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4.0 Status of Federal and State Findings

This chapter summarizes the I-270 Corridor Improvements Project's (project) compliance with applicable federal and state environmental laws and regulations. It identifies regulatory requirements that apply to the project; describes consultations, certifications, or reviews conducted during development of the Draft Environmental Impact Statement (EIS); and explains how final compliance has been or will be achieved prior to construction. Permits and mitigation that are required for construction are listed in Chapter 5.0, Measures to Minimize Harm, of this Record of Decision (ROD).

4.1 Federal and State Findings

4.1.1 Endangered Species Act of 1973

Section 7 of the Endangered Species Act of 1973 (ESA) requires federal agencies to ensure that actions they fund, authorize, or carry out do not jeopardize listed species or adversely modify designated critical habitat. As documented in Draft EIS Section 4.4 (Biological Resources) and Appendix E5 (Biological Resources Technical Report), the project corridor is a highly developed transportation setting with limited, fragmented habitat. Field investigations and desktop reviews did not identify federally listed species within the project footprint, and no designated critical habitat occurs in the project area. Habitat characteristics for the *Ute ladies'-tresses* orchid (a federally listed species) are not present in the project area, as confirmed by field surveys and habitat evaluations, and no suitable habitat would be affected by the project. Based on these findings, the Federal Highway Administration's (FHWA) ESA effect finding for the project is "no effect" for federally listed species and critical habitat, and Section 7 consultation with the United States Fish and Wildlife Service is not required. The project is therefore compliant with the ESA.

The project will implement the avoidance, minimization, and mitigation practices identified in Chapter 5.0, Measures to Minimize Harm, of this ROD, during final design and construction to maintain the "no effect" condition.

4.1.2 The Migratory Bird Treaty Act of 1918

The federal Migratory Bird Treaty Act of 1918 (MBTA) prohibits the take of migratory birds, their nests, and eggs. As documented in Draft EIS Section 4.4 (Biological Resources) and Appendix E5 (Biological Resources Technical Report), suitable nesting and foraging habitat for

migratory birds occurs along riparian corridors (e.g., Sand Creek and the South Platte River), in roadside trees and shrubs, and on certain bridge and structure elements within the project area. Construction activities, such as vegetation removal and bridge/structure work, during the nesting season could disturb active nests if work is not appropriately timed and managed.

Compliance with the MBTA is achieved by avoiding disturbance to migratory birds and active nests. The project will implement the avoidance, minimization, and mitigation practices identified in Chapter 5.0, Measures to Minimize Harm, of this ROD, to prevent impacts to nesting birds. With these practices in place, the project will avoid disturbance to migratory birds and their nests and is compliant with the MBTA.

4.1.3 Clean Air Act of 1970

The Clean Air Act of 1970 (CAA) (as amended) and the Conformity Rule are the primary federal statute and regulation, respectively, regulating air quality. These regulations play a role in setting the nation's air quality standards for pollutants and adopting emission control programs. Transportation projects in nonattainment or maintenance areas must demonstrate conformity with applicable federal air quality requirements. Draft EIS Section 4.2 and Appendix E3 (Air Quality Technical Report) document the regulatory framework and air quality analyses performed for the project.

The project's regional emissions are addressed through the Denver Regional Council of Governments metropolitan planning and conformity processes. As described in the Draft EIS Section 4.2 and Appendix E3 (Air Quality Technical Report), the project is included in the Regional Transportation Plan and Transportation Improvement Program used for regional conformity determinations. The Selected Alternative was also evaluated for its potential to cause or contribute to new localized National Ambient Air Quality Standards violations or worsen existing conditions, following the General Conformity Rule (United States Environmental Protection Agency [EPA] 2010). The analysis shows that the project meets all applicable project-level conformity requirements for pollutants evaluated at the local scale.

Based on the regional and project-level evaluations documented in the Draft EIS Section 4.2 and Appendix E3 (Air Quality Technical Report), the project meets applicable CAA requirements and conforms to the State Implementation Plan.

4.1.4 National Historic Preservation Act of 1966

Section 106 of the National Historic Preservation Act (36 Code of Federal Regulations [CFR] 800) requires federal agencies to consider the effects of their undertakings on historic properties and to consult with the State Historic Preservation Office (SHPO), federally recognized Tribes, and other consulting parties. Draft EIS Section 4.12 summarizes the Section 106 process for the project, and Appendix E13 (Historic Resources Technical Report) documents the identification methods, Area of Potential Effects (APE), the historic resource inventory, and effects analysis supporting the Draft EIS.

The Section 106 evaluation identified 11 historic properties that were determined eligible or treated as eligible for listing in the National Register of Historic Places, including eight linear resources, one architectural property, one railroad junction, and one industrial complex.

These eligible properties are summarized in Draft EIS Table 4-12 and shown in Figure 4-16. No archaeological sites were identified in the APE, as documented in Draft EIS Appendix E14 (Archaeological Resources Technical Report).

CDOT has made a determination of “no adverse effect” for the 11 eligible properties. CDOT initially coordinated eligibility and effect findings with the Colorado SHPO, Commerce City, and Adams County in February 2021, and SHPO concurred on March 5, 2021; no comments were received from the consulting parties.

Following additional analysis of the Build Alternatives, CDOT submitted updated findings in November 2024, and SHPO concurred on December 5, 2024. Tribal consultation was initiated in July 2023 with 11 Tribes; the Northern Cheyenne Tribe and the Pawnee Nation accepted invitations to participate, and no responses were received from the remaining Tribes.

Following publication of the Draft EIS, design refinements resulted in new permanent and temporary easements as described in Chapter 2.0 of the Final EIS, and CDOT reopened Section 106 consultation on February 5, 2026, to confirm that these design updates do not introduce new effects or increase effects to historic properties, and SHPO concurred on February 17, 2026, (see Appendix G of the Final EIS).

4.2 Future Federal and State Findings

4.2.1 Colorado Senate Bill 40

Colorado Senate Bill (SB) 40 requires CDOT to obtain certification from Colorado Parks and Wildlife (CPW) for any transportation project that will impact riparian areas supporting fish and wildlife resources. As documented in Draft EIS Section 4.4 (Biological Resources) and Appendix E5 (Biological Resources Technical Report), riparian habitat occurs within segments of Clear Creek, Sand Creek, and the South Platte River within the project area. These areas are designated SB 40 resources and may be temporarily or permanently affected by construction activities, such as bridge work or riparian vegetation removal.

CDOT will coordinate with CPW during final design to confirm SB 40 impact limits and prepare the required SB 40 Certification application. Avoidance, minimization, and mitigation practices will be incorporated into construction plans consistent with SB 40 requirements. Upon issuance of SB 40 Certification, the project will be fully compliant with Colorado SB 40. The project will implement the avoidance, minimization, and mitigation practices identified in Chapter 5.0, Measures to Minimize Harm, of this ROD, for any SB 40 impacts.

4.2.2 Clean Water Act of 1972

The federal Clean Water Act of 1972 (CWA) regulates the discharge of dredged or fill material into waters of the United States under Section 404 and requires Section 401 Water Quality Certification for activities requiring a federal permit. As documented in Draft EIS Section 4.5 and Appendix E6 (Wetland and Aquatic Resources Technical Report), wetlands and other aquatic features occur along Sand Creek, Clear Creek, the South Platte River, and stormwater drainage corridors within (or adjacent to) the project footprint.

CDOT initiated coordination with the United States Army Corps of Engineers (USACE)-Denver Regulatory Office on May 5, 2023, and an initial meeting was held on May 15, 2023. CDOT submitted jurisdictional determination (JD) requests to USACE on August 22, 2024, for both assumed jurisdictional and non-jurisdictional aquatic resources. The purpose of the JD request was to obtain regulatory certainty for identifying potential Section 404 impacts and supporting future permitting. USACE issued Approved and Preliminary JDs on November 1, 2024.

Section 404 permitting will be required for the project. Based on current design and the small size of anticipated impacts at individual locations, it is likely that a series of Nationwide Permits (NWP) will be used, potentially including NWP 14 (Linear Transportation Projects) and NWP 3 (Maintenance of Existing Structures). These NWPs apply to activities with less than 0.50 acres of permanent impacts at single project locations (e.g., bridge areas), and each NWP constitutes a separate and complete action under USACE regulations. The project lies within the USACE Omaha District, and permitting will occur within district boundaries. Coordination with USACE is ongoing and will continue through final design and into the permitting phase, following the ROD.

Consultation with the Colorado Department of Public Health and Environment (CDPHE) will also be required under Regulation 87, which is a control regulation for avoiding, minimizing, and mitigating the impacts of dredge and fill activity into waters of the State. Depending on the extent and timing of impacts, either temporary or permanent authorization may be required.

The project will implement the avoidance and minimization practices identified in Chapter 5.0, Measures to Minimize Harm, of this ROD. Upon issuance of the required Section 404 authorization(s), the project will comply with the CWA.

4.2.3 Executive Order 11988, Floodplain Management

Federal Executive Order (EO) 11988 and FHWA's implementing regulations at 23 CFR 650, Subpart A requires federal agencies to avoid, to the extent practicable, adverse impacts associated with the occupancy and modification of floodplains and to avoid support of floodplain development where practicable alternatives exist. As documented in Draft EIS Section 4.7, mapped floodplains associated with Clear Creek, the South Platte River, and Sand Creek occur where the existing I-270 corridor crosses these waterways. The Selected Alternative maintains the existing crossing locations and was developed to minimize encroachments and preserve hydraulic capacity consistent with EO 11988.

The Draft EIS analyses indicate that floodplain effects are limited, primarily consisting of bridge replacements and short-term construction activities within an established transportation corridor. The project would not increase base flood elevations, diminish floodplain conveyance, or introduce new longitudinal encroachments. Per the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps, the improvements will have significant encroachments under 23 CFR 650.105(q). Because no practicable alternative exists that avoids all encroachments while meeting the project's Purpose and Need, and because all practicable measures to minimize harm have been incorporated, the project complies with EO 11988.

Please refer to Chapter 5.0, Measures to Minimize Harm, for further detail on the project's process to comply with EO 11988 and 23 CFR 650.

4.3 Other Applicable Requirements

4.3.1 Water Quality/Stormwater Management

Construction of the project will comply with Section 402 of the CWA through the Colorado Discharge Permit System (CDPS) administered by CDPHE's Water Quality Control Division (WQCD). Prior to ground disturbance, CDOT will obtain coverage under the CDPS Construction Stormwater General Permit (COR-400000) and prepare, implement, and maintain a Stormwater Management Plan (SWMP) consistent with CDOT's municipal separate storm sewer system (MS4) Construction Sites Program. As needed, a CDPS construction dewatering authorization will be obtained to manage discharges of groundwater encountered during excavation. Where construction occurs outside CDOT right-of-way (ROW) within municipal MS4 areas, CDOT will secure the applicable local stormwater approvals from the City and County of Denver, Adams County, and Commerce City. These permits and the associated best management practices (BMPs) and completed during final design and prior to construction.

4.3.2 Noise Abatement Decision

The project's noise analysis (Draft EIS Section 4.3 and Appendix E, Noise Technical Report, of the Final EIS) identified one location where a noise barrier is reasonable and feasible for a cluster of impacted receptors in the South Rose Hill neighborhood (north of I-270 and south of North Sandcreek Drive); 11 impacted receptors would achieve at least a 5 A-weighted decibels benefit from the wall. Consistent with FHWA and CDOT noise policy, CDOT will conduct a benefited-receptor preference survey during final design, and if a majority of responding owners/residents support the wall, it will be advanced into final plans for the Selected Alternative. With completion of the survey and a Noise Verification, and incorporation of the abatement decision into final design, the project will meet FHWA's noise abatement requirements as documented in the Draft EIS. The project will implement the avoidance and minimization practices identified in Chapter 5.0, Measures to Minimize Harm of this ROD.

4.3.3 Hazardous Materials

As described in the Draft EIS hazardous materials analysis (Draft EIS Section 4.10 and Appendix E11, Modified Environmental Site Assessment), CDOT will implement materials handling and response procedures and obtain any state approvals required for site-specific conditions encountered during construction. This may include a demolition permit, including inspection and, if needed, abatement of asbestos-containing materials, approvals for beneficial reuse of impacted soil and any required environmental use restrictions/covenants, a project-specific Materials Management Plan, and (if applicable) CDPHE WQCD authorizations for construction dewatering or remediation-related discharges under the CDPS. These actions will be coordinated with CDPHE and implemented before and during construction. The project will implement the avoidance and minimization practices identified in Chapter 5.0, Measures to Minimize Harm, of this ROD.

4.3.4 Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act)

Limited property acquisition, permanent ROW easements, and temporary construction ROW easements are required for the Selected Alternative, as summarized in the Draft EIS and updated in the Errata.

CDOT will pursue early ROW acquisition of 7.091 acres of parcels required to implement improvements associated with the first phase of construction for the Selected Alternative. Purchase of these properties would minimize the risk associated with potential access issues and mitigate the risk of possible encroachment and incompatible development. In addition, early ROW acquisition would preserve the integrity of the corridor and prevent the need for route realignments that could affect resources in or near the project area. 23 United States Code (USC) Section 108(c)(1) and 23 CFR 710.501 permit state agencies to undertake early acquisition prior to the completion of the environmental review process for a proposed transportation project, as long as it does not influence the environmental review process for the proposed transportation project. These acquisitions would be necessary regardless of which Build Alternative was selected and do not influence the process. In addition, these acquisitions do not include any Section 4(f) resources or parklands per 23 USC 138. See Figure 4-1 for locations of the parcels that are included in the early ROW acquisition.

All remaining acquisitions will be completed following publication of the ROD and prior to construction in accordance with the Uniform Act and CDOT ROW procedures.

Table 4-1 presents a summary of the statutory and regulatory requirements applicable to the project and the current status of compliance for the Selected Alternative.

FHWA and CDOT have met NEPA requirements and complied with all applicable environmental laws.

Figure 4-1. Parcels Included and Excluded in the Early ROW Acquisition



Table 4-1. Regulatory Compliance Summary for the Selected Alternative

Law/Regulation	Compliance Status/Finding	Remaining Compliance Actions?	Timing
ESA	No effect on federally listed species and critical habitat; no Section 7 consultation required. Project will carry standard avoidance/minimization during construction to maintain “no effect.”	No. Implement ROD commitments during final design and construction.	Post-ROD, during final design and construction.
MBTA	Compliance by avoiding disturbance to migratory birds/active nests (seasonal timing, nest surveys/buffers, structure exclusions, revegetation).	No. Implement ROD commitments during final design and prior to and during construction.	Post-ROD, during final design and prior to and during construction.
CAA	Conforms to the State Implementation Plan at regional level and meets project-level conformity requirements.	No.	Not Applicable
Section 4(f)	<i>de minimis</i> for historic properties: Plastics, Inc. Suncor Energy Sand Creek (Railroad) Junction Chicago, Burlington & Quincy, Brush Railroad Line Burlington Ditch Denver Pacific Railroad, Greeley Line Chicago, Burlington & Quincy, Market Street Line Brighton Boulevard Gardener's Ditch York Street Vasquez Boulevard Temporary occupancy exception for South Platte River Trail (OWJ concurrence 11/22/2024); <i>de minimis</i> for Sand Creek Trail and Dahlia Trailhead with OWJ concurrences dated [May 8, 2026] and [May 13, 2026].	No.	Not Applicable

Law/Regulation	Compliance Status/Finding	Remaining Compliance Actions?	Timing
Colorado SB 40	Certification required because work may affect riparian habitat along Sand Creek and the South Platte River.	Yes. Coordinate with CPW; submit SB 40 application; incorporate riparian avoidance/minimization into plans during final design; obtain SB 40 Certification.	Post-ROD, prior to construction.
CWA	Section 404 authorization(s) required; USACE Approved and Preliminary JDs (11/01/2024) on file. Expect permitting via NWP (e.g., NWP 14, NWP 3).	Yes. Complete Section 404 permit package(s) with USACE Omaha District; secure CDPHE Regulation 87 authorization.	Post-ROD, prior to construction.
EO 11988	No significant encroachment; no practicable alternative to limited encroachments at existing crossings; all practicable minimization incorporated.	Yes. Prepare engineer-certified no-rise documents; obtain local floodplain development permits; submit FEMA Conditional Letter of Map Revision/Letter of Map Revision as needed during final design prior to construction and post construction, respectively.	Post-ROD, during final design and prior to and after construction.
CWA Section 402	Obtain CDPS COR-400000 construction stormwater coverage; develop and implement SWMP; obtain local MS4 approvals where work is outside CDOT ROW; CDPS dewatering if needed.	Yes. Prepare SWMP and secure permits/approvals during final design.	Post-ROD, during final design and prior to construction.
Noise	One feasible and reasonable barrier identified (South Rose Hill). Construction contingent on benefited-receptor preference survey majority support during final design; if supported, barrier advances to plans.	Yes. Conduct preference survey; finalize abatement decision; complete Noise Verification; incorporate into final design.	Post-ROD, during final design.
Hazardous Materials	Anticipated needs include CDPHE Hazardous Materials and Waste Management Division demolition permit, approvals for beneficial reuse/environmental use restrictions, and Materials Management Plan; CDPS dewatering/remediation discharges if needed.	Yes. Coordinate with CDPHE; prepare/implement Materials Management Plan; obtain permits/approvals; implement handling/response BMPs.	Post-ROD, during final design and construction.
Uniform Act	Acquisitions/easements required; all to follow Uniform Act.	Yes. Follow CDOT's ROW acquisition process.	Post-ROD, during final design and prior to construction.