



# APPENDIX D — AGENCY COORDINATION AND COMMENTS

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**DEPARTMENT OF THE ARMY**  
CORPS OF ENGINEERS, OMAHA DISTRICT  
DENVER REGULATORY OFFICE, 9307 SOUTH WADSWORTH BOULEVARD  
LITTLETON, COLORADO 80128-6901

June 5, 2009

Jess Ortiz  
City and County of Denver  
Department of Public Works, Engineering Division  
201 W. Colfax Ave.  
Denver, CO 80202

**RE: Central Park Boulevard Approved Jurisdictional Determination  
Corps File No. NWO-2008-01791-DEN, City and County of Denver, Colorado**

Dear Mr. Ortiz:

Reference is made to the above-referenced project located in the City and County of Denver, Colorado.

An approved jurisdictional determination (JD) has been completed for this project. There are no waters of the U.S. within the site located in Section 21, Township 3 South, Range 67 West in the City and County of Denver, Colorado. Therefore, a Department of Army Permit is not required for any work located within this site. If you are not in agreement with the JD decision, you may request an administrative appeal under regulation 33 CFR 331, by using the attached Appeal Form and Administrative Appeal Process form. The request for appeal must be received within 60 days from the date of this letter. If you would like more information on the jurisdictional appeal process, contact this office. It is not necessary to submit a Request for Appeal if you do not object to the JD.

If any work associated with this project requires the placement of dredged or fill material, and any excavation associated with a dredged or fill project, either temporary or permanent, in any wetlands, this office should be notified by a proponent of the project for Department of the Army permits or changes in permit requirements pursuant to Section 404 of the Clean Water Act. Work in the wetlands should be shown on a map identifying the Quarter Section, Township, Range and County of the work and the dimensions of work in each area. Any loss of wetlands may require mitigation. Mitigation requirements will be determined during the Department of the Army permitting review.

This JD is valid for a period of five years from the date of this letter, unless new information warrants revisions of the JDs before the expiration date, or unless the Corps has identified, after a possible public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.

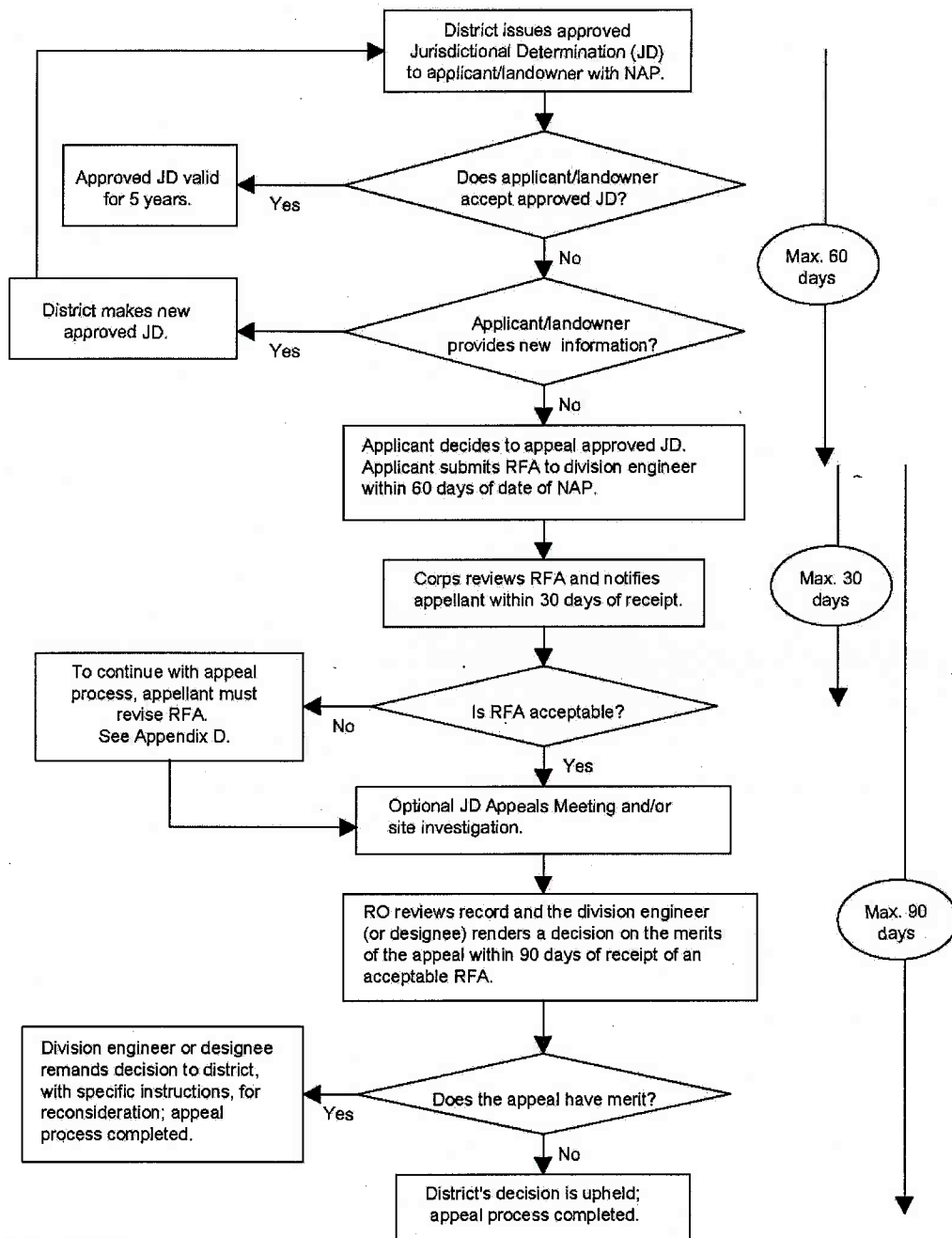
If there are any questions call **Mr. Kiel Downing** at **(303) 979-4120** and reference **Corps No. NWO-2008-01791-DEN**.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy T. Carey", is written over a large, stylized circular flourish.

Timothy T. Carey  
Chief, Denver Regulatory Office

## Administrative Appeal Process for Approved Jurisdictional Determinations



**Appendix C**

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND  
REQUEST FOR APPEAL**

Applicant: City and County of Denver	File Number: 2008-1791-DEN	Date: 6/5/09
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
→	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

**SECTION I** - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

Timothy T. Carey  
Chief, Denver Regulatory Office  
9307 South Wadsworth Boulevard  
Littleton, CO 80128  
(303) 979-4120

If you only have questions regarding the appeal process you may also contact:

US Army Corps of Engineers, Northwestern Division  
Attn: David Gesl, Appeal Review Officer  
1125 NW Couch St.  
Portland, OR 97209-4141  
Telephone (503) 808-3825

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** May 6, 2009

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Denver Regulatory Office, Central Park Boulevard, NWO-2008-01791-DEN

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: **CO** County/parish/borough: **Denver** City: **Denver**  
Center coordinates of site (lat/long in degree decimal format): Lat. **39.776847** N; Long. **-104.884607** W  
Name of nearest waterbody: **Sand Creek**  
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **None**  
Name of watershed or Hydrologic Unit Code (HUC): **10190003**

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.  
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

- Office (Desk) Determination. Date: **May 6, 2009**  
 Field Determination. Date(s): **May 4, 2009**

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

- Waters subject to the ebb and flow of the tide.  
 Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.  
Explain:

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are no** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

- TNWs, including territorial seas  
 Wetlands adjacent to TNWs  
 Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs  
 Non-RPWs that flow directly or indirectly into TNWs  
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs  
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs  
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs  
 Impoundments of jurisdictional waters  
 Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: linear feet: width (ft) and/or acres.  
Wetlands: acres.

**c. Limits (boundaries) of jurisdiction based on: Pick List**

Elevation of established OHWM (if known):

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **The wetland is located within a drainage feature that received much of its hydrology from Stapleton Airport parking lots before it was closed and removed. The wetland is located in a small depression approximately 4,000 feet up-gradient from Sand Creek, the closest waters of the US. Evidence of flow leaving the wetland was present but they quickly dissipate and disappear within 150 feet of the wetland. Soils in the area are very sandy/fast draining soils. The upland swale showed no evidence of flow in recent year. An OHWM does not exist between the wetland and the down gradient Sand Creek. The South Platte River, the nearest TNW, is approximately 4.75 miles down gradient.**

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

**SECTION III: CWA ANALYSIS**

**B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

**1. Characteristics of non-TNWs that flow directly or indirectly into TNW**

**(i) General Area Conditions:**

Watershed size: ~~2500 square miles~~  
Drainage area: ~~80 acres~~  
Average annual rainfall: 15 inches  
Average annual snowfall: 40 inches

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

- Tributary flows directly into TNW.
- Tributary flows through ~~Pick List~~ tributaries before entering TNW.

Project waters are ~~15-20~~ river miles from TNW.  
Project waters are ~~15-20~~ river miles from RPW.  
Project waters are ~~5-10~~ aerial (straight) miles from TNW.  
Project waters are ~~5-10~~ aerial (straight) miles from RPW.  
Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW<sup>5</sup>: ~~Tributary flow does not normally reach a TNW. In very extreme precipitation events the unnamed drainage could possible flow approximately 4,000 feet across the upland area to Sand Creek. From that point, Sand Creek flows another 4 miles before reaching a the South Platte River, a TNW.~~  
Tributary stream order, if known:

**(b) General Tributary Characteristics (check all that apply):**

Tributary is:  Natural

Artificial (man-made). Explain: ~~The wetland has been created as a result of runoff from an upland parking lot and some minor roadside runoff. The entire area immediately surrounding the wetland has been regarded during development.~~

Manipulated (man-altered). Explain: .

**Tributary properties with respect to top of bank (estimate):**

Average width: 0 feet ~~Area is an upland swale. A tributary features do not exist.~~  
Average depth: 0. feet  
Average side slopes: ~~Pick List.~~

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.



- Primary tributary substrate composition (check all that apply):
- |  |  |                                   |
|--|--|-----------------------------------|
| <input type="checkbox"/> Silts           | <input type="checkbox"/> Sands                     | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles         | <input type="checkbox"/> Gravel                    | <input type="checkbox"/> Muck     |
| <input type="checkbox"/> Bedrock         | <input type="checkbox"/> Vegetation. Type/% cover: |                                   |
| <input type="checkbox"/> Other. Explain: |  |                                   |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): %

(c) **Flow:**

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime: **Flows do not exist in this upland swale.**

Other information on duration and volume:

Surface flow is: **Pick List**. Characteristics: .

Subsurface flow: **Unknown**. Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks

OHWM<sup>6</sup> (check all indicators that apply):

- |  |   |
|--|---|
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris          |
| <input type="checkbox"/> changes in the character of soil          | <input type="checkbox"/> destruction of terrestrial vegetation      |
| <input type="checkbox"/> shelving                                  | <input type="checkbox"/> the presence of wrack line                 |
| <input type="checkbox"/> vegetation matted down, bent, or absent   | <input type="checkbox"/> sediment sorting                           |
| <input type="checkbox"/> leaf litter disturbed or washed away      | <input type="checkbox"/> scour                                      |
| <input type="checkbox"/> sediment deposition                       | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining                            | <input type="checkbox"/> abrupt change in plant community           |
| <input type="checkbox"/> other (list):                             |   |

Discontinuous OHWM.<sup>7</sup> Explain: **There is no OHWM for approximately 4,00 linear feet down gradient from the wetland (non-RPW).**

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> High Tide Line indicated by:   | <input checked="" type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects      | <input type="checkbox"/> survey to available datum;                    |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |  |
| <input type="checkbox"/> other (list):                             |  |

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: **Water is not present in the drainage feature. Water within the wetlands (when present) exhibits characteristics typical of urban runoff**

Identify specific pollutants, if known:

(iv) **Biological Characteristics. Channel supports (check all that apply):**

Riparian corridor. Characteristics (type, average width):

Wetland fringe. Characteristics:

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: **Habitat for animals adapted to life on the high plains and foothills.**

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

<sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup>Ibid.

wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

**Finding of No Significant Nexus:**

The wetland is located within a drainage feature that received much of its hydrology from Stapleton Airport parking lots before it was closed and removed. The wetland is located in a small depression approximately 4,000 feet up-gradient from Sand Creek, the closest waters of the US. Evidence of flow leaving the wetland was present but they quickly dissipate and disappear within 150 feet of the wetland. Soils in the area are very sandy/fast draining soils. The upland swale showed no evidence of flow in recent year. An OHWM does not exist between the wetland and the down gradient Sand Creek. The South Platte River, the nearest TNW, is approximately 4.75 miles down gradient.

The hydrologic nexus to the South Platte River is so minimal as to be insubstantial. While extreme precipitation events may produce small flows that may move sediments within the unnamed drainage feature, these sediments would rarely, if ever, traverse the 4,000 feet of upland swale, and then would be intercepted by the down gradient Sand Creek. There is also no evidence of a significant biological or ecological nexus, such as ESA habitat or aquatic life movement.

There is no evidence of the presence of more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of the downstream TNW.

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: **There is no evidence of the presence of more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of the downstream TNW.**
- Other: (explain, if not covered above): **There is no information available to show that these resources are used by interstate or foreign travelers for recreational or other purposes, or support fish or shellfish, and are used for industrial purposes by industries in interstate commerce [33 CFR 328.3(a)(i)(i-iii)].**

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource:
- Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource:
- Wetlands: 0.146 acres.

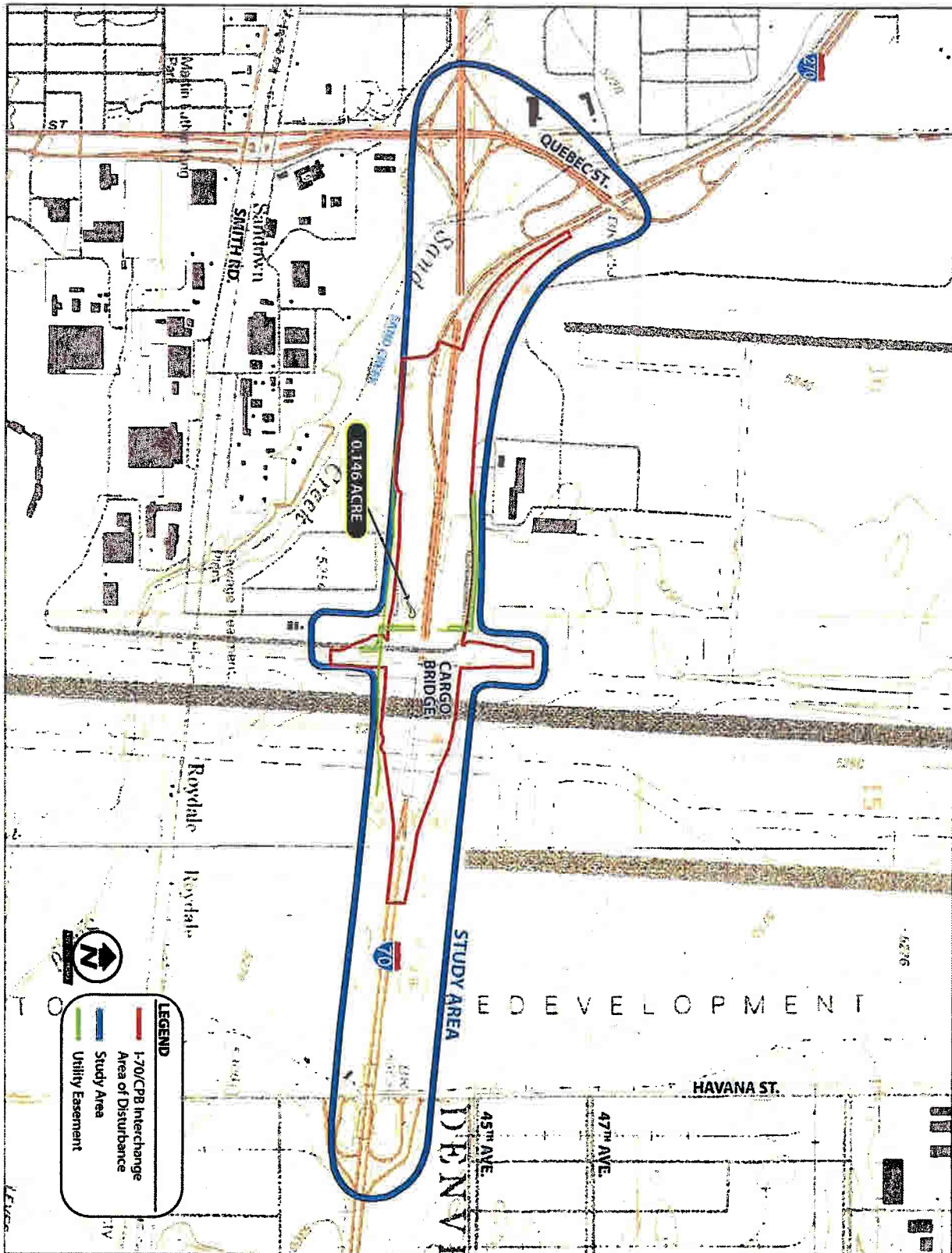
#### **SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: **Provided by the project proponent**
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters' study:
- U.S. Geological Survey Hydrologic Atlas:
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: **1:24000, Commerce City Quad**
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): **Live Search and Google Maps**  
or  Other (Name & Date):
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law: **Rapanos and Carabell cases.**
- Applicable/supporting scientific literature:
- Other information (please specify):

#### **B. ADDITIONAL COMMENTS TO SUPPORT JD:**

**A relevant reach has not been identified due to the fact that the drainage is an upland swale. A relevant reach can only be defined when a tributary is present.**





# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Ecological Services  
Colorado Field Office  
P.O. Box 25486, DFC (65412)  
Denver, Colorado 80225-0486

IN REPLY REFER TO:

ES/CO: T&E/CDOT  
TAILS: 65412-2009-TA-0423

JUN 18 2009

Marc Devos  
URS  
999 18<sup>th</sup> Street, Suite 900  
Denver, Colorado 80202

Dear Mr. Devos:

Based on the authority conferred to the U.S. Fish and Wildlife Service (Service) by the Fish and Wildlife Act of 1956 (916 U.S.C. 742(a)-754); Fish and Wildlife Coordination Act (FWCA - 16 U.S.C. 661-667(e)); National Environmental Policy Act of 1969 (NEPA - 42 U.S.C. 4321-4347); Department of Transportation Act (49 U.S.C. 1653(f)), and; Endangered Species Act of 1973, as amended (ESA - 50 CFR §402.14), as well as multiple Executive Orders, policies and guidelines, and interrelated statutes to ensure the conservation and enhancement of fish and wildlife resources (e.g., Migratory Bird Treaty Act (MBTA - 16 U.S.C. 703), and Bald and Golden Eagle Protection Act (BGEPA - 16 U.S.C. 668)), the Service reviewed the **I-70/Central Park Boulevard Interchange Environmental Assessment** sent with your letter of June 8, 2009. But for a few minor items mentioned below, the document adequately addresses the Service's trust resources: threatened and endangered species, migratory birds, and wetlands.

Section 4.2.4, Mitigation, and Table 4-13, indicate that the Colorado Division of Wildlife (CDOW) will be contacted in the event that active raptor nests are found within the project area. Because raptors are protected under the MBTA, we would also appreciate notification of active raptor nests in the area. In addition, Section 4.2.4 and Table 4-13 also state that land-clearing activities and removal of trees will occur prior to March 1 in order to avoid affecting active raptor and songbird nests. While this date is adequate to avoid nesting songbirds, Figure 4-1 shows a red-tailed hawk nest in the project area, and the CDOW's Recommended Buffer Zones and Seasonal Restrictions for Colorado Raptors, February, 2008, recommends restricting human encroachment within a 1/3-mile radius of active red-tailed hawk nests beginning February 15. Because of this earlier date, we recommend conducting land-clearing and tree removal activities prior to February 15.

Finally, Section 4.10, Permits and Clearances, indicates that a Nest Take Permit from us may be necessary. Attached for your reference is the Service's Nest Destruction Policy, which states that no permit is needed to remove an *inactive* nest, and that the

Service may issue a permit to take individual birds only when human health and safety are at risk.

We appreciate the opportunity to review and provide comments on the EA. If the Service can be of further assistance, please contact Alison Deans Michael of my staff at (303) 236-4758.

Sincerely,



Susan C. Linner  
Colorado Field Supervisor

Enclosure

cc: CDOT, HQ (Jeff Peterson)  
FHWA (Chris Horn)  
Michael

Ref: Alison\H:\My Documents\CDOT 2007+\Region 6\Central Park Blvd\I-70 & Central Park Blvd EA comments.doc



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

1595 Wynkoop Street  
DENVER, CO 80202-1129  
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Ref: 8EPR-N

JUL 08 2009

Karla S. Petty, P.E.  
Division Administrator, Colorado Division  
Federal Highway Administration  
12300 W. Dakota Avenue Suite 180  
Lakewood, CO 80228

Randy Jensen  
Region 6 Transportation Director  
Colorado Department of Transportation  
2000 S. Holly Street  
Denver, CO 80222

Re: Comments on I-70/Central Park Boulevard  
Interchange Environmental Assessment  
SA 16342

Dear Ms. Petty and Mr. Jensen:

The U.S. Environmental Protection Agency (EPA) Region 8 has reviewed the Federal Highway Administration's (FHWA) I-70 / Central Park Boulevard Interchange Environmental Assessment (EA) in accordance with our agreement with FHWA, dated August 28, 2000. We appreciate the opportunity to review and comment on this project. EPA does not object to the proposed interchange at I-70 and Central Park Boulevard; however, we are offering comments to ensure adequate protection of human and environmental health.

**Project Background**

The FHWA, along with the Colorado Department of Transportation and the City and County of Denver, proposes to construct a new I-70 interchange. The proposed interchange, at Central Park Boulevard, will provide I-70 access to Stapleton, Colorado. It will also create arterial connection across I-70 for the northern and southern portions of the Stapleton Redevelopment Area. The purpose of the proposed development is to support local and regional access for both existing and planned land uses served by Central Park Boulevard.

**EPA Concerns**

Our review of the EA has identified deficiencies in information provided regarding Air Quality, Water Quality, and Hazardous Materials. A summary of these concerns follows, with additional details provided in the enclosed Detailed Comments.

### Air Quality

We are concerned that the discussion of Mobile Sources Air Toxics (MSAT) contained in the DEIS and appended Air Quality Technical Report contain concepts and language from FHWA's February 2006 Interim Guidance on MSATs, with which EPA has consistently disagreed. In addition, critical information has been overlooked regarding construction mitigation measures. The EA only describes mitigation measures for controlling dust emissions during construction. Measures for mitigating emissions from diesel engines used throughout the three-year construction period are also needed.

### Water Quality

EPA is concerned about the potential effects of the preferred alternative on water quality in Sand Creek and the South Platte River Watershed, identified in the EA as the affected environment. The EA could be improved by including additional information pertaining to potential water quality effects on these already impaired waters. Our recommended points for expansion of the water quality discussion are included in the enclosure.

### Hazardous Materials

EPA believes that the EA should include additional information related to hazardous materials management and mitigation. The Executive Summary table (ES-3) indicates that a Phase II Environmental Site Assessment for soils and groundwater will be performed. However, the Hazardous Materials sections of the document (4.3 and 4.8.2) appear to focus on Health and Safety concerns and Materials Management concerns, leaving out critical information on source/contaminant characterization. We are providing FWHA with a list of specific points that we recommend to be included in the EA.

Thank you for the opportunity to review on this EA. We hope the comments provided will assist FWHA in preparing a sound Finding of No Significant Impact. If you have any questions, please contact me at 303-312-6004 or you may also contact Molly Brodin of my staff at 303-312-6577.

Sincerely,



Larry Svoboda  
Director, NEPA Program  
Office of Ecosystems Protection and Remediation

Enclosure: Detailed Comments

cc: Chris Horn, FHWA (e-mail)





**EPA DETAILED COMMENTS  
I-70/CENTRAL PARK BOULEVARD EA**

**Air Quality**

Section 4.7.15: Air Quality:

- Pages 4-66 and 4-67: This section discusses carbon monoxide (CO) and PM<sub>10</sub>, however, it does not address other pollutants of concern for the metropolitan Denver area. The metro-Denver area is currently designated as nonattainment for the 1997 8-hour (0.08 ppm) ozone National Ambient Air Quality Standard (NAAQS). A historical discussion regarding the 1997 8-hour ozone NAAQS and the relevance to metro-Denver is provided in section 2.2 of the Air Quality Technical Report, but there is no discussion on how emissions from the construction of this project from 2010 through 2012 will affect the area's ability to attain and maintain that NAAQS. Further, will construction emissions from the timeframe of the construction of this project hinder the metro-Denver area's ability to meet the 2008 8-hour (0.075 ppm) ozone NAAQS? This should be considered as the EA offers no emissions mitigation except for construction dust emissions. In addition, EPA notes that Colorado submitted its State Implementation Plan revision (dated June 18, 2009) for demonstrating attainment of the 1997 8-hour ozone NAAQS on June 23, 2009.

We also note that EPA's Integrated Risk Information System states that diesel exhaust appears "... likely to be carcinogenic to humans by inhalation from environmental exposures." Diesel exhaust is the combination of diesel particulate matter (DPM) and diesel exhaust gases which include PM<sub>2.5</sub>. As the vast majority of the construction equipment likely to be used on this project would be both on-road and non-road diesel equipment, it would be appropriate that a discussion be provided regarding PM<sub>2.5</sub>, and the potential impacts, as associated with this project.

- Pages 4-66 and 4-67 and section 2.2 of the Air Quality Technical Report addressing MSATs: EPA is concerned that the MSAT discussion in the DEIS and section 2.2 of the Air Quality Technical Report contain concepts and language from FHWA's February 2006 Interim Guidance on MSATs, with which EPA has consistently disagreed. We recently provided comments on this issue in our letter dated March 31, 2009, on the I-70 East Highway Project DEIS, and we suggest you refer to this letter for details regarding our disagreements with FHWA's 2006 MSAT guidance.

We note that air toxics are defined as pollutants in the air that are known or suspected to cause cancer or other serious health effects, such as respiratory, neurological, reproductive, and developmental effects. MSATs are usually the largest source of air toxics of concern in urban areas. Emissions from on-road mobile and non-road sources typically occur near the ground and are not particularly buoyant. Therefore, the largest impacts of these emissions tend to occur at receptors close to the source.

- In view of the duration of this project (three years), the construction location (between the current Quebec and Havana street interchanges), the proximity to current businesses at the Northfield area (with their patrons and employees), and the potential for additional commercial development adjacent to and during the project's construction phases, it would be appropriate to develop a construction phase emission inventory that would include criteria pollutants, with precursor emissions, as well as MSAT emissions. The development of a criteria pollutants emission inventory would also provide information to assist in the evaluation of potential impacts with regard to the PM<sub>2.5</sub> and the 2008 8-hour ozone NAAQS noted above.

Section 4.8.4: Air Quality:

- Pg. 4-73, section 4.8.4 Air Quality, Mitigation: The EA contains mitigation measures that will essentially control dust emissions from the construction phase of the project. The EA does not contain any mitigation measures for engine exhaust emissions from construction equipment. As the vast majority of both the on-road and non-road construction equipment to be used on this project would be powered by diesel engines, we recommend that the EA include the following potential mitigation measures:
  - Prohibiting unnecessary idling of construction equipment,
  - Using low-sulfur fuel,
  - Locating diesel engines and motors as far away as possible from residential areas,
  - Locating staging areas as far away as possible from residential uses,
  - Requiring heavy construction equipment to use the cleanest available engines or to be retrofitted with diesel particulate control technology,
  - Using alternatives for diesel engines and/or diesel fuels (such as: biodiesel, liquefied natural gas, compressed natural gas, fuel cells, or electric engines),
  - Installing engine pre-heater devices to eliminate unnecessary idling during winter time construction,
  - Prohibiting tampering with equipment to increase horsepower or to defeat emission control devices effectiveness,
  - Requiring construction vehicle engines to be properly tuned and maintained, and
  - Using construction vehicles and equipment with the minimum practical engine size for the intended job.

Editorial Comment:

- Pg. 2-2, Table 2.1-1 of the Air Quality Technical Report, correction: EPA revised the lead (Pb) standard from 1.5 µg/m<sup>3</sup> to 0.15µg/m<sup>3</sup> as measured over a rolling 3-month average. (ref. 73 FR 66964, November 12, 2008, effective January 12, 2009.) The lead primary and secondary standards are the same.

## Water Quality

EPA believes the EA should include additional information pertaining to potential water quality effects to Sand Creek and the South Platte River Watershed. To ensure adequate disclosure of impacts to and protection for this environment we suggest that FWHA:

- identify pollutants that would likely be associated with indirect water quality degradation, identified in the EA as potentially arising due to vehicular traffic and as the result of increased development of the adjacent properties;
- disclose whether the indirect impacts of the preferred alternative are likely to contribute to impairments of the Aquatic Life Warm Class 2 use and the Recreation Class 1a use for South Platte River Segment 16 a (Sand Creek), currently 303(d) listed as impaired for selenium and *E. coli*;
- disclose whether or not the preferred alternative is likely to cause any additional impairments for pollutants associated with the Aquatic Life Warm Class 2 use, Recreation Class 1a use, or the Agriculture use; and
- discuss the extent to which the mitigation measures are likely to address the indirect impacts associated with vehicular traffic and increased development.

## Hazardous Materials

The Hazardous Materials sections of the document (4.3 and 4.8.2) appear to focus on Health and Safety concerns and Materials Management concerns. EPA believes this leaves out critical information on source/contaminant characterization. We recommend that the EA include details on:

- how sampling programs will be designed to appropriately characterize soils and groundwater/surface water;
- how to confirm or deny the presence of contaminants of concern identified in the Phase I Recognized Environmental Conditions;
- what benchmarks or standards will be used to determine if action is needed to protect worker health and safety (or other receptors, if any);
- what the management actions will be (containment/capping, complete removal, or natural attenuation based on lack of receptors and incomplete pathway in the developed areas); and
- if transport and disposal will be required, what steps will be taken to ensure that it is done properly and the materials are accepted by appropriate entities.

In addition, regulatory action levels used to determine the significance of contamination should be specified. Specifically, on page 4-17, we recommend referring to the regulatory action levels for 1,1-dichloroethene in groundwater. Similarly, if there are action levels for other contaminants of concern in groundwater and soil, the EIS should be clear about the standards that will be used for reference or for cleanup levels. This information should be added to Section 4.3.3 and 4.8.2. Finally, the Modified Phase I Environmental Site Assessment refers to the

Stapleton Numeric Criteria (SNC). We recommend that you include an explanation of the relationship of the SNC to the Colorado Maximum Contaminant Levels.

- Identify pollutants that would likely be associated with indirect water quality degradation identified in the EA as potentially arising due to increased traffic and as the result of increased development of the subject properties.
- Discuss whether the indirect impacts of the proposed alternative are likely to contribute to impairments of the Aquatic Life Water Class 2 use and the Recreation Class 2 use for South Platte River Segment 16 (Sandy Creek), currently 303(d) listed as impaired for sediment and E. coli.
- Discuss whether or not the proposed alternative is likely to cause any additional impairments for pollutants associated with the Aquatic Life Water Class 2 use, Recreation Class 2 use, or the Agriculture use, and
- Discuss the extent to which the mitigation measures are likely to address the indirect impacts associated with residential, commercial and industrial development.

#### Residential Materials

The Hazardous Materials section of the document (4.2 and 4.3.2) appear to focus on health and safety concerns and material management activities. EPA believes this leaves out critical information on source/contaminant characteristics. We recommend that the EA include details

- how handling programs will be designed to appropriately characterize soils and ground water/surface water;
- how to confirm or deny the presence of contaminants of concern identified in the Phase I Remedial Investigation/Assessment;
- what treatments or standards will be used to determine if action is needed to protect worker health and safety (or other receptors, if any);
- what the management actions will be (containment/capping, complete removal, or natural attenuation based on lack of receptors and migration pathway in the developed area);
- if transport and disposal will be required, what steps will be taken to ensure that it is done properly and the materials are accepted by appropriate entities.

In addition, regulatory action levels need to determine the significance of contamination should be specified. Specifically, on page 4-11, we recommend referring to the regulatory action levels for 1,1-dichloroethane in groundwater. Similarly, if there are action levels for other contaminants of concern in groundwater and soil, the EA should provide them. The standards that will be used for reference or for cleanup levels. This information should be added to Section 4.3.2 and 4.3.3. Finally, the Remedial Investigation/Assessment Site Assessment refers to the

STATE OF COLORADO

Bill Ritter, Jr., Governor  
DEPARTMENT OF NATURAL RESOURCES  
**DIVISION OF WILDLIFE**

AN EQUAL OPPORTUNITY EMPLOYER

Thomas E. Remington, Director  
6060 Broadway  
Denver, Colorado 80216  
Telephone: (303) 297-1192  
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*For Wildlife-  
For People*

July 24, 2009

Mr. Jess Ortiz, PE  
City and County of Denver  
Department of Public Works, Transportation Division  
201 West Colfax, Department 506  
Denver, CO 80202

RE: I-70/Central Park Boulevard Interchange

Dear Mr. Ortiz:

Thank you for the opportunity to comment on the I-70/Central Park Boulevard (CPB) Interchange project located in Denver County. The Colorado Division of Wildlife (CDOW) has received the Environmental Assessment which identifies and describes potential impacts to wildlife and wildlife habitat.

The mission of the CDOW is to protect, preserve, enhance, and manage wildlife and their environment for the use, benefit and enjoyment of the people of Colorado and its visitors. One of the ways we achieve our mission is to comment on land use proposals such as the request we received from your agency. Our goal is to provide complete, consistent and timely information to all entities who request comments on matters within our statutory authority and our mission.

### **Project Description**

The proposed project is located on I-70 in the eastern portion of Denver, CO. The project proposes the construction of a braided-ramp interchange for I-70. This alternative includes the demolition of the existing cargo bridge and construction of a new bridge over I-70. Additionally, the project includes the development of a CPB bridge with consecutive eastbound on-ramps for I-270 and consecutive westbound off-ramps for CPB and I-270. The I-70/CPB Interchange project would impact 21.9 acres, and temporarily impact 1.8 acres of prairie dog habitat.

### **Wetlands and Riparian Areas**

The proposed project includes potential impacts to 0.146 acre of wetland habitat. The impacted jurisdictional wetlands should be mitigated at a minimum ratio of 1:1.

Riparian areas serve as wildlife habitat and movement corridors, and are a valuable resource for a variety of urban wildlife species. Numerous aquatic species are associated with these waters as well as a variety of wildlife including reptiles, amphibians, coyotes, foxes, raccoons, skunks, waterfowl, passerine

DEPARTMENT OF NATURAL RESOURCES, Harris D. Sherman, Executive Director  
WILDLIFE COMMISSION, Brad Coors, Chair • Tim Glenn, Vice Chair • Dennis Buechler, Secretary  
Members, Jeffrey Crawford • Dorothea Farris • Roy McAnally • John Singletary • Mark Smith • Robert Streeter  
Ex Officio Members, Harris Sherman and John Stulp

birds and raptors. Local riparian areas and open space corridors serve as a great benefit to wildlife providing habitat and a place to migrate with minimal disturbance and conflicts with people.

As with any development and construction project along urban streams and creeks, there is always the potential for displacement and disturbance of wildlife that use this corridor. Unavoidable and permanent impacts to these riparian areas, although minimal, will occur as a result of this project. The CDOW recommends the following mitigation for riparian areas affected by the proposed project:

- All trees removed in this project should be replaced at a minimum ratio of 1:1.
- Landscaping in the developed area should be comprised of native plant species. The CDOW strongly recommends against using non-native plants. By using native species, with high food and cover values, wildlife along this project will be concentrated in areas that minimize conflict and optimize wildlife watching opportunities. Native species provide an aesthetically pleasing landscape that requires little maintenance and are frequently more drought-tolerant than non-native species.
- The Colorado Division of Wildlife recommends that consideration be made for using principles of an integrated weed management plan to help reduce the spread of invasive/noxious weeds.

Additionally, the CDOW recommends the following:

If heavy equipment to be used for the project has previously been used in another stream, river, lake, pond, or wetland, one of the following disinfection practices is necessary prior to construction to prevent the spread of New Zealand mud snails, zebra mussels, quagga mussels, whirling disease, and any other aquatic invasive species into this drainage. These practices are also necessary after project completion, prior to this equipment being used in another stream, river, lake, pond, or wetland:

- Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and spray/soak equipment a 1:15 solution of Sparquat institutional cleaner and water. Keep equipment moist for at least 10 minutes **OR**
- Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and spray/soak equipment with water greater than 140 degrees F for at least 10 minutes.
- Clean hand tools, boots, and any other equipment that will be used in the water with one of the above options as well.

### **Threatened, Endangered, and Sensitive Species**

#### Threatened and Endangered Species

As indicated in the Environmental Assessment, the proposed project will not affect federally listed threatened or endangered species.

#### Black-tailed prairie dogs

The CDOW acknowledges that approximately 1.8 acres of prairie dog habitat will be impacted by the proposed project. The black-tailed prairie dog is a species that is native to the foothills and eastern plains of Colorado. The black-tailed prairie dog is currently listed as a species of concern in Colorado; however, the species is not classified as a threatened or endangered species. Colorado Revised Statute 33-6-107(9) authorizes landowners to manage prairie dogs that are causing damage to crops, real or personal property, or livestock. The management of prairie dogs on private property is the prerogative of the landowner. However, the CDOW recommends the removal or relocation of prairie dogs prior to any earth-moving.

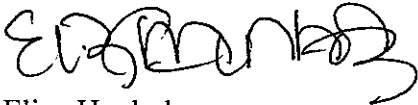
Burrowing owls

Burrowing owls are known to inhabit and nest in prairie dog burrows in Colorado. During the summer and fall seasons, adult burrowing owls raise and fledge their young in prairie dog burrows. These raptors are classified as a State Threatened species and are protected by both state and federal laws, including the Migratory Bird Treaty Act. These laws prohibit the killing of burrowing owls or the disturbance of their nests. Precautions should be taken to minimize the risk of the incidental take of this species of concern.

Burrowing owls are generally absent from Colorado from November 1<sup>st</sup> through March 1<sup>st</sup>. Postponing construction near prairie dog burrows until after October 31<sup>st</sup> would greatly reduce the likelihood of the incidental take of burrowing owls. If any earth-moving will occur between March 1st and October 31st, a burrowing owl survey should be performed. Additional guidelines on burrowing owl surveying techniques are enclosed with this letter.

We thank you for the opportunity to comment on this project. Please contact your local District Wildlife Manager, Melanie Kaknes at 303-291-7137, for further questions or concerns about this project, or any other project, as it relates to wildlife.

Sincerely,



Eliza Hunholz  
Area Wildlife Manager

cc: S. Yamashita, K. Green, M. Kaknes

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