately be used for TELs, as an interim improvement it will be used as continuous acceleration/deceleration lanes. This would avoid potential operational problems associated with a southbound lane drop at SH 392. Widening would include water quality ponds and median barrier features necessary to accommodate this improvement. Right-of-way purchase associated with the ultimate Preferred Alternative cross-section is also included.
- Widening I-25 between SH 56 and SH 66 (approximately seven miles) with one tolled express lane in each direction. Widening would include water quality ponds and median barrier features as well as the right-of-way purchase associated with the ultimate Preferred Alternative cross-section.
- Widening I-25 between approximately US 36 and 120th Avenue (approximately six miles) with one buffer-separated tolled express lane in each direction and interchange modifications, as necessary. Widening would include noise and sound walls, water quality ponds, and median barrier features as well as the right-of-way purchase associated with the ultimate Preferred Alternative cross-section.
- Replacement and reconstruction of interchanges I-25/SH 14, I-25/Prospect, I-25/SH 56, I-25/CR 34, and I-25/SH 7 would be constructed to their ultimate configurations. SH 392 and 84th Avenue would be completed as

part of separate projects. A first phase of improvements to the I-25/US 34 interchange would be completed, which includes a single point urban interchange (SPUI) at the US 34/Centerra Parkway intersection.

- Replace or construct forty-six structures, modify two existing structures, and rehabilitate (minor) two structures.
- Installation of six carpool lots at I-25 interchanges (I-25/SH 14, I-25/Prospect Road, I-25/Harmony Road, I-25/SH 56/WCR 44, Firestone, and I-25/SH 7). Several of these carpool lots are shared with the I-25 express bus transit stations.
- Preservation of commuter rail right-of-way- All right-of-way necessary to construct the ultimate commuter rail configuration would be purchased as part of Phase 1.
- I-25 express bus - Regional express bus service connecting Fort Collins and Greeley to downtown Denver and DIA would be initiated. Four transit stations would be constructed as part of Phase 1 (I-25/Harmony Road, US 34/SH 257, Firestone, and I-25/SH 7), and 27 buses would be purchased.
- US 85 commuter bus - Commuter bus along US 85 connecting Greeley to downtown Denver would be implemented in Phase 1. This would include construction of five stations and the purchase of five buses. The entire US 85 commuter bus system identified in the Preferred Alternative would be implemented in Phase 1.

The North I-25 Preferred Alternative is estimated to impact waters of the United States, including jurisdictional open waters and wetlands from several of the proposed improvements (e.g., interchanges, structural improvements including general purpose and tolled express lanes, safety upgrades, and commuter rail). These areas are primarily urbanized and development includes a mix of residential, commercial, agricultural and some industrial uses. Construction would include new bridges crossing at Cache la Poudre River, Big Thompson River, Little Thompson River, St. Vrain River, Little Dry Creek, Big Dry Creek, Spring Creek, and Fossil Creek.

Permanent impacts typical to the North I-25 Preferred Alternative include the placement of fill material in waters of the U.S. for construction of bridges or culverts associated with highway and rail transit stations, and other support facilities. Construction of new culverts or culvert extensions would result in permanent impacts when concrete and/or embankment material is placed in waters of the U.S. Riprap installed for bank stabilization, erosion control, to dissipate energy, or to slow the surface water flow in a wetland or other water of the U.S. would be considered a permanent impact.

Project Impact Locations:

- I-25 over Niver Creek (CBC)
- I-25 over Farmers Highline Canal
- I-25 over S. Fork Preble Creek (CBC)
- Bull Canal (CBC)
- I-25 over North Creek (CBC)
- I-25 over Drainage (CBC)
- I-25 over Draw (CBC)
- I-25 NB over Little Thompson River
- I-25 SB over Little Thompson River
- I-25 over Cache la Poudre Floodway (CBC)
- I-25 SB on Ramp over Cache la Poudre Floodway (CBC)
- LCR 36 over Cache la Poudre Floodway (CBC)

- Kechter Rd over Cache la Poudre Floodway (CBC)
- I-25 over Cache la Poudre Floodway (CBC)
- I-25 NB over Cache la Poudre River
- I-25 SB over Cache la Poudre River
- Lake Canal (CBC)
- Timnath Ditch (Cache la Poudre Reservoir Inlet) (CBC)
- Box Elder Creek (CBC)
- I-25 over Preble Creek (CBC)

CBC= Concrete Box Culvert

2.4. Impacts and Mitigation.

The North I-25 Transportation Improvement Preferred Alternative is currently at 15% design, and will be refined as each construction phase is developed and the final designs reviewed for final approval. Currently, given the conceptual level of the 15% design, impacts are conservatively quantified. A conservative 16.10 acres of permanent impacts have been identified in the early designs and a 5-foot temporary disturbance envelope accounts for 2.08 acres of temporary impacts, combining for a total of 18.18 acres. The permanent impact total includes 2.35 acres of unvegetated streambed, which will be replaced in-kind and at each stream crossing location, but possibly in a slightly different alignment, based on detailed hydraulic analysis at each construction phase. With future design refinements, it is anticipated that portions of the identified impacts may be further avoided or minimized and opportunities for onsite restoration or creation are likely to become apparent. Some impacts currently identified as permanent impacts are expected to be reclassified as temporary impacts. All temporary impacts will be restored in-place and in-kind. The table below summarizes the project impacts, broken down by functional capacity.

IMPACT TOTALS BY FUNCTIONAL CAPACITY				
	PERMANENT IMPACTS (acre)	TEMPORARY IMPACTS (acre)	TOTALS (acre)	% of Total
HIGH FUNCTIONING	3.52	0.45	3.97	21.8%
MODERATE FUNCTIONING	3.10	0.31	3.41	18.8%
LOW FUNCTIONING	7.13	0.82	7.95	43.7%
UN-CLASSIFIED (Open Waters)	2.35	0.50	2.85	15.7%
TOTALS	16.10	2.08	18.18	

Mitigation will be constructed up-front, prior to impacts occurring. Prior to each phase of construction, proposed impact totals will be refined and assessed to determine the necessary offset required against the balance of mitigation credit accumulated.

As outlined in the table above, the Preferred Alternative is estimated to impact 18.18 acres of waters of the US. Impacts are anticipated to primarily occur along the South Platte River, Big Dry Creek, Little Dry Creek, St. Vrain Creek, Little Thompson River, Big Thompson River, Fossil Creek and the Cache la Poudre River.

Up-front wetland mitigation has been proposed at two sites within St. Vrain State Park in the form of both wetland creation and enhancement. 15.9 acres of wetland will be enhanced at the site known as the Idaho

Creek Restoration Area within the park. At the site known as the St. Vrain Terrace Restoration Area, 8.0 acres of wetland will be enhanced, and 6 acres created. The total of 23.9 acres of enhancement will be credited at 4:1 ratio to equate to 5.98 acres of wetland mitigation credit. Combined with the 6.0 acres of wetland creation, credited at 1:1, the proposed site is expected to yield 11.98 acres of mitigation credit.

The Phase 1 ROD is expected to impact approximately 7.75 acres of wetlands/WUS and will be mitigated up-front along with the rest of the wetland mitigation for the Preferred Alternative at a minimum ratio of 1:1. Prior to each phase of construction, impact totals will be refined and mitigation will be assessed to determine the necessary offset required.

	Impacts (acre/debit)		Mitigation (acre/credit)	
	Permanent	Temporary	On-site Restoration	Off-site
1. Open Water	2.35	0.50	2.87	
2. Wetlands	13.75	1.58	1.58	11.98
Sub-total	16.10	2.08	4.45	11.98
Total	18.18		16.43	

* Note that proposed mitigation credits are 1.75 acres less than conceptual impacts. Construction of the mitigation project will occur up front and prior to impacts. Upon refinement of project impacts at each construction phase, it is expected that permanent impact totals will be reduced due to identification of temporary impacts and further avoidance and minimization.

3. GENERAL CONDITIONS

1. The time limit for completing the work authorized ends on **May 31, 2035**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

4. SPECIAL CONDITIONS

- A. The permittee agrees that all reports or correspondence required under these special conditions shall include the following information:

Project: North I-25 Transportation Improvement Project
Corps Permit No: NWO-2004-80110-DEN
Permittee: Colorado Dept. of Transportation, c/o Mr. Myron Hora (970) 350-2177
Expiration Date: May 31, 2035

and shall be sent to:

US Army Corps of Engineers
Denver Regulatory Office
9307 S. Wadsworth Blvd.
Littleton, CO 80128-6901

- B. Corps Review and Approval for Phased Design: Prior to the commencement of work on each construction phase that will impact waters of the US, you shall submit detailed design plans to the Corps for review and approval. Work within waters of the US of each approved construction phase may not commence until you receive final approval for that phase from this office. This process will ensure that future construction phases abide by the terms and conditions of this permit, along with the information submitted as part of your permit application.

The submitted plans shall include at a minimum the following information:

- a. Overview plan.
- b. A profile view for any crossings within waters of the U.S.
- c. A grading plan showing the existing and proposed grades.
- d. Drainage considerations.
- e. Soil erosion and sediment control techniques.
- f. Temporary and permanent impacts to waters of the U.S., including wetlands.
- g. Restoration plan for any and all temporary impacts within or adjacent to waters of the US.
- h. Permanent stormwater management and water quality enhancement techniques.
- g. A description of the methods taken to further avoid and minimize impacts to waters of the US taking into consideration cost, existing technology, and logistics in light of the overall project purposes.
- h. A table of running total project permanent impacts vs. mitigation, and any adjusted mitigation requirements.

All plans shall clearly identify all waters of the U.S. In addition, you shall submit a detailed narrative describing your proposed work for that construction phase.

- C. The permittee agrees to follow the Section 401 Certification Requirements, which are attached to, and made part of, this permit.

- D. The permittee agrees to contact the U. S. Fish and Wildlife Service, Office of Migratory Birds, at (303) 236-8171, for permitting requirements prior to the removal or destruction of any bird nest.
- E. The permittee agrees that they are responsible for all work accomplished in accordance with the terms and conditions of this authorization. If a contractor or other authorized representative will be accomplishing the work hereby authorized in behalf of the permittee, such parties shall be provided a copy of this authorization so they are aware of the terms and conditions. An activity that fails to comply with the terms and conditions of this authorization will be considered unauthorized and all responsible parties will be subject to appropriate enforcement action.
- F. Invasive Aquatic Species. If heavy equipment is used for the subject project that was previously working in another stream, river, lake, pond or wetland within 10 days of initiating work, one of the following procedures is necessary to prevent the spread of New Zealand Mud Snails and other aquatic hitchhikers: (1) Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and keep the equipment dry for 10 days; or (2) Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and spray/soak equipment with either a 1:1 solution of Formula 409 Household Cleaner and water, or a solution of Sparquat 256 (5 ounces Sparquat per gallon of water). Treated equipment must be kept moist for at least 10 minutes; or (3) Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and spray/soak equipment with water greater than 120 degrees F for at least 10 minutes.
- G. Wetland mitigation will be constructed up-front, prior to impacts occurring. Prior to each phase of construction, proposed impact totals will be refined and assessed to determine the necessary offset required against the balance of mitigation credit accumulated. The permittee shall hire a professional ecologist to oversee the mitigation, which will be accomplished in accordance with the attached mitigation plan and with these special conditions. In cases where a conflict between the two exists, the special conditions supersede the mitigation plan.

Wetland Mitigation has been proposed at two sites within St. Vrain State Park in the form of both wetland creation and enhancement. 15.9 acres of wetland will be enhanced at the site known as the Idaho Creek Restoration Area within the park. At the site known as the St. Vrain Terrace Restoration Area, 8.0 acres of wetland will be enhanced, and 6 acres created. The total of 23.9 acre of enhancement will be credited at 4:1 ratio to equate to 5.98 acre of wetland mitigation credit. Combined with the 6.0 acre of wetland creation, credited at 1:1, the proposed site is expected to yield 11.98 acre of mitigation credit. Given permanent impact totals are expected to be reduced with further design refinement prior to each construction phase, impact totals will be refined and mitigation will be assessed to determine the necessary offset required.

- H. The permittee agrees that the created wetlands will be considered successful and self-sustaining when the following conditions have been met without intervention in the form of irrigation or replanting of desirable vegetation during the last three (3) years of a seven (7) consecutive year period or as determined by the Corps:
- a. At least 80 % (determined by ocular estimate of herbaceous and shrub foliar cover) of the mitigation site is vegetated, with at least 50% of the total number of dominant species present will consist of species rated as facultative or wetter. At least 50% of the vegetation cover in the wetland area will be comprised of willow or other woody plant species, including volunteer plants.
 - b. Trees and shrubs, to include volunteer specimens, will have a survival rate of at least 85%. Species composition shall be representative of species planted.
 - c. Those species shown on the Colorado Noxious Weed Inventory list-A shall be 100% eradicated. Those species shown on list-B shall be no more than 10% or less of the total cover in the mitigation area. The lists can be found at <http://www.ag.state.co.us/CSD/weeds/statutes/weedrules.pdf>.

- I. The permittee agrees that the mitigation areas will have no more than 20% non-native species in all stratigraphic levels (forbs, shrubs, trees) unless determined otherwise by the Denver Regulatory Office.
- J. The permittee agrees to verify that the mitigation site has the appropriate hydrology to ensure success of wetland creation and/or enhancement. This verification will be reported in the first annual monitoring report submitted after construction of the mitigation site and can be done with photographs, moisture probe data, ground water monitoring stations or other techniques approved by the Corps. If site conditions indicate that adequate hydrology is not present, the permittee agrees that remedial efforts will be undertaken after consultation with the Corps.
- K. The permittee agrees to monitor the authorized work and mitigation during the summer months each year beginning in 2014. Annual Reports will be submitted to the Corps of Engineers before December 31 of each year beginning in 2014. The format of this report shall follow the requirements shown in the attached *Annual Mitigation Monitoring Report Format Requirements*. The permittee agrees to monitor all wetlands within, or contiguous to, the project site that are to remain 'undisturbed' as the authorized work progresses. If there is any indication that the 'undisturbed' wetlands, are being adversely impacted, the permittee will contact the DA for potential remedial actions to be taken. Your responsibility to complete the required compensatory mitigation will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the Corps. If, at any time during the first two years after initial implementation of mitigation, site conditions indicate that the success criteria are not likely to be achieved, the permittee agrees that remedial efforts will be undertaken after consultation with the Corps of Engineers. In addition to on-site remedial efforts, if the Corps determines that additional on-site efforts are fruitless, remedial efforts may include new mitigation plans and sites, the purchase of credits from a mitigation bank or participation in an in-lieu fee program.
- L. The permittee agrees to submit a FACWet assessment of the mitigation site to this office with the proposed final Annual Report. The FACWet assessment shall be conducted by a qualified professional ecologist and submitted to the address given in Special Condition A above.
- M. The permittee agrees that once the wetland mitigation areas have been constructed and planted, proper precautions will be taken to prevent domestic animals and human activity from adversely affecting them, and there will be no mowing, or other detrimental effects to the mitigation areas.
- N. Based on information provided by the applicant, the Corps has determined the overall project purpose is to increase the number of lanes on I-25, establish rail service, bus service and rapid bus service along the corridor. This project purpose was the basis upon which the Corps conducted its review of the application, as well as a basis for the Corps' determination that permit issuance is in the best interest of the public. Accordingly, the Corps authorizes no change in project purpose, or in the nature of the permitted activity, without prior review and approval.
- O. The permittee agrees that all construction debris will be disposed of on land in such a manner that it cannot enter a waterway or wetland except as approved herein.
- P. The permittee agrees that equipment for handling and conveying materials during construction shall be operated to prevent dumping or spilling the materials into the water except as approved herein.
- Q. The permittee agrees that care will be taken to prevent any petroleum products, chemicals, or other deleterious materials from entering the water.
- R. The permittee agrees that steps will be taken to prevent materials spilled or stored on shore from washing into the water as a result of cleanup activities, natural runoff, flooding, and that, during construction, any materials which are accidentally spilled into the water will be retrieved.

- S. The permittee agrees that all work in the waterway will be performed in such a manner so as to minimize increases in suspended solids and turbidity which may degrade water quality and damage aquatic life outside the immediate area of operation.
- T. The permittee agrees that all areas along the bank disturbed or newly created by the construction activity will be seeded with vegetation indigenous to the area for protection against subsequent erosion.
- U. The permittee agrees that the clearing of vegetation will be limited to that which is absolutely necessary for construction of the project except as approved herein.
- V. The permittee agrees that close coordination will be maintained by the contractor with downstream water users, advising them of any water quality changes to be caused by the construction.
- W. The permittee agrees that all dredged or excavated materials, with the exception of that authorized herein, will be placed on an upland site above the ordinary high water line in a confined area, not classified as a wetland, to prevent the return of such materials to the waterway.
- X. The permittee agrees that deposition of excavated materials on shore and all earthwork operations on shore will be carried out in such a way that sediment runoff and soil erosion to the water are controlled.
- Y. The permittee agrees that adequate pipes shall be installed in any temporary crossing to carry normal flows and prevent the restriction of expected high flows during construction.
- Z. The permittee agrees that concrete trucks will be washed at a site and in such a manner that washwater cannot enter the waterway.
- AA. The permittee agrees that the use of machinery in the waterway will be kept to a minimum.
- BB. The permittee agrees that when the District Engineer has been notified that a filling activity is adversely affecting fish or wildlife resources or the harvest thereof and the District Engineer subsequently directs remedial measures, the permittee will comply with such directions as may be received to suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect as required.
- CC. The permittee agrees that fuel storage tanks above ground shall be diked or curbed or other suitable means provided to prevent the spread of liquids in case of leakage in the tanks or piping.
- DD. After a detailed and careful review of all of the conditions contained in this permit, the permittee acknowledges that, although said conditions were required by the Corps of Engineers, nonetheless the permittee agreed to those conditions voluntarily to facilitate issuance of the permit; the permittee will comply fully with all the terms of all the permit conditions.