



U.S. Department
of Transportation
**Federal Highway
Administration**

1200 New Jersey Ave., SE
Washington, D.C. 20590

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In Reply Refer To: HCR-20
DOT # 2017-0095

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On behalf of Candi CdeBaca,
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Shailen P. Bhatt
Executive Director
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4201 E. Arkansas Avenue
Denver, Colorado 80222

Subject: Letter of Finding (LOF) DOT 2017-0095
CdeBaca v. Colorado Department of Transportation

Dear Ms. CdeBaca and Mr. Bhatt:

The Federal Highway Administration (FHWA) Office of Civil Rights (HCR) issues the following Letter of Finding (LOF) summarizing its investigation of the above referenced complaint. The complaint was filed pursuant to Title VI of the Civil Rights Act of 1964 (Title VI) against the Colorado Department of Transportation (hereinafter Respondent) by EarthJustice on behalf of the residents of the Globeville, Elyria, and Swansea neighborhoods of Denver (Complainant).

Based on the available data and information, FHWA finds that there is insufficient evidence that the Project, itself—and the Respondent's advancement of the Project when it approved the 2017-2020 STIP—will create adverse, disparate impacts. FHWA finds, however, that even if the selection of the preferred alternative would result in adverse, disparate impacts, the Respondent has provided a substantial legitimate justification for its actions and shown that a less discriminatory alternative has not been identified.

I. Procedural History

On November 15, 2016, Candi CdeBaca, a Hispanic resident of the Elyria-Swansea neighborhood in Denver, Colorado (Complainant), filed a complaint against the Colorado

Department of Transportation (Respondent or CDOT) with U.S. Department of Transportation (USDOT) and the FHWA. The Complainant alleges the Respondent discriminated against the Hispanic residents of the Elyria-Swansea neighborhoods in Denver in violation of Title VI and the USDOT Title VI regulations (collectively Title VI). The complaint was timely filed during the 180-day period following the alleged discriminatory act, the signing of the Statewide Transportation Improvement Program (STIP) dated May 19, 2016.¹ On December 6, 2016, FHWA accepted the complaint for investigation. Complainant is Hispanic and a resident of the minority community on whose behalf she filed. All other grounds for filing a Title VI complaint have been met and Respondent does not dispute the Complainant's standing in this matter.

II. Factual Background

a. History and Current Status of the Elyria-Swansea Neighborhoods

According to the City of Denver, Elyria and Swansea were founded and platted in 1870 and 1881, respectively, as two separate settlements near Denver's growing industrial and railroad industries.² They were consolidated into Denver in 1902, and are today considered part of the same statistical neighborhood even though many residents still consider the two neighborhoods to be distinct. The area is surrounded by railroads, industrial facilities, and the South Platte River. The neighborhood remains highly industrial today and only 16% of Elyria-Swansea is made up of residences, parks, recreation facilities, and schools.³ The towns grew around the Kansas Pacific and Union Pacific railroads and the Globe smelter, established in 1886. The smelter processed the gold, silver, copper, and lead delivered from Colorado's mountain mining communities. The smelter drew immigrants from all over the globe – hence its name. Polish, Slovenian, Russian Croatian, Serbian, Czechs, and Volga Germans were all recruited to come work the dangerous jobs at the smelter and at the adjoining rail yards. Later, Hispanic families came to work in industries such as the meatpacking operations that came afterward.⁴

After two decades of planning and design engineering, Interstate 70 was constructed directly through the Elyria-Swansea neighborhoods in 1964. The freeway is an elevated highway viaduct that runs from Colorado to Brighton Blvd. Some residents opposed the project based on the contention that the viaduct would be a significant visual detraction and would decrease neighborhood property values.⁵

¹ Statewide Transportation Improvement Program Fiscal Years 2017 – 2020, Colorado Department of Transportation, <https://www.codot.gov/business/budget/documents/draft-fy2017-fy2020-stip>.

² Denver City Council, Elyria and Swansea Neighborhoods Plans, p. 14 (February 23, 2015), https://www.denvergov.org/content/dam/denvergov/Portals/646/documents/planning/Plans/Elyria_Swansea_Neighborhood_Plan.pdf.

³ *Id.* at 15.

⁴ Gretchen Armijo & Gene C. Hook, Denver Dep't of Env't'l Health, How Neighborhood Planning Affects Health in Globeville & Elyria Swansea, p. 12 (Sept. 2014), https://www.denvergov.org/content/dam/denvergov/Portals/746/documents/HIA/HIA%20Comp%20Report_9-18-14.pdf.

⁵ Denver City Council, Elyria and Swansea Neighborhoods Plans, p. 16 (February 23, 2015), https://www.denvergov.org/content/dam/denvergov/Portals/646/documents/planning/Plans/Elyria_Swansea_Neighborhood_Plan.pdf.

Some of the areas near the Elyria-Swansea neighborhoods have been found to be contaminated with toxic materials. Beginning as early as 1870, three smelting plants, the Omaha-Grant, Argo, and Globe operated for varying lengths of time, and refined metals including gold, silver, copper, lead, and zinc. As a result of these activities, the soils in some areas of the neighborhoods required soil remediation (or cleanup). The sections of those cleanup projects that are in residential areas have largely been completed.⁶

b. Demographic Profile & Affected Communities

Title VI requires that Recipients collect and analyze demographic data to ensure their programs and activities do not create a disparate impact based on race, color, or national origin.⁷ For construction projects, Recipients must determine the demographics for a reasonable project area that encompasses direct and indirect effects. The Respondent identified the demographic breakdown of the census tracts and block groups associated with the “study area,” which constitutes an area likely to realize direct and indirect impacts from the Project.⁸ The study area included the Elyria and Swansea neighborhoods, and the most current U.S. Census data from the American Community Survey for the study area neighborhoods is shown in Figure 1.⁹

Figure 1
Hispanic Population in Study Area Neighborhoods

Neighborhood	Total Population	Not Hispanic or Latino	Hispanic or Latino	Percentage Hispanic or Latino
Globeville	3551	1373	2178	61.33%
Elyria and Swansea	6676	1142	5534	82.89%
Northeast Park Hill	9086	6363	2723	29.97%
Stapleton	17,626	15,527	2099	11.91%
Montbello	34,483	13,286	20,897	60.60%
Aurora	7380	3998	3382	45.83%
Gateway	7545	4117	3428	45.43%

The Elyria-Swansea neighborhoods have the highest percentage of Hispanic persons for the study area. The total Hispanic population for the Denver Metropolitan Statistical Area, which includes the study area, is 615,396 or 29.46%, which indicates that all neighborhoods in the study area except Stapleton have higher percentages of Hispanic persons than the City of Denver as a whole.¹⁰

⁶ Gretchen Armijo & Gene C. Hook, Denver Dep’t of Env’tl Health, *How Neighborhood Planning Affects Health in Globeville & Elyria Swansea*, p. 33 (Sept. 2014), https://www.denvergov.org/content/dam/denvergov/Portals/746/documents/HIA/HIA%20Composite%20Report_9-18-14.pdf.

⁷ 23 C.F.R. §200.9(b)(4).

⁸ I-70 East Supplemental Draft Environmental Impact Statement – Environmental Justice Technical Report, Attachment F (adopted by Respondent in the FEIS), August 2014, p. 5, http://www.i-70east.com/SDEIS/chapters/I-70EastSDEIS_Vol2AttF_Enviro-Justice-Tech-Report.pdf.

⁹ Source: U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates.

¹⁰ *Id.*

In addition, both the U.S Census data and interviewees from the FHWA's site visit show that a large number of persons with Limited English Proficiency (LEP) reside in the Elyria-Swansea neighborhoods, as well as the study area as a whole. Title VI prohibits discrimination based on national origin, which therefore requires that Recipients take reasonable steps to provide meaningful access so that LEP individuals can effectively engage in federally assisted programs and activities.¹¹ The U.S. Department of Justice defines LEP individuals as those "who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English."¹²

For the Project, the Respondent assessed the language access needs of persons in the study area and found the Elyria-Swansea areas to have the highest need both compared to the study area and compared to the surrounding Denver area, as shown in Figure 2.

Figure 2
Limited English Proficiency Needs for the Project

Geographic unit	Total adult population	Primary language groups of persons who speak English less than very well							
		Spanish		Other-Indo European		Asian/Pacific		Other	
		#	%	#	%	#	%	#	%
Denver MSA	1,844,006	129,502	7.0	15,958	0.9	26,766	1.5	7,755	0.4
Denver County	452,947	50,223	11.1	3,906	0.9	5,828	1.3	2,645	0.6
Adams County	303,605	38,106	12.6	2,403	0.8	5,160	1.7	455	0.1
Globeville	2,633	794	30.2	0	0.0	9	0.3	0	0.0
Elyria and Swansea	4,260	1,739	40.8	0	0.0	11	0.3	0	0.0
Northeast Park Hill	5,469	675	12.3	0	0.0	7	0.1	30	0.5
Stapleton	8,837	288	3.3	43	0.5	71	0.8	63	0.7
Montbello	18,675	5,970	32.0	48	0.3	346	1.9	55	0.3
Aurora	4,949	975	19.7	31	0.6	328	6.6	45	0.9
Gateway	4,434	1,015	22.9	0	0.0	112	2.5	104	2.3
Study Area	49,257	11,456	23.3	122	0.2	884	1.8	297	0.6

Here, 40.8% of the combined Elyria-Swansea populations were identified as Spanish-speaking persons for their primary language.¹³ All neighborhoods in the study area, except Stapleton, feature higher percentages of LEP persons than the Denver MSA.

c. The Complainant

¹¹ *Lau v. Nichols*, 414 U.S. 563 (1974).

¹² Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 FR 41459, June 18, 2002.

¹³ I-70 East Supplemental Draft Environmental Impact Statement – Environmental Justice Technical Report, Attachment F (adopted by Respondent in the FEIS), August 2014, p. 17, http://www.i-70east.com/SDEIS/chapters/I-70EastSDEIS_Vol2AttF_Enviro-Justice-Tech-Report.pdf.

The named Complainant is Candi CdeBaca, who is Hispanic/Latino and member of the Cross Community Coalition (CCC).¹⁴ The Cross Community Coalition is a Registered Neighborhood Organization of Swansea and Elyria, which are neighborhoods of north Denver adjacent to the existing I-70 highway. The Complainant lives approximately three blocks south of the current I-70 in the area of the Project, and she believes the Project will cause an adverse, disparate impact to her, her family, and other similarly-situated individuals in the Project area. Specifically, she alleges that she suffers from health problems that include asthma, which she alleges subsided when she left the state of Colorado for several yearly periods of time and that the asthma returned when she returned to reside in the Elyria-Swansea neighborhood. For these reasons, the Complainant alleges that air pollution from I-70 has caused her health problems and that the Respondent's preferred alternative, which will add additional lanes to I-70, will exacerbate her condition.

The named Complainant is represented by counsel through EarthJustice, a non-profit public interest law firm that advocates for the protection of natural spaces and wildlife, healthy communities, and clean energy and a healthy climate.¹⁵

In addition, the complaint was joined by the Colorado Latino Forum, the Cross Community Coalition, and the Elyria and Swansea Neighborhood Association ("ESNA"), all of whom oppose the Respondent's selection of the preferred alternative.

d. Project History

The I-70 East Project (Project)¹⁶ concerns an 11-plus mile stretch of the I-70 corridor with a western boundary at the I-25/I-70 interchange to an eastern limit of Tower Road, beyond the I-225 interchange. The project dates to 2003 when the Respondent first conducted a study of the highway and transit needs of the entire Denver I-70 corridor. In 2006, the Respondent divided the Project, believing the transit component required a discreet, separate study. The Draft Environmental Impact Statement (DEIS) for the highway portion of the Project was published in 2008, though the Respondent did not advance any of the proposed alternatives due to lack of support from the public and other project stakeholders.¹⁷ A depiction of the project area can be found in Figure 3.

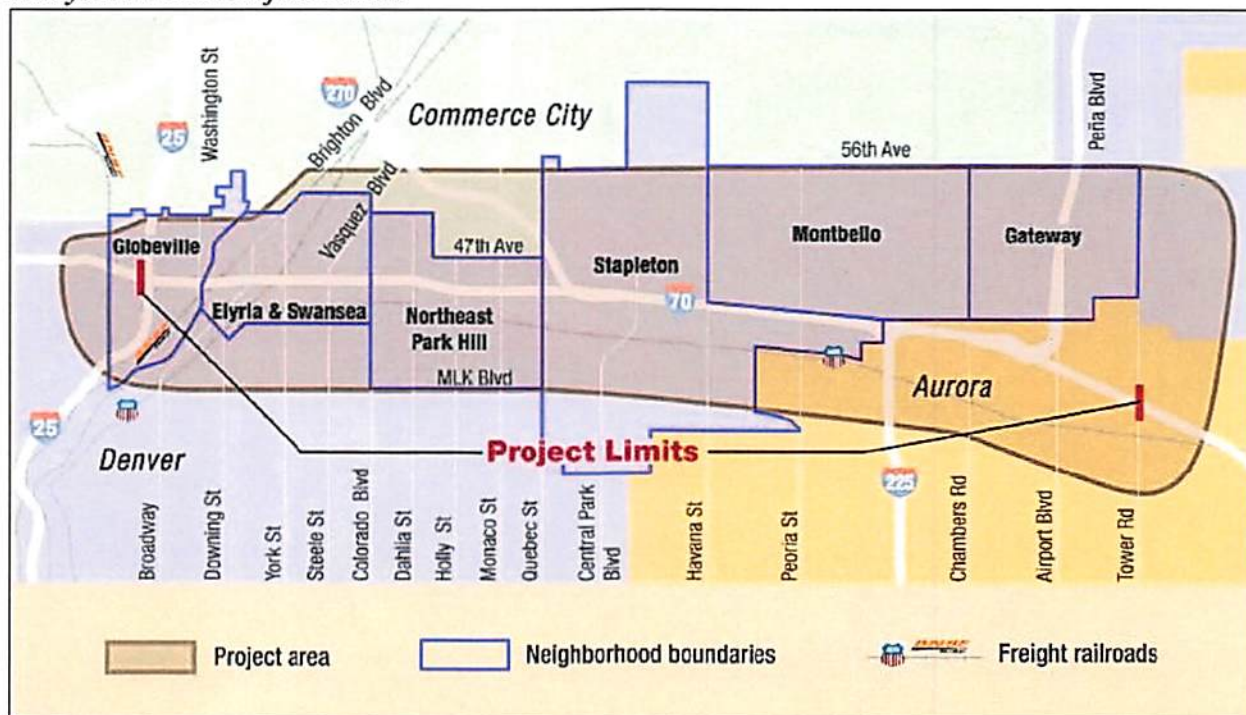
¹⁴ Declaration of Candi CdeBaca, May 15, 2016.

¹⁵ Our Story: True and lasting change happens when the power of the law is on your side, EarthJustice About Page, accessed 2/3/17, <http://earthjustice.org/about>.

¹⁶ The I-70 East Project was renamed "Central 70" in the draft CDOT 2017-2020 Statewide Transportation Improvement Program Plan. This LOF will refer to the Project as "I-70 East" to be congruous with the Project environmental and other development documents for clarity.

¹⁷ I-70 East Final Environmental Impact Statement and Section 4(f) Evaluation, ES-3, Colorado Department of Transportation, January 2016, http://www.i-70east.com/FinalEIS/I-70EastEIS_FEIS-Volume1.pdf.

Figure 3
Study Area and Project Limits



Respondent assembled the Preferred Alternative Collaborative Team (PACT), a group representing federal, state and local governments, as well as representatives from community groups and neighborhood associations. While agreeing that the I-70 alignment should remain unaltered, Respondent and PACT members failed to reach a consensus for a preferred alternative.¹⁸ Reexamining previously eliminated options, Respondent developed a new alternative with corresponding analysis, which it published in a Supplemental DEIS in 2014. After additional public involvement, Respondent published the Final Environmental Impact Statement (FEIS) in January 2016, identifying a “no action” alternative, a managed lane alternative, a revised viaduct alternative and a modified partially covered lowered alternative. In addition, the FEIS addressed two other alternatives that followed alignments different from that of I-70, but concluded that neither addressed the purpose and need for the project.

As a Recipient of Federal financial assistance from the FHWA and FTA, Colorado must develop a STIP for selecting projects for all areas of the state. This STIP is a four-year, fiscally constrained, and prioritized set of transportation projects compiled from local and regional plans. Colorado selects STIP projects through an annual development process. In May 2016, the Respondent signed its latest STIP. Projects included in the STIP must be both fiscally

¹⁸ *Id.*

constrained and consistent with longer range planning documents, in this case the MPO's 25-year Regional Transportation Plan.

e. Project Purpose and Need

The Project need originated with the area's vision in long range transportation plans. In its 2035 Regional Transportation Plan,¹⁹ the MPO's first policy was ensuring that "existing and future transportation facilities are maintained and preserved," followed by increasing transit service and providing sustainable, safe, efficient roadway systems for cars, buses and trucks. The 2040 Plan²⁰ maintains these policies, listing the following strategies:

- Maintain and enhance a regional roadway system comprised of existing, expanded, or new freeways, major regional arterials and principal arterials that provide regional and statewide connectivity for the movement of people and goods;
- Expand the capacity of existing regional roadways in the most critically congested corridors and at key traffic bottlenecks, after considering demand management strategies and operational efficiencies;
- Implement multimodal facilities and system management improvements when constructing new or retrofitting existing major travel corridors;
- Support local streets and roadways that provide vehicular, local transit, bicycle, and pedestrian access to and from residential and non-residential areas throughout the region;
- Prioritize roadway capacity funds for projects that address gaps in the existing roadway system and eliminate bottlenecks consistent with findings of the congestion management planning process;
- Develop opportunities for implementing congestion pricing and other tolling techniques on existing freeways, and implement a tolling component (price-management) on new freeway lane-addition projects, where feasible, with all impacted communities included in the tolling decision and surplus revenue directed to multimodal investment or system preservation;
- Support legislation that would implement VMT-based fees, pay-as-you-drive insurance, and other pricing strategies that more directly and immediately reflect the cost of vehicle travel to the user.

The various environmental studies of I-70 East provide further detail and clarify the Project's purpose. Chapter 2 of the Final EIS describes a heavily congested roadway in deteriorating condition that nonetheless serves as a "key east-west transportation and freight corridor through

¹⁹ 2035 Metro Vision Regional Transportation Plan, Denver Regional Council of Governments (DRCOG), February 16, 2011, https://drcog.org/sites/drcog/files/resources/2035%20MVRTP-2010%20Update%20with%20App%202-9_0.pdf.

²⁰ 2040 Fiscally Constrained Regional Transportation Plan, DRCOG, February 18, 2015, <https://drcog.org/sites/drcog/files/resources/2040%20Fiscally%20Constrained%20Regional%20Transportation%20Plan.pdf>.

the American Midwest, Denver and Colorado's Rocky Mountains, and it is the primary access to [Denver International Airport]."²¹ Of the four project motivators including safety concerns, limited facility capacity, and increased travel demand, the Final EIS emphasized the current deficiency of the existing viaduct. Rehabilitation projects have improved the structural deficiency rating and extended the life of the viaduct, though Respondent estimates that nine structures along the corridor are beyond their anticipated lifespan and are either structurally deficient or functionally obsolete. The FEIS includes this photo²² from below the viaduct under 46th Avenue.



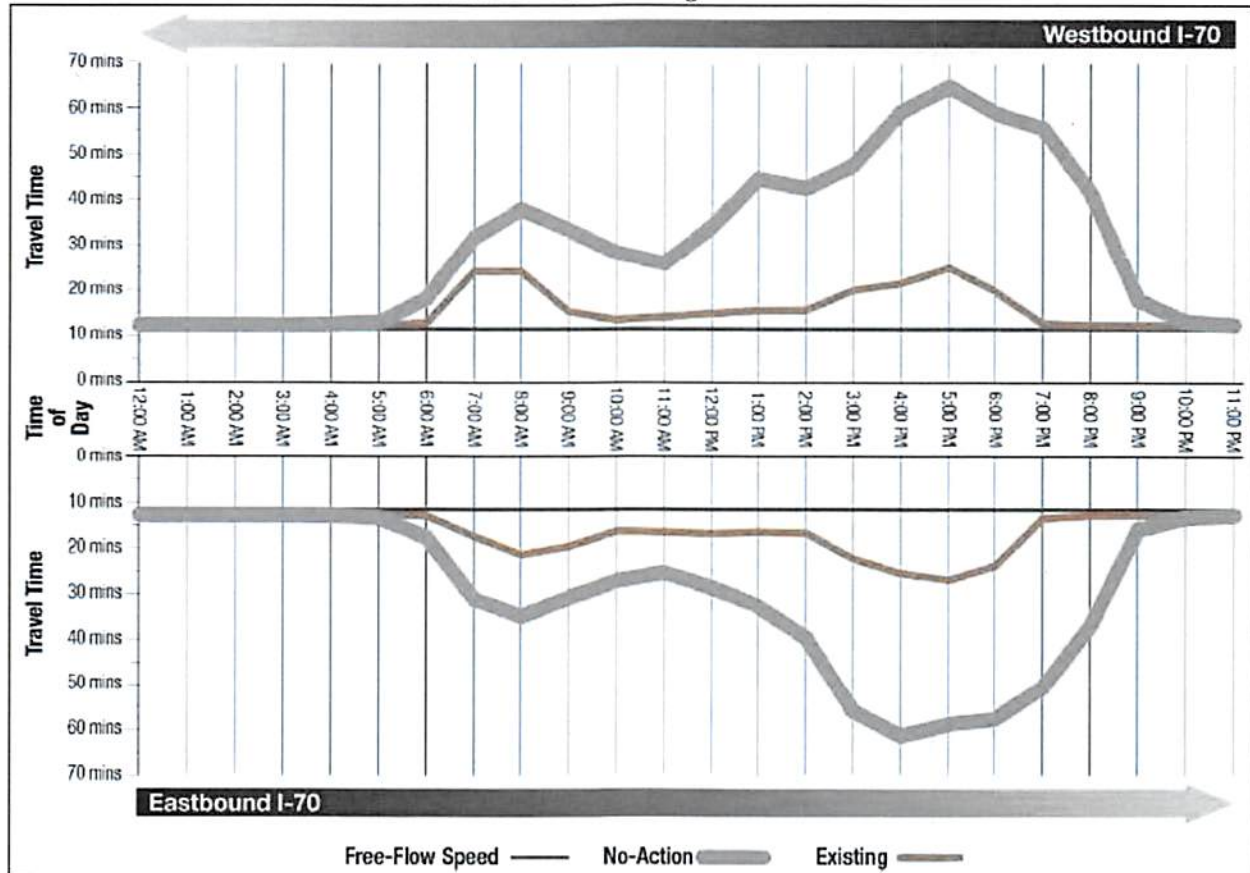
In addition, the FEIS demand models forecast a 42% increase in population growth and 58% increase in employment through 2035, with continued housing and industrial development in the corridor, along with airport expansion and growth of tourist destinations.²³ Respondent predicts that I-70 would not be able to satisfy the increase in travel demand, as it currently functions at or beyond design capacity. A depiction of the traffic demand model is shown in Figure 4.

²¹ I-70 East Final Environmental Impact Statement and Section 4(f) Evaluation, 2-2, Colorado Department of Transportation, January 2016, http://www.i-70east.com/FinalEIS/I-70EastEIS_FEIS-Volume1.pdf.

²² Undated photo, I-70 East Final Environmental Impact Statement and Section 4(f) Evaluation, ES-5, Colorado Department of Transportation, January 2016, http://www.i-70east.com/FinalEIS/I-70EastEIS_FEIS-Volume1.pdf.

²³ *Id.* at 2-7.

Figure 4
I-70 Travel Demand Model: “no action” vs. Existing



Finally, the FEIS cites crash statistics that are over twice as high within the project area as found on other sections of I-70, owing to inadequate acceleration/deceleration lane length; insufficient sight distance at ramps; lower than adequate ramp speeds; narrow shoulder widths; overly frequent interchange spacing prompting vehicle weaving; substandard drainage and other deficiencies.²⁴

f. Summary of Project Alternatives

In selecting the preferred Partial Cover Lowered Alternative, the Respondent eliminated alternatives that it believed failed to meet project purpose and need. The first, a “no action” alternative studied the use of the existing I-70 facility with only those improvements already planned or programmed. The No Action alternative was intended to serve as a baseline but

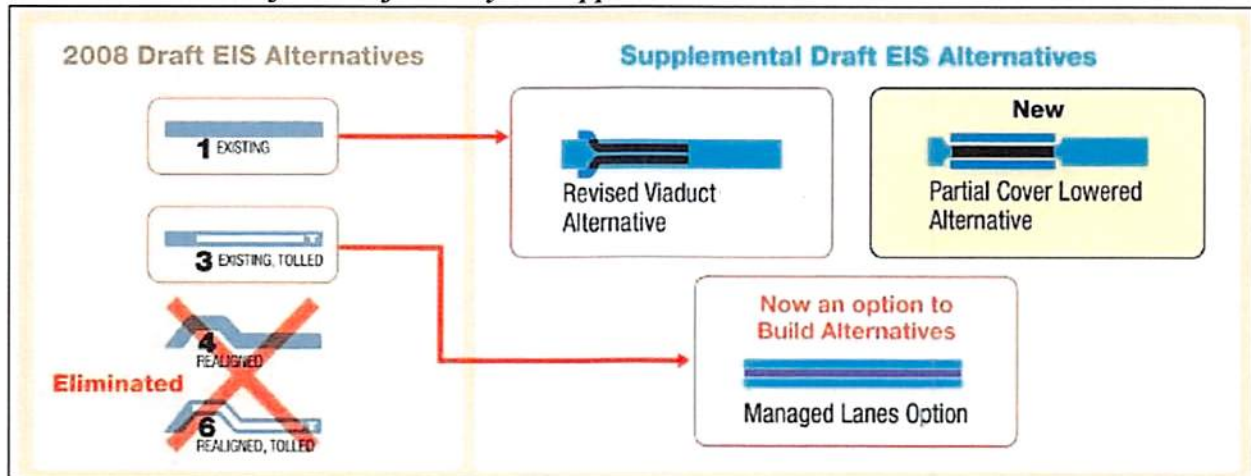
²⁴ I-70 East Final Environmental Impact Statement and Section 4(f) Evaluation, 2-10, Colorado Department of Transportation, January 2016, http://www.i-70east.com/FinalEIS/I-70EastEIS_FEIS-Volume1.pdf.

nonetheless included options for adding capacity either to the north or south of the existing corridor, either with tolled or managed lanes.

The second alternative that Respondent analyzed was a Revised Viaduct Alternative that would replace a section of the western existing facility with a new structure, adding one to two additional lanes through the eastern limit of the project, either through restriping or capacity improvements. As with the No Action Alternative, the Revised Viaduct included two expansion options, either to the north or south of the existing roadway with additional lanes. In addition, Respondent considered the revised viaduct for both a general lanes option and a managed lanes option. The Revised Viaduct Alternative would require a footprint of 197 feet, approximately twice the width of the existing facility.

Figure 5 depicts the early elimination of the realignment alternatives in the Draft EIS to those considered in the Supplemental EIS.

Figure 5
Alternatives carried forward for study in Supplemental EIS



The Partial Cover Lowered Alternative was advanced as the preferred alternative. This alternative removes the existing I-70 viaduct between Brighton Boulevard and Colorado Boulevard, lowering the highway below grade in this area. It adds additional lane(s) in each direction from Brighton Boulevard to Tower Road. It also adds capacity from I-25 to Brighton Boulevard by restriping. This alternative includes a cover over the highway in the vicinity of Clayton Street and Columbine Street that is approximately, but not more than, 1,000 feet in length. As part of this alternative, 46th Avenue would be located on both the north and south sides of the highway. 46th Avenue would then be a two-way street between Josephine Street and Milwaukee Street on both sides of the highway and one way in the other locations. This alternative eliminates the portion of 46th Avenue north of I-70 between Columbine Street and Clayton Street to allow for a connection between the Swansea Elementary School and the highway cover. The preferred alternative would maintain access to and from I-70 at the Steele Street/Vasquez Boulevard interchange is maintained. A more detailed map of this alternative, along with a visualization of the cover can be found in the Appendix to this LOF. See Figure 6 for a depiction of the preferred alternative.

Figure 6
Overview of Partial Cover Lowered Alternative (Preferred)



In addition to these alternatives, in the Final EIS the Respondent reexamined other alternatives that were not pursued after the Draft EIS in 2008. One proposal, a I-270/I-76 Reroute Alternative, which was preferred by the Complainant, proposed removing the Brighton Blvd. to Colorado Blvd. viaduct and realigning I-70 around Denver using the existing I-270 and I-76 corridors (Reroute), as shown in Figure 7. The new 46th Avenue/48th Avenue would be converted to either a 4- or 6-lane arterial.

Figure 7
Map of I-270/I-75 Complainant Reroute Alternative



Despite its earlier assessment that the alternative did not meet the purpose and need of the project, Respondent reconsidered the Reroute based upon public and stakeholder input and rejected it because:

- It would increase use by highway users of 46th Avenue (which currently runs parallel beneath the I-70 viaduct) rather than the mainline highway, introducing higher volumes of traffic along with safety, accessibility and mobility issues in surrounding neighborhoods.
- The resulting widening of 46th Avenue even to six lanes would not alleviate projected traffic projections for 2035, considering the increased use of freight vehicles traveling to and from industry along I-70.
- It increased out of direction travel, particularly burdensome to the 35% of westbound traffic exiting onto south I-25.
- It lacked multiple east-west travel choices for emergency providers.
- The cost of 12 miles of major highway construction and reconstruction along the corridors was more than twice the that of other alternatives
- It lacked stakeholder support due to impacts to existing and planned areas of economic growth.

For example, the Respondent conducted a travel analysis using the Denver Regional Council of Governments (DRCOG) 2035 Regional Travel Demand Model, which simulated the reroute. From the study:²⁵

[T]he analysis shows that the traffic on the arterials west of I-25 is reduced with the I-270/I-76 reroute; however, this reduction results in major traffic increase in the arterials east of I-25. The local street networks east of I-25 do not have the capacity to hold the forecasted traffic volumes; therefore, the increase in the local street traffic will result in safety issues and major delays.

The expected changes to traffic are shown in Figure 8.

²⁵ Alternative Analysis Technical Report Addendum - I-70 East Final Environmental Impact Statement, p. 4, January, 2016, http://www.i-70east.com/FinalEIS/chapters/I-70EastFEIS_Vol2AttC_Alternative-Analysis.pdf.

Change in 2035 Daily Traffic

Reduction

- More than 50%
- 25% to 50%
- 10% to 25%
- 5% to 10%

Increase

- 5% to 10%
- 10% to 25%
- 25% to 50%
- More than 50%
- N/A

The average daily traffic for both Reroute scenarios (4-lane and 6-lane 46th/48th Avenue), ranges from 30,000 to 60,000 (as 4-lane) and from 40,000 to 75,000 vehicles a day (as 6-lane) in 2035, resulting in congested conditions. The 6-lane scenario processes higher volumes in comparison to the 4-lane scenario resulting in a reduction in the amount of additional traffic on other arterials in the traffic impact analysis area. The traffic volumes on 46th/48th Avenue in the re-route analysis are typically 4-6 times higher than the traffic volumes in the Partial Covered Lowered Alternative and 10 to 15 times higher than on the levels on 46th Avenue in 2012.

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In addition, the Respondent notes that I-70 and I-270 serve as reliever routes when one highway or the other becomes congested or closed due to accidents. With the reroute, the redundancy of the highway network, which is important for emergency response in the area, is limited. If I-70 was rerouted to combine with I-270, there would be no alternate highway connecting the Denver neighborhoods to the rest of the region.

The Respondent finally states that, in addition to the safety and congestion concerns, keeping the current alignment was supported by the community:²⁷

The Preferred Alternative Collaborative Team (PACT), consisting of community, business, and stakeholder agency representatives, was initiated after the publication of the Draft EIS in 2008 to identify the preferred alternative for the project. Based on additional analysis and community input, the group reached a consensus to keep I-70 at its current location. The PACT determined that keeping I-70 at its current location rather than rerouting or realigning it is the most beneficial to the surrounding communities, businesses, and the transportation system, because of the amount of traffic that would be on 46th Avenue if the highway was moved.

The Respondent rejected a previously studied Realignment Alternative because it did not meet the purpose and need of the project. In fact, there were several realignments considered, shown in Figure 6, one using the current alignment of existing rail facilities, and two that proposed realigning either I-70 westbound to the north of the existing I-70 alignment, or I-70 eastbound to the south following the alignment of Smith Road.

Most of the Realignment Alternatives failed to pass first level screening due to unacceptable community impacts or requiring improvements to facilities that did not meet purpose and need. Similarly, other Realignment Alternatives were eliminated during comparative screening. The northern and southern realignments along existing city streets were also eliminated because both would require major highway construction through a high number of existing residential properties. Figure 9 depicts one of the realignment alternatives considered.

²⁷ Alternative Analysis Technical Report Addendum - I-70 East Final Environmental Impact Statement, p. 6, January, 2016.

Figure 9
Map of Realignment Alternatives



Only the alternatives adjacent to the existing railway corridor were advanced among the Corridor Alternatives – one realigned using general purpose lanes and one realigned with tolled express lanes. Both were eliminated from further consideration based on lack of PACT and public support.

In the 2016 Final EIS, Respondent concluded that the Partial Cover Lowered Alternative with managed lanes was preferred because it met project purpose and need, addressed concerns of the public and stakeholders, and had more community and local public agency support than any of the other alternatives. Respondent further proposed the cover design to protect and expand the Swansea Elementary School's current location and meet drainage requirements, and because it was considered more visually and aesthetically appealing.

III. Issues Raised by Complainants

The Complainant alleges that the Respondent's selection of the preferred project alternative, the Partial Cover Lowered Alternative, violates Title VI due to adverse and disparate impacts that are predominantly borne by the Hispanic populations in the Project area. Specifically, Complainants allege:

1. Respondent's approval of the STIP, which allowed the Project to move forward, led to disparate, adverse impacts on the predominantly Hispanic residents of

Globeville and Elyria-Swansea, established minority neighborhoods divided by the construction of I-70 beginning in 1953.

2. Respondent's proposed mitigation strategies for the preferred alternative are insufficient to offset the disparate, adverse impacts to the Hispanic communities.
3. Respondent's process for selecting the preferred alternative lacked adequate consultation with Hispanic communities in the Project area.
4. Even if Respondent can offer a substantial, legitimate justification for its selection of the preferred alternative, Respondent failed to adequately analyze a proposal to reroute I-70, which is a less discriminatory alternative that meets the Respondent's legitimate needs, but that will do so without the same level of disparate effect on a class protected by Title VI.

IV. Legal Background

a. Title VI

Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance. Specifically, Title VI provides that:

[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.²⁸

The Civil Rights Restoration Act of 1987 clarified Title VI congressional intent, ensuring that when an entity receives Federal financial assistance, all of that recipient's programs and activities fall under the jurisdiction of Title VI. This includes even those programs and activities that do not directly receive Federal financial assistance.²⁹

The U.S. Department of Justice (DOJ), as the Federal government's coordinating agency for Title VI, implemented its Title VI program in 28 C.F.R. Part 42, which provides that the responsibility for enforcing Title VI rests with the federal agencies which extend financial assistance, such as the FHWA. The USDOT issued common Title VI regulations for all USDOT modes at 49 C.F.R. Part 21. When individuals file discrimination complaints under Title VI with regards to highways, the HCR will process the complaints. If HCR accepts the complaint, it will investigate and issue a LOF with potential findings and recommendations. Specific provisions regarding the investigation of Title VI complaints are found at 49 C.F.R. § 21.11. FHWA requires State Departments of Transportation (State DOTs) to take specific steps in compliance with Title VI. These are enumerated at 23 C.F.R. § 200.9, and include submitting nondiscrimination assurances, developing policies and procedures, resolving identified areas of noncompliance and collecting demographic data on those impacted by its decision-making.³⁰ The

²⁸ 42 U.S.C. § 2000d.

²⁹ [Civil Rights Restoration Act of 1987](#), P.L. 100-259 [S.557].

³⁰ See [28 C.F.R. Part 42](#); [49 C.F.R. Part 21](#); [23 C.F.R. Part 200](#).

FHWA's complaint investigation procedures are contained in its [Procedures Manual for Processing External Complaints of Discrimination](#).³¹

b. Discrimination Prohibited

Discrimination under Title VI can be analyzed under two types of legal analysis: (1) disparate treatment and (2) disparate impact. Regarding disparate impact, the U.S. Supreme Court has held that agencies may create regulations to prohibit practices having a disparate impact on protected groups, even if the actions or practices are not intentionally discriminatory.³² The USDOT's Title VI implementing regulations state that a recipient "may not utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin," 49 C.F.R. § 21.5(b)(2). FHWA's Title VI regulations similarly require Title VI compliance by recipients receiving Federal financial assistance from FHWA. 23 C.F.R. Part 200.

The first step in analyzing any disparate impact case is determining whether the recipient's criteria or method of administering its programs or activities *adversely* and *disparately* affect members of a protected class. In some cases federal agencies proceed directly to preliminary findings after this step. The elements of a Title VI disparate impact claim derive from the analysis of cases decided under Title VII disparate impact law.³³ To establish a *prima facie* case³⁴ of discrimination, the investigating agency must ascertain whether the recipient utilized:

1. A specific, facially neutral policy or practice;
2. That had a disproportionate impact on a protected group; and
3. Whether the policy or practice likely caused the disproportionate impact.

In a Title VI disparate impact analysis, a causal connection must be shown between the facially neutral policy or practice and the disproportionate and adverse impact on the protected group.³⁵ To demonstrate causation, evidence that "adequately captures" the impact of the project on similarly situated members of protected and non-protected groups must be shown, using an "appropriate measure."³⁶

After a *prima facie* showing is made, the burden shifts to the respondent to demonstrate the existence of a "substantial legitimate justification" for the allegedly discriminatory practice. To prove a "substantial legitimate justification," the recipient must be able to show that the challenged policy was "necessary to meeting a goal that was legitimate, important, and integral

³¹ Procedures Manual For Processing External Complaints of Discrimination, Federal Highway Administration, <http://www.fhwa.dot.gov/civilrights/programs/finalcomplaintmanual110410.cfm>

³² *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582, 582; *Alexander v. Choate*, 469 U.S. at 292-94; see *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1406 (11th Cir.), reh'g denied, 7 F.3d 242 (11th Cir. 1993).

³³ *New York Urban League v. New York*, 71 F.3d 1031, 1036 (2d Cir. 1995).

³⁴ *Larry P. v. Riles*, 793 F.2d 969, 982 (9th Cir. 1984); *Elston*, 997 F.2d 1394, 1407.

³⁵ *New York City Envtl. Justice Alliance v. Giuliani*, 214 F.3d 65, 69 (2d Cir. 2000).

³⁶ *New York Urban League v. New York*, 71 F.3d 1031, 1037-38 (2d Cir. 1995).

to the [recipient's] institutional mission."³⁷ The justification must bear a "manifest demonstrable relationship" to the challenged policy.³⁸

If the recipient can make a showing of "substantial legitimate justification," the investigating agency must then focus on whether the complainant has identified "less discriminatory alternatives" that meet the recipient's legitimate needs, but that will do so without the same level of disparate effect on a class protected by Title VI.³⁹ In a transportation context, courts have analyzed site selection alternatives, particularly where the recipient had already considered and rejected them, establishing a record.⁴⁰ In cases involving site selection, courts have considered not only whether the construction was necessary to begin with, but also whether the recipient can justify selection of the particular site over alternatives.⁴¹

c. Prior Discrimination and Site Selection

First, the USDOT Title VI regulations provide that, where prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination in applicable programs and activities, recipients must take actions to remove or overcome the effects of the prior discriminatory practice or usage.⁴² Even in the absence of prior discriminatory practice or usage, recipients are expected to ensure no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin.⁴³

The regulations further provide that recipients may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of Title VI.⁴⁴

d. Jurisdiction

A recipient may mean any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency,

³⁷ *Sandoval v. Hagan*, 7 F.Supp. 2d 1234, 1278 (M.D. Ala. 1998), aff'd, 197 F.3d 484 (11th Cir. 1999), rev'd on other grounds, *Alexander v. Sandoval*, 532 U.S. 275 (2001) (quoting *Elston*, 997 F.2d at 1413).

³⁸ *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d. 1403, 1418 (11th Cir. 1985); *See, e.g., Elston*, 997 F. 2d at 1413 (In an education context, the practice must be demonstrably necessary to meeting an important educational goal, i.e. there must be an "educational necessity" for the practice).

³⁹ *Elston v. Talladega County Bd. of Educ.*, 997 F.2d at 1407.

⁴⁰ *See, e.g., Coalition of Concerned Citizens Against I-670 v. Damian*, 608 F. Supp. 110, 119-20 (S.D. Ohio 1984), (conducting a thorough review of alternatives sites for highway or other methods, such as light rail or public transportation).

⁴¹ *See, e.g., Damian*, 608 F. Supp. at 127; *see also Bryan, Jr., et al., v. Edward I. Koch et al., and District Council 37, American Federation of State, County and Municipal Employees Union, AFL-CIO, et al.*, 627 F.2d 612 (1985), at 617-18.

⁴² 49 C.F.R. § 21.5(b)(7) (1970).

⁴³ *Id.*

⁴⁴ 49 C.F.R. § 21.5(d) (1970).

institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient.⁴⁵

Respondent is the recipient of Federal financial assistance through FHWA, as it receives an annual apportionment of funding under the prevailing highway act. For example in 2016, Respondent was apportioned \$542,412,699⁴⁶ pursuant to the Fixing America's Surface Transportation Act (FAST Act), Public Law (Pub. L.) 114-94. According to the Final EIS, Respondent has programmed \$50 million of FHWA funding for Phase 1 of the I-70 East project. Further, it has expended \$12,504,737 of advance construction funds during the environmental analysis phase of the project under the National Environmental Policy Act (NEPA) alone.⁴⁷ However, even in the absence of Federal monies on this project, Respondent would still be subject to Title VI.⁴⁸

Any person who believes they, or any specific class of persons, have been subjected to discrimination prohibited by Title VI may by themselves or by a representative file a written complaint with the FHWA.⁴⁹ A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by a competent authority.⁵⁰ Once a complaint is accepted, FHWA will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with Title VI. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with Title VI.⁵¹

The Complainant is of Hispanic or Latino national origin, whose residence is in the Project area and alleges the Project will disproportionately adversely impact her and other Hispanic members of her community on the basis of national origin. As noted previously, the Complainant filed the Title VI complaint on November 15, 2016, 176 days after the date of the Respondent's action to approve the STIP.

V. Analysis

This section summarizes information related to potential adverse disparate impacts stemming from selection of the preferred alternative for the I-70 East project, including community demographics, adverse impacts, and mitigation measures.

⁴⁵ 49 C.F.R. § 21.23(f).

⁴⁶ See [Notice of Apportionment](#), N 4510.802, January 8, 2016.

⁴⁷ Respondent project funding summary shows a total of \$37,500,000 in advance construction of which \$12,504,737 are Federal.

⁴⁸ See Section IV and footnote 2.

⁴⁹ 49 C.F.R. § 21.11(b).

⁵⁰ *Id.*

⁵¹ 49 C.F.R. § 21.11(c).

a. Disparate Impacts Based on Race, Color, or National Origin

The Complainant asserts the preferred alternative will have a disproportionate and adverse impact on the predominantly Hispanic persons in Elyria-Swansea. Specifically, the Complainant expresses concerns that the project:

- Increases air pollution and resulting/associated health issues;
- Destroys homes, businesses and an elementary school playground;
- Widens the existing divide within the impacted communities;
- Disturbs ground contaminants that exacerbate air quality along the project corridor;
- Increases noise levels, particularly in Globeville, Elyria and Swansea;
- Decreases property values, particularly in Elyria-Swansea based on their project proximity.

FHWA examined the evidence for each listed concern in an effort to assess Complainant's and Respondent's expectations of adverse impacts.

1. Air Quality and Health Impacts

The Complainant alleges that adding lanes to I-70 will increase air pollution and therefore cause a disparate impact. Specifically, Complainant alleges that expanding I-70 will increase traffic driving on the highway, and will, thus, increase fine particulate matter ("PM2.5") emissions that cause "asthma, heart attacks, and premature death." Complainant also alleges that the Respondent failed to conduct a health impact assessment of the Project. In support of its allegations, the Complainant offered documents regarding the harmful effects of highway traffic on air quality. Some of the Complainant's evidence speaks to general concerns about potential negative health impacts of the Project. During interviews with FHWA, residents anecdotally referred to their health problems, such as asthma and cancer. Interviewees stated that I-70 was the cause for these health problems.

Other Complainant documents allege the Respondent failed to comply with legal requirements for air quality and related health impacts, but the weight of evidence does not support these allegations. The Complainant cited public comments for the Project made by the Sierra Club, Colorado Latino Forum, and North Denver Community Organizations regarding the Colorado 2017-2020 STIP (Sierra Club).⁵² To begin, the Sierra Club alleges "[v]iolations of Federal Requirements Governing the Metropolitan Planning Process for the Development and Adoption of Regional Transportation Plans and Transportation Improvement Programs."⁵³ The Sierra Club

⁵² Comments of Sierra Club, Colorado Latino Forum, and North Denver Community Organizations Objecting to Approval of Proposed 2017-2020 Colorado State Transportation Improvement Program, <http://www.sierraclub.org/sites/www.sierraclub.org/files/sce-authors/u557/STIPcommentsSierraClub,CLF,CGD,etc20160429.pdf>.

⁵³ *Id.* at 1.

alleges the Respondent failed to comply with the legal requirements of Title VI and Environmental Justice. For example, the Sierra Club stated:⁵⁴

Evidence documented by Denver [Department of] Environmental Health (DEH) showing disparate health outcomes for residents in the Globeville/Elyria/Swansea neighborhoods and the city council districts where I-70 is located compared to other council districts in Denver, including a 50% higher incidence of mortality related to cardiovascular disease, 50,000 more years of life lost annually, and 40% greater rate of hospitalization of children for asthma, demonstrate that these residents are disproportionately affected by the diseases of air pollution. The contribution that emissions from current vehicle travel on heavily trafficked highways such as I-70 make to these adverse community health outcomes must be evaluated, disclosed to decisionmakers and the public, and considered in the evaluation of alternatives to determine the extent to which community health can be enhanced by reducing, not increasing, exposure to traffic pollution in these neighborhoods.

The investigation determined that the Respondent did evaluate health impacts, for Globeville/Elyria/Swansea, while also considering the DEH study referenced by the Sierra Club.⁵⁵ The Respondent performed environmental studies of the Project, in coordination with the Colorado Department of Public Health and Environment, the federal Environmental Protection Agency (EPA) and the FHWA. No studies during this investigation were found to demonstrate a causal link between adverse health impacts and the preferred alternative for the I-70 project. In fact, the preferred alternative is projected to reduce Elyria-Swansea residents' exposure to emissions and air toxics by alleviating congestion in the community when compared to other alternatives for the project, including the "no action" alternative. As discussed before, traffic modeling conducted for the project demonstrated that rerouting I-70 around the community would result in heavy traffic along 46th Avenue, exposing residents to increased emissions. Therefore, it is expected that the preferred alternative will benefit Elyria-Swansea with regards to air quality, by replacing an aging and congested system.

The Clean Air Act, Section 176(c), requires that federally supported highway and transit projects are consistent with state air quality goals found in the State Implementation Plan (SIP). The process to ensure this consistency is called Transportation Conformity. A transportation project is said to conform to the provisions and purposes of the SIP if the project, both alone and in combination with other planned projects, does not:⁵⁶

- Cause or contribute to new air quality violations of the NAAQS;
- Worsen existing violations of the NAAQS; or
- Delay timely attainment of the NAAQS or required interim milestones

⁵⁴ Supplemental Draft EIS Comments and Responses, S-105, January 2016, http://www.i-70east.com/FinalEIS/chapters/I-70EastFEIS_Vol3AttQ-Part1_Agency-Biz-Special-Int.pdf.

⁵⁵ I-70 East Final Environmental Impact Statement and Section 4(f) Evaluation, Volume 2, Attachment J, Section 5.2, Colorado Department of Transportation, January 2016, http://www.i-70east.com/FinalEIS/chapters/I-70EastFEIS_Vol2AttJ_Air-Quality.pdf.

⁵⁶ 40 C.F.R. §93.116(a).

Transportation conformity is required for federally supported transportation projects in areas that have been designated by the U.S. Environmental Protection Agency (EPA) as not meeting one or more of the transportation-related NAAQS.

The Project is in a nonattainment area for ozone, and an attainment/maintenance area for PM10 and carbon monoxide; therefore, it must comply with transportation conformity requirements for these NAAQS.⁵⁷ FHWA concurred that the project would meet the transportation conformity requirements because the Central 70 Project does not contribute to any new local violations, increase the frequency or severity of any existing violation, or delay timely attainment of the NAAQS or any required interim emission reductions or other milestones.⁵⁸

Some public commenters asked why the respondent did not examine some additional transportation related pollutants. The Respondent did not model PM2.5 and nitrogen dioxide for roadside concentrations in the Final EIS because they are not pollutants of concern in the Denver area or the project area at the present time or into the foreseeable future. PM2.5 and nitrogen dioxide were examined through emissions inventories. The Denver area has never violated the NAAQS for PM2.5. Since Denver is an attainment area for PM2.5, no hot spot modeling for PM2.5 is required. With regard to nitrogen dioxide, the EPA conformity regulations do not require hot spot modeling for nitrogen dioxide. 40 CFR §93.116 clearly states that it only applies to non-attainment or maintenance areas, thereby exempting the Denver metro area from performing hot spot analyses for nitrogen dioxide. The project used the best science and data available to make its determinations about NAAQS violations. The approved methods to determine air quality impacts, developed in consultation with EPA and CDPHE-APCD, show the project will not cause exceedances of the NAAQS.

Since the Complainant filed her complaint, the Respondent posted and distributed an Air Quality Update to its *Draft Air Quality Conformity Determination and NEPA Comparative Analysis* in response to comments received on the FEIS.⁵⁹ The comment period extended from December 16, 2015 through January 14, 2017 and offered another opportunity for the Complainant and affiliated community members to provide input. The report included the results of analysis of the preferred alternative as well as a comparison between alternatives. Of note, in regard to the Project's air quality impacts, the analysis in the report shows that the I-70 East project meets the requirements of the Clean Air Act and, "will not cause violations of air quality standards in the Denver Region when the project is completed and being used by the traveling public." Final conformity is documented in Section 6.1 of the FHWA Record of Decision, which was issued in January, 2017.

⁵⁷ I-70 East Record of Decision: Phase 1 (Central 70 Project), Federal Highway Administration, p. 67, January, 2017.

⁵⁸ *Id.* at 68.

⁵⁹ Air Quality Update Draft Air Quality Conformity Determination and National Environmental Policy Act (NEPA) Comparative Analysis, December 2016, http://www.i-70east.com/AirQuality/I-70EastEIS_DraftAirQuality.pdf.

The investigation also determined that the Respondent was responsive to air quality concerns and recommendations raised by EPA and comments received by the public, including the Sierra Club.⁶⁰

When looking at the complete record, the air quality studies demonstrate that the preferred alternative would not adversely impact the regional or project-level air quality.⁶¹ The Respondent also demonstrated it was responsive to the concerns and suggestions EPA raised regarding air quality issues. Based on the evidence discussed in this section, FHWA finds there is insufficient evidence of adverse harm on the basis of air quality.

2. Right of Way Acquisition

The Complainant alleges the preferred alternative disproportionately impacts Hispanics in Elyria-Swansea due to the number of relocations/displacements necessary. The FEIS shows the preferred alternative would require relocations of 56 residential properties as well as 35 tenants as shown in Figure 10, while the resulting relocations for all alternatives would take place in the Elyria-Swansea neighborhoods.⁶²

Figure 10
Summary of Residential Relocations/Displacements for Project Alternatives

Alternative/Option	Residential Relocations		
	Total Residential	Owner-Occupied ¹	Tenant-Occupied
No-Action Alternative, North Option	15	7	8
No-Action Alternative, South Option	13	3	10
Revised Viaduct Alternative, North Option	38	16	22
Revised Viaduct Alternative, South Option	44	11	33
Partial Cover Lowered Alternative	56	21	35

The preferred alternative would require 17 total business relocations and one non-profit, as shown in Figure 11. Note that the Swansea Elementary School changes are not considered a relocation—the original facilities will be expanded on and not moved.

⁶⁰ Letter from Monica Morales (Acting Director, Air Program, EPA) to Chris Horn (Senior Area Engineer, FHWA CO Division) and Vanessa Henderson (I-70 East Environmental Manager, CDOT), January 18, 2017.

⁶¹ I-70 East Record of Decision: Phase 1 (Central 70 Project), Federal Highway Administration, p. 68, January, 2017.

⁶² I-70 East Final Environmental Impact Statement and Section 4(f) Evaluation, Volume 1, Section 5.5, Colorado Department of Transportation, January 2016, http://www.i-70east.com/FinalEIS/I-70EastEIS_FEIS-Volume1.pdf.

Figure 11***Summary of Business Relocations/Displacements for Project Alternatives***

Alternative/ Option	Neighborhood	Business Relocations	Non-Profit Relocations
No-Action Alternative, North Option	Elyria and Swansea	5	1
	Total	5	1
No-Action Alternative, South Option	Elyria and Swansea	15	—
	Total	15	—
Revised Viaduct Alternative, North Option	Elyria and Swansea	10	1
	Northeast Park Hill	3	—
	Stapleton	1	—
	Total	14	1
Revised Viaduct Alternative, South Option	Elyria and Swansea	22	1
	Northeast Park Hill	3	—
	Stapleton	1	—
	Total	26	1
Partial Cover Lowered Alternative	Elyria and Swansea	13	1
	Northeast Park Hill	3	—
	Stapleton	1	—
	Total	17	1

The preferred alternative would require more residential relocations compared to the other alternatives at 56, and would require more business relocations than all but the South Revised Viaduct Alternative, with 17 impacted business properties and one impacted not-for-profit property. All of the residential relocations are in the Elyria-Swansea neighborhood, as are all but four of the impacted businesses.

The Complainant also alleges the lower property values in Elyria-Swansea, coupled with rising residential, rental and commercial property values city-wide, may make it difficult for relocatees

to find suitable replacement properties within the neighborhood or even in the City or County. FHWA finds insufficient evidence to indicate that relocatees will have difficulty finding suitable replacement properties. Furthermore, the Respondent has committed to using the Uniform Relocation Act's "housing of last resort" option for residents affected by the relocation, making it possible for relocatees to be offered equitable housing options that may be more costly than their current homes.⁶³

The Respondent attempted to collect demographic data for the proposed relocatees, per 23 C.F.R. §200.9(b)(4), but the state personnel stated they were unable to collect sufficient data due to the collection form being voluntary. FHWA could infer that, since all residential locations are within the majority Hispanic Elyria-Swansea neighborhood, a majority of relocatees are therefore Hispanic. As demonstrated in Figure 1, Elyria-Swansea residents are 82.89% Hispanic or Latino, while the rest of the neighborhoods in the study area range from 11.91% Hispanic or Latino (Stapleton) to 61.33% Hispanic or Latino (Globeville).

Nevertheless, the Respondent states that it has and will continue to follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). FHWA's Uniform Act regulations at 49 C.F.R. Part 24 provide that owners of real property, and other displaced persons, to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs. The Respondent states that:⁶⁴

Residents will not be required to move unless at least one comparable DSS replacement unit is available. Decent, safe, and sanitary standards are established by federal regulations and conform to applicable local housing and occupancy codes. CDOT will provide comparable replacement housing that is DSS and within the resident's financial means, before any residents will be required to move. If such comparable replacement housing is not available, the regulations allow the agency to provide a replacement housing payment in excess of the statutory maximum as part of the Last Resort Housing process.

In addition, the Respondent has committed in its FEIS to providing \$2 million in funding to develop affordable housing units in the Elyria and Swansea Neighborhood through available programs.⁶⁵ This commitment, which will become legally binding when FHWA issued its Record of Decision on January 19, 2017, may help those residents who need additional housing assistance beyond what the Uniform Act provides.

⁶³ FHWA conducted interviews with individuals regarding the Right of Way Acquisition, but that matter is discussed in greater detail under the Public Involvement section

⁶⁴ I-70 East Final Environmental Impact Statement and Section 4(f) Evaluation, Volume 1, Section 5.5-19, Colorado Department of Transportation, January 2016, http://www.i-70east.com/FinalEIS/I-70EastEIS_FEIS-Volume1.pdf.

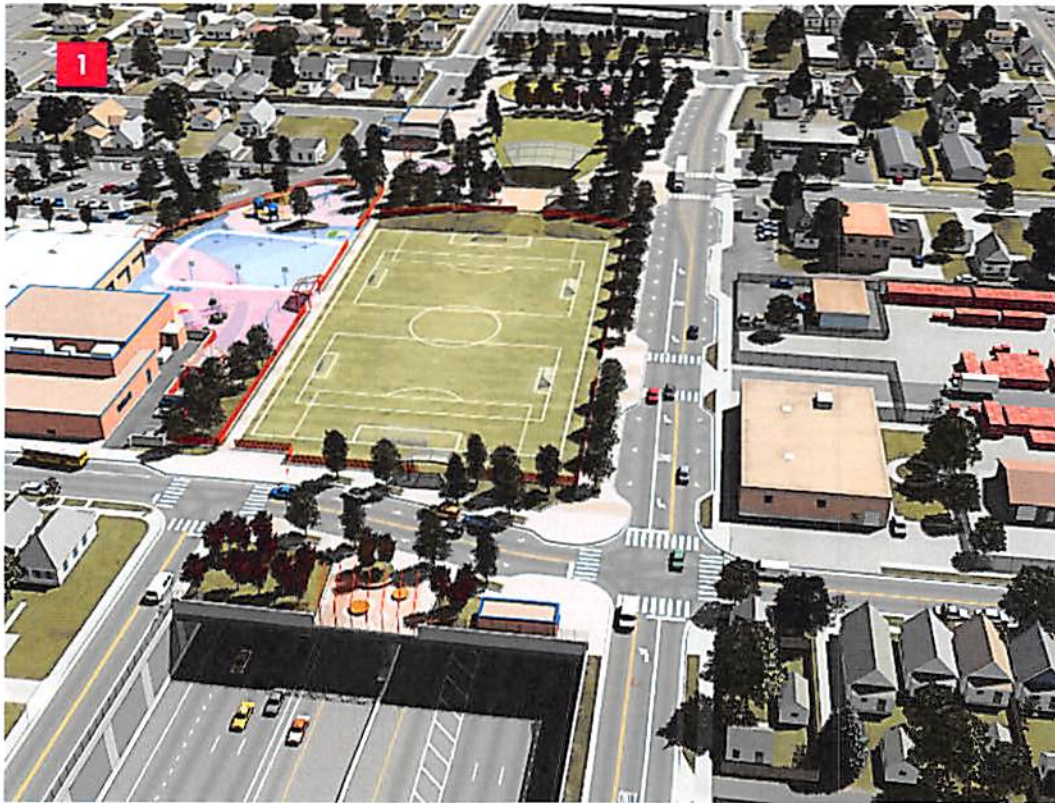
⁶⁵ *Id.* Volume 9, p. 9-7. http://www.i-70east.com/FinalEIS/chapters/I-70EastFEIS_Vol1Ch9_Prefered-Alt-Mitigation-Commit.pdf.

Due to the relatively large amount of residential relocations, and the likelihood that these relocations will disproportionately affect Hispanic residents, the preferred alternative could have a disparate and adverse impact on Elyria-Swansea.

3. Community Cohesion

The Complainant alleges adverse impacts to community cohesion with the preferred alternative, alleging that the highway will be wider, and some north-south access points and on-ramps will be eliminated. Respondent states that any detrimental effects to community cohesion are mitigated by the preferred alternative, in particular through the cover portion of the Project, which is illustrated in Figure 12.

Figure 12
Preferred Alternative Cover Illustration



The Respondent intends for the cover to serve as an active community space for the surrounding residents and local neighborhoods, as well as provide required mitigation for Swansea Elementary School. The Respondent consulted with the City of Denver and Denver Public Schools to arrive at this connectivity solution, including the boundaries of the school playground (school use only areas) and the potential use of the shared space (shared school and community use) on the highway cover. Further, the Respondent believes the integrated design of the highway cover will have a direct impact on the perception of safety and will influence an individual's willingness to use the space. Designing for safety includes meeting the needs of its users; providing diverse and interesting features, and will reconnect the surrounding areas and provide easy and safe connections between these communities for all users, especially

pedestrians and bicyclists. The inclusion of the highway cover helps achieve some broader community goals of livability, quality schools, and safe streets along with supporting the existing communities along the corridor. In addition, the highway cover reduces noise impacts in adjacent areas. The cover also will directly contribute to improved air quality, resulting in PM10 concentrations that are lower at Swansea Elementary School than future conditions without the cover (No-Action Alternative), and indirectly by encouraging more walking and bicycling for short trips to local destinations.⁶⁶

In contrast, the existing facilities do not offer many of the pedestrian and livability features that the cover will provide, as shown in Figure 13.

Figure 13

Photo of Clayton Street and 46th Street; East End of Proposed Cover



The evidence demonstrates that the Project is likely to improve community cohesion in the Elyria-Swansea neighborhoods, with few temporary impacts during construction and overall positive cumulative impacts. While the preferred alternative eliminates one interchange at York Street, it also provides an interchange a half mile west and another 0.5 miles east. Moreover, interchange reconstruction provides longer ramp lanes, reduces weaving and appears an overall safer option. Similarly, the preferred alternative does eliminate one north-south access point at Garfield Street, but it maintains and improves crossings at York Street, Josephine Street, Columbine Street, Clayton Street, Fillmore Street and Steele Street. It further provides an additional crossing over the lowered I-70 at Cook and Monroe Streets. With improvement and/or addition of pedestrian facilities, Elyria-Swansea will enjoy the best connectivity since the construction of the viaduct.

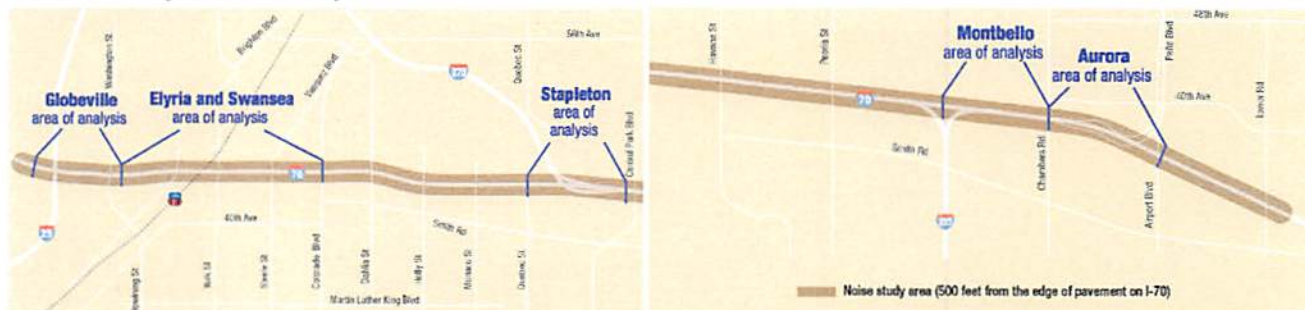
⁶⁶ I-70 East Final Environmental Impact Statement and Section 4(f) Evaluation, Volume 1, Section 5.3-34, Colorado Department of Transportation, January 2016, http://www.i-70east.com/FinalEIS/I-70EastEIS_FEIS-Volume1.pdf.

Finally, other than Swansea Elementary School (which under the preferred alternative realizes improvements for both students and the surrounding community) and the Denver Rescue Mission there are no other public services identified that are adversely affected. Therefore, the preferred alternative is unlikely to cause adverse impacts to the affected community.

4. Noise

The Complainant alleges the preferred alternative will result in higher than permissible noise levels along the I-70 corridor, primarily impacting the Hispanic neighborhoods of Globeville and Elyria-Swansea. Respondent argues that noise mitigation is in compliance with 23 C.F.R. §772 and that it will install a sound wall in the area where noise receptors indicate the need for abatement, as shown in Figure 14.

Figure 14
Locations of Noise Analysis



For all federal aid projects, recipients must compare projected noise levels to the minimum standards provided by the FHWA and provide mitigation.⁶⁷ These minimums are referred to as Noise Abatement Criteria (NAC) standards. A “traffic noise impact” occurs when design year build condition noise levels approach or exceed the NAC standards for future conditions or over existing noise levels.⁶⁸ Noise can be defined as unwanted or undesired sound, and can affect peoples’ daily activities, especially those that occur outdoors. Noise from traffic on roadways can be disruptive at high noise levels if it is not mitigated. Noise typically affects humans in three different ways: intensity, frequency, and variation with time. Noise intensity, or loudness, is determined by how sound pressure fluctuates. Since the range of sound pressure ratios vary greatly over many orders of magnitude, a base-10 logarithmic scale is used to express sound levels in dimensionless units of decibels (dB). The range of noise normally encountered can be expressed by values between 0 (threshold of hearing) dB and 120 dB. A 3-dB change in sound level generally represents a barely noticeable change in noise level, whereas a 10-dB change is typically perceived as a doubling of loudness. Because sensitivity to sound varies from person to person, the A-weighted system—expressed as dBA—is used to provide a value that represents human response. Leq(h) is the hourly equivalent noise level; the equivalent steady-state sound level that contains the same amount of acoustic energy as the time-varying sound level over a one-hour period.

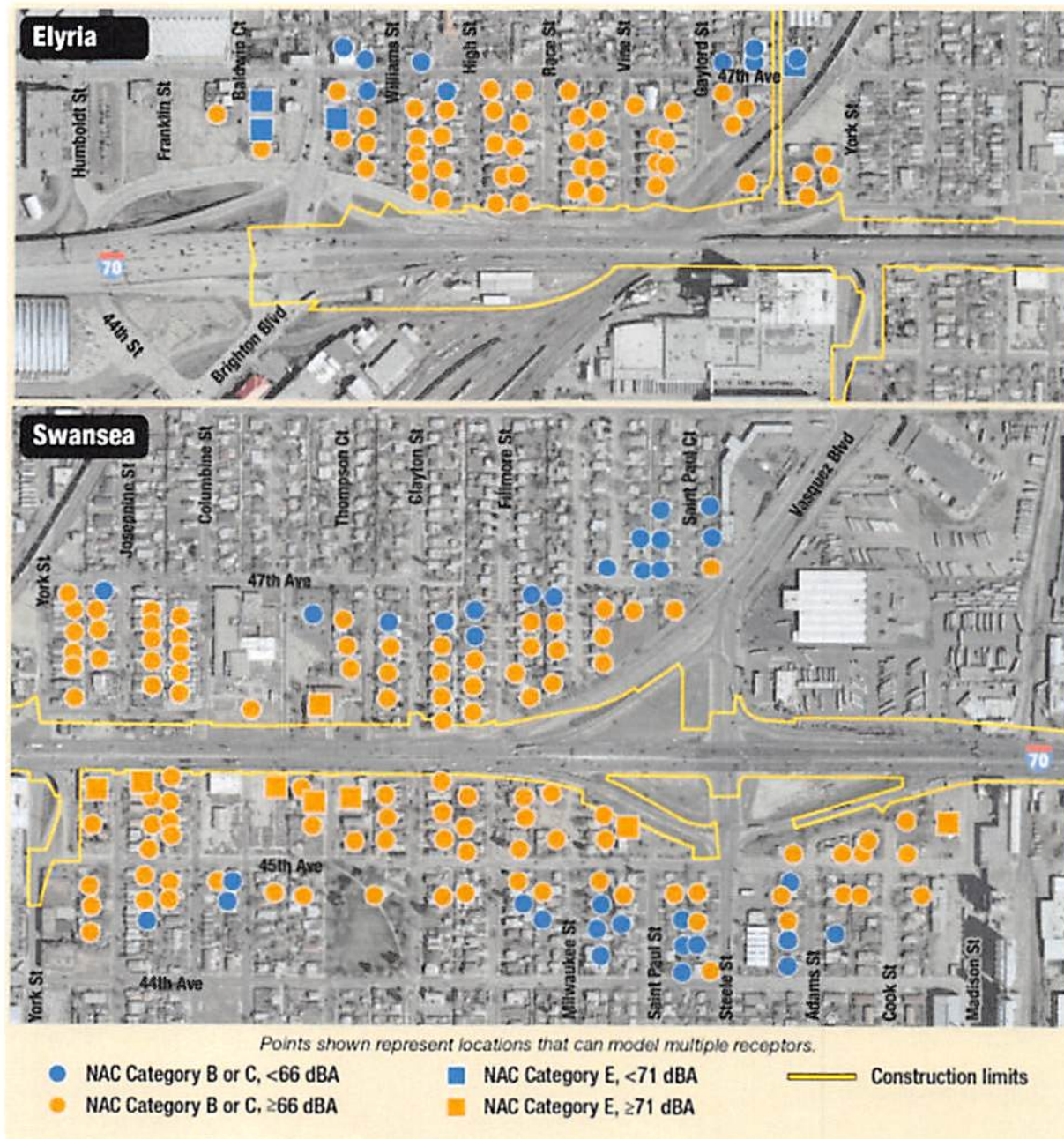
⁶⁷ 23 C.F.R. §772.3.

⁶⁸ *Id.* §772.5.

Due to the expected increase in traffic volumes along the I-70 East corridor by 2035, and the changes proposed by the design alternatives, the Respondent expects that traffic noise will increase over time for all alternatives. However, the evidence shows that compared to the “no action” alternatives, the preferred alternative will ultimately result in fewer impacts. By 2035, the preferred alternative is projected to have fewer noise impacts compared to the “no action” alternatives, therefore rendering the construction of the preferred alternative a future benefit to the community with regards to noise impacts. Both “no action” alternatives result in impacts to numerous noise receptors primarily because of the higher future (2035) traffic volumes coupled with the highway alignment moving closer to many of the noise receptors.⁶⁹ For the “no action” North option, for example, the noise levels in Elyria will range from 64 dBA to 75 dBA, which is 3 dBA to 13 dBA greater than the existing noise range. Of the 136 noise receptors modeled for this option, 116 are anticipated to exceed their respective NAC thresholds. Of the 116 impacted noise receptors, 20 will experience a substantial noise increase. In Swansea, the noise levels range from 61 dBA to 76 dBA, which is 2 dBA lower to 11 dBA greater than the existing noise levels. Of the 297 noise receptors modeled for this option, 233 are anticipated to exceed their respective NAC thresholds. Of the 233 impacted noise receptors, 20 will experience a substantial noise increase. As an example, the impacts for the No Action North alternative are depicted in Figure 14.

⁶⁹ I-70 East Final Environmental Impact Statement and Section 4(f) Evaluation, Volume 1, Section 5.12-14, Colorado Department of Transportation, January 2016 http://www.i-70east.com/FinalEIS/chapters/I-70EastFEIS_Vol1Ch5-12_Noise.pdf

Figure 14
Noise Impacts in Elyria and Swansea for No-Action Alternative, North Option

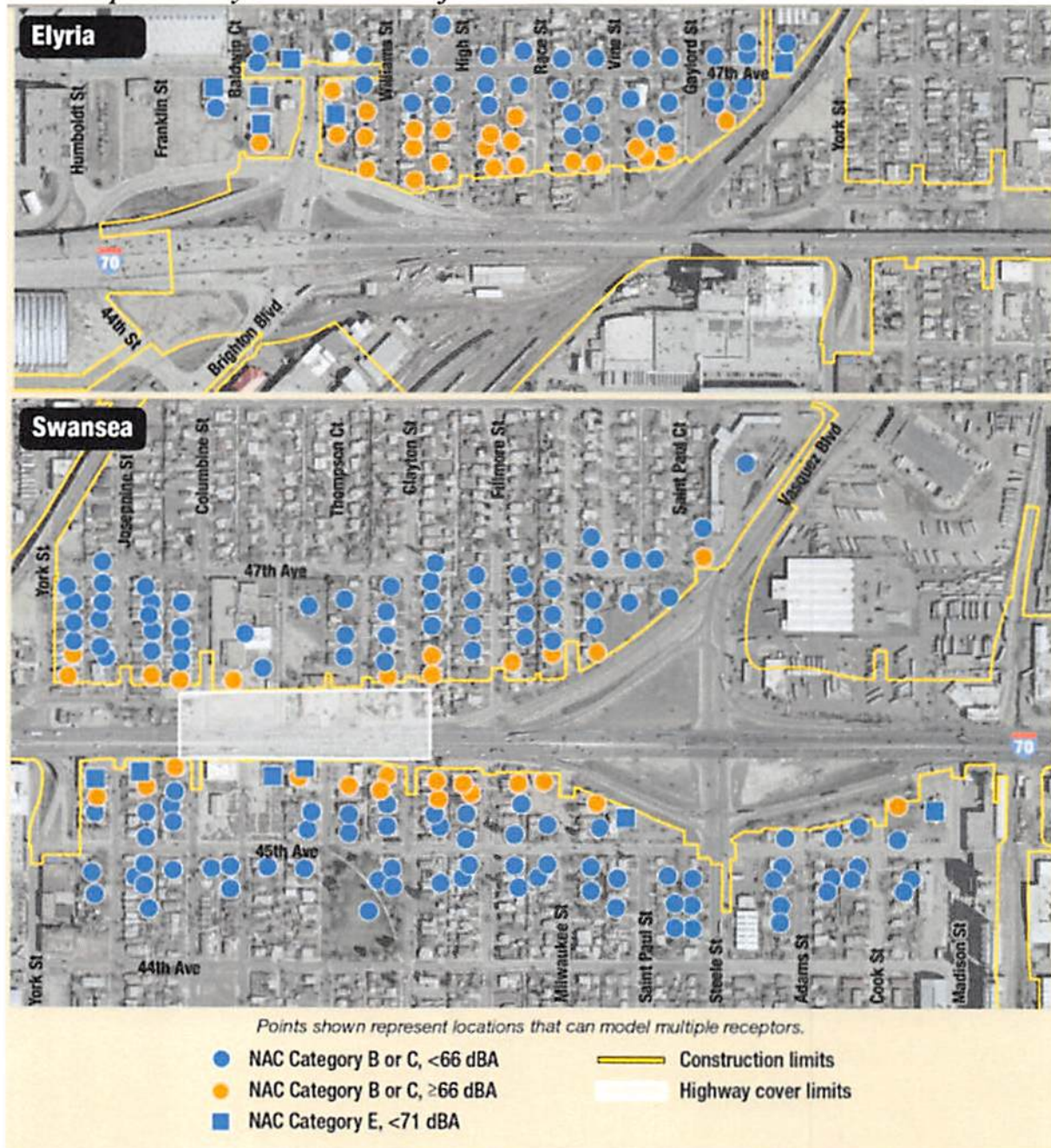


In comparison, of the 129 noise receptors in Elyria, 55 noise receptors (23 modeled locations) are anticipated to exceed their respective Noise Abatement Criteria (NAC) thresholds with the Partial Cover Lowered Alternative. Of these 55 impacted receptors, 11 also would experience a substantial increase in noise. The noise levels in Elyria would range from 60 dBA to 75 dBA, which is 3 dBA lower to 16 dBA greater than the existing noise levels. In Swansea, of the 287 receptors, 50 receptors (21 north of I-70 and 29 south of I-70, 27 modeled locations) would exceed their respective NAC thresholds with the Partial Cover Lowered Alternative. None of the

50 impacted receptors would experience a substantial noise increase. The noise levels for the Partial Cover Lowered Alternative range from 52 dBA to 74 dBA, which is 6 dBA lower to 8 dBA greater than existing noise levels. This is shown in Figure 15.

Figure 15

Noise Impacts in Elyria and Swansea for Partial Cover Lowered Alternative



Regarding mitigation, when recipients identify traffic noise impacts, noise abatement shall be considered and evaluated for feasibility and reasonableness.⁷⁰ Recipients must determine and

⁷⁰ 23 C.F.R. § 772.13(a).

analyze alternative noise abatement measures to abate identified impacts by giving weight to the benefits and costs of abatement and the overall social, economic, and environmental effects by using feasible and reasonable noise abatement measures for decision-making.

Regarding feasibility, recipients must define, and receive FHWA approval for, the number of receptors that must achieve at least a 5 dB(A) reduction for the noise abatement measure to be acoustically feasible and explain the basis for this determination.⁷¹ In addition, recipients must determine it is possible to design and construct the noise abatement measure. Factors to consider are safety, barrier height, topography, drainage, utilities, and maintenance of the abatement measure, maintenance access to adjacent properties, and access to adjacent properties.

Recipients must also consider the reasonableness of noise abatement measures, which involves two factors: (1) the viewpoints of the affected community and (2) cost effectiveness.⁷² Recipients shall solicit the viewpoints of all of the benefited receptors and obtain enough responses to document a decision on either desiring or not desiring the noise abatement measure. Regarding cost effectiveness, recipients shall determine, and receive FHWA approval for, the allowable cost of abatement by determining a baseline cost reasonableness value. This determination may include the actual construction cost of noise abatement, cost per square foot of abatement, the maximum square footage of abatement/benefited receptor and either the cost/benefited receptor or cost/benefited receptor/dB(A) reduction. The highway agency must re-analyze the allowable cost for abatement on a regular interval, not to exceed 5 years.

The Respondent's noise analysis was performed as outlined in its CDOT Noise Analysis and Abatement Guidelines (January 2015).⁷³ Project noise impacts were analyzed for land uses such as homes, parks, schools, and churches that were located within 500 feet of the edge of the pavement of I-70. Typically, noise mitigation is not considered for any industrial or commercial properties unless they have a noise-sensitive function, such as a recording studio or a hotel. Noise impacts were predicted using Traffic Noise Model version 2.5 (TNM), which is supported by the FHWA.⁷⁴ To be considered feasible, the Recipient's guidelines state that a noise wall must:⁷⁵

1. Cause at least a 5-dBA reduction for at least one impacted receptor;
2. Not reduce safety, such as reducing sight distance;
3. Be possible to construct with reliable and common engineering practices; and
5. Be no more than 20 feet in height.

Walls along 46th Avenue were placed on the side of the street adjacent to the I-70 mainline. The walls were assumed to be located at the edge of pavement of the proposed roadway. Based on the mitigation analysis performed, the total length of the noise wall complex is proposed to be approximately 2,380 feet in Elyria, 1,370 feet along the north side of I-70 in Swansea, and

⁷¹ 23 C.F.R. § 772.13(d)(1) et seq.

⁷² *Id.* § 772.13(d)(2) et seq.

⁷³ <https://www.codot.gov/programs/environmental/noise>.

⁷⁴ http://www.fhwa.dot.gov/environment/noise/traffic_noise_model/.

⁷⁵ Noise Technical Report, I-70 East Final Environmental Impact Statement, p. 19, Colorado Department of Transportation, January 2016, http://www.i-70east.com/FinalEIS/chapters/I-70EastFEIS_Vol2AttK_Noise.pdf.

approximately 3,650 feet along the south side of I-70 in Swansea.

TNM analyzed wall heights of eight feet to 20 feet. In Elyria, 12-foot to 20-foot walls were found to be both feasible and reasonable. Walls analyzed from 12-foot to 20-foot were found to be feasible in Swansea north of I-70 and achieve the 7-dBA design reduction goal, but fail to meet reasonability criteria because of the high cost-benefit index. In Swansea south of I-70, 8-foot to 20-foot walls met feasibility requirements, but failed to meet reasonability requirements because an 8-foot wall did not benefit any receptors by 7-dBA and 10-foot to 20-foot wall heights and did not result in an acceptable cost-benefit index value.

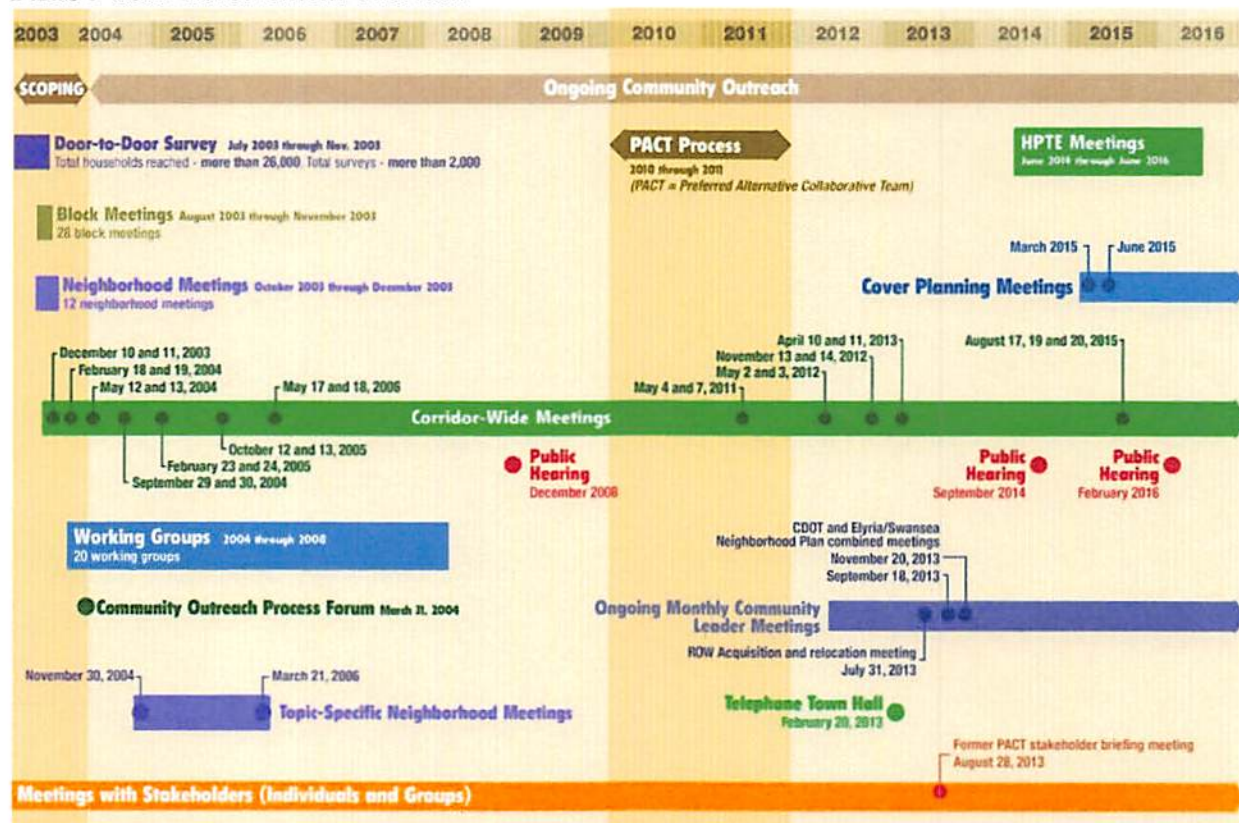
In Swansea, Respondent found noise abatement unreasonable because they failed to lower the noise by required decibels. Elyria will receive 2,380 feet of noise walls, as receptors indicated 12 to 20 foot walls to be both feasible and reasonable.

Because the preferred alternative will have a lesser adverse impact compared to the “no action” alternative, FHWA finds there is insufficient evidence that the preferred alternative would adversely impact Elyria-Swansea on the basis of noise. Were the project not to be constructed at all, Elyria-Swansea would face higher noise levels in the future than if the preferred alternative were built.

5. Public Involvement

One of the prevailing principles of transportation planning and project development is need for early, continuous and extensive public involvement, including both access to information and solicitation of public input. The Complainant alleges that Respondent failed to provide adequate consultation with the minority communities in the selection of the preferred alternative. Respondent argues that public involvement was and continues to be an integral part of the project study, particularly with regard to the Globeville and Elyria-Swansea communities and those who are Limited English Proficient (LEP). The Respondent’s overall public involvement process for the Project is found in Figure 16.

Figure 16
FEIS Public Involvement overview



In Chapter 10 of the Final EIS, Respondent provides a detailed summary of project outreach, beginning as early as 2003 and including both agency coordination and community outreach.⁷⁶ The Respondent produced flyers, print media, newsletters, and email/phone blasts. For example, agency coordination for the 2008 Draft EIS included both an Environmental Justice Compliance Committee and Air Quality Compliance Committee to ensure specific concerns were addressed and the results in compliance with federal laws and related authorities. Community outreach included a number of FHWA-identified strong practices, including hiring community residents to share project information; using faith-based organizations to distribute project information; providing food and child care at project events to promote attendance; taking project information into the impacted neighborhoods and collecting survey responses; holding block meetings to build rapport with communities and better understand needs and values of specific parts of a neighborhood; and tiered meetings to collect information from entire neighborhoods as well as the perspectives of the overall corridor. The community outreach included members of the Elyria-Swansea neighborhoods, and the Respondent held neighborhood-specific meetings for Elyria-Swansea.

⁷⁶ I-70 East Final Environmental Impact Statement and Section 4(f) Evaluation, Volume 1, Section 10, Colorado Department of Transportation, January 2016, http://www.i-70east.com/FinalEIS/I-70EastEIS_FEIS-Volume1.pdf.

To ensure continued involvement, Respondent formed project working groups focused on particular areas of concern, as well as meetings specific to each neighborhood, including Elyria-Swansea.⁷⁷ The groups consisted of interested members of the communities who then worked with transportation and project specialists to help evaluate the project alternatives and impacts. When this and other methods failed to identify a preferred alternative after the 2008 Draft EIS, Respondent formed the Preferred Alternative Collaborative Team (PACT), consisting of government agencies at all levels as well as representatives from community residents, businesses and interest groups. In 2011, this effort too failed to reach consensus on a project alternative beyond general agreement that the project alignment should remain in the current I-70 footprint.

With the assistance of the City of Denver, Respondent participated in a series of working group sessions, prompting re-examination of the previously eliminated alternatives and the eventual development of a hybrid alternative that both met project needs and addressed the documented concerns of the public and stakeholders, the preferred Partial Cover Lowered Alternative. Since then, involvement has continued with targeted meetings, notably with Elyria-Swansea stakeholders, to discuss impacts to Swansea Elementary School and other local issues. Respondent conducted telephone town hall meetings in English and Spanish, at least one of which addressed project alternatives/impacts and resulted in 2600 participants. Finally, Respondent provided an information kiosk near the Swansea Elementary School to advise the community of project contacts, announcements and opportunities for involvement. It also opened project offices within the project corridor to provide information and undertake specific outreach tasks, such as addressing right of way issues. Respondent committed to maintaining an office during construction to ensure fast and efficient public communication.

Respondent's project website, available in both English and Spanish,⁷⁸ provides details on past public engagement and solicits input from the public. The site's visualization techniques include maps, schedules, project documents, high definition "fly over" videos and updated technical studies and summaries, among others. The Respondent displays photos to display its public involvement with headings such as "Walk-ins Welcome" and "Your Opinion is Important." The Respondent also created a 29-minute video that provides a history of Globeville and Elyria-Swansea, including its use for heavy industry and disenfranchisement during construction of the interstate system. The video features audio clips from residents and stakeholders expressing their love of and concern for the community, and not all of whom were or are project supporters.

Even with an extensive record of public involvement activities, FHWA did discover during its investigation that there was potential for improvement. For example, FHWA interviewed a number of witnesses who expressed confusion about the right of way process and whether it would impact their residence. One witness shared that information on right of way relocation was not distributed to her landlord, the property owner. Another said she was unaware of any right of way specific meetings in either Spanish or in English. Witnesses generally agreed that the impacted residents were concerned about two things: 1) Respondent did not provide

⁷⁷ E.g. CDOT and City and County of Denver I-70 East Elyria and Swansea Joint Public Meeting Summary, http://www.i-70east.com/meetingminutes/ElyriaSwansea/ESNPMeeting_11-20-13_MeetingSummary.pdf.

⁷⁸ See <http://www.i-70east.com/index-es.html>.

sufficient updates or new information on right of way; and 2) affected persons would not have enough time to find affordable housing and move.


Though overall not constituting an adverse impact, FHWA will make recommendations to the Respondent to ensure that public involvement is meaningfully engaging the public through all aspects and phases of a project.

6. Summary of Benefits and Mitigation of Impacts

The Complainant suggests that, as a small minority community bisected by I-70, the Elyria-Swansea neighborhoods will realize fewer project benefits compared to other affected populations in the Project area, as well as the City of Denver. When determining the level of adverse impact, the countervailing benefits accruing to impacted communities from a proposed project or policy are to be weighed against the harms.⁷⁹ When recipients take actions to mitigate impacts, they must be balanced against the adverse impacts to determine if the project as a whole is adverse.

The weight of the evidence shows that many of the project benefits, which include the Project cover features, appear directly targeted toward Elyria-Swansea. Furthermore, as previously stated in this LOF, the preferred alternative will result in less adverse impacts to noise and reduced exposure to air pollution when compared to all alternatives, particularly the “no action” alternative. While it is possible the Project may have an adverse and disparate impact on the neighborhood due to the number of residential relocations in Elyria-Swansea, the Respondent has made commitments to mitigate that impact to the extent possible. The Respondent has committed to an extensive list of mitigation features targeted toward the natural and human environments. A summary of the mitigation is found in Figure 17.

Figure 17
Summary of Benefits; Impacts and Mitigation

Benefits all users	Benefits to all affected neighborhoods	Impacts	Mitigation
Less congestion on free lanes by addition of managed lanes	Enhanced, improved north/south connectivity	Relocation of residences and businesses.	<div>  </div> Provide \$2 million in funding to develop affordable housing units in the Elyria and Swansea Neighborhood through available programs Piloting hiring preference programs for work on the project Helping essential businesses remain in the same

⁷⁹ See, e.g., *NAACP v. Wilmington Med. Ctr.*, 657 F.2d at 1340 (3d Cir. 1980); see also *United States v. Bexas County*, 484 F. Supp. 855, 859 (W.D. Tex. 1980).

			community
Improving safety due to fewer interchanges, longer ramps and less traffic weaving			Participate in and fund city and related programs to facilitate access to fresh food; affordable housing
		Impacts to 105 noise receptors and air quality issues, particularly during construction	Provide residents near highway from Brighton to Colorado Blvd (Elyria-Swansea, primarily) with A/C and storm windows
Faster east-west access, particularly for emergency vehicles	Removal of truck stop and resulting source of pollution	Visual obstruction by safety barriers, isolating community views	Remove the viaduct, lower the highway, and cover portions of the highway to include space for community and neighborhood activities
			Enlist community to develop project aesthetics and design guidelines
Maintaining a freight corridor within the existing interstate footprint	Preserving large area employer Preserving location of Elementary School	Moving Highway closer to school	Redesign and reconstruct the school playground; this will include the adjacent parcels as part of the elementary school site and will eliminate Elizabeth Street between 46th Avenue and 47th Avenue and 46th Avenue between Clayton Street and Columbine Street will be removed to allow for a connection between Swansea Elementary School and the landscape on the highway cover
	Improving safety due to lighting and improved pedestrian facilities		Provide new HVAC, doors, windows for Swansea

			Elementary School to reduce noise and dust during construction
		Financial burden to minority community that may not be able to afford to use managed lanes	Research methods for providing access assistance for those in low income areas
			Conduct or facilitate job fairs and ready-to-work training programs

7. Conclusion Regarding Adverse, Disparate Impacts

After examining the likely impacts of the selection of the preferred alternative, taking into consideration project benefits and mitigation, FHWA finds that there is insufficient evidence that the Project will create adverse, disparate impacts.

b. Substantial Legitimate Justification

FHWA's determination that there is insufficient evidence of disparate impacts ends the Title VI analysis of this matter. FHWA finds, however, that even if the selection of the preferred alternative resulted in adverse, disparate impacts, the Respondent has provided a substantial legitimate justification for its actions and shown that a less discriminatory alternative has not been identified. After a *prima facie* showing of disparate impact, the investigating agency must determine whether a "substantial legitimate justification" exists for the allegedly discriminatory practice. The investigating agency must determine whether the challenged policy is "necessary to meeting a goal that was legitimate, important, and integral to the [recipient's] institutional mission."⁸⁰ The justification must bear a "manifest demonstrable relationship" to the challenged policy.⁸¹ This analysis is similar to the "business necessity" part of the Title VII disparate impact analysis.

As stated in more detail in Section II of this document, the overall purposes and needs for the Project stem from infrastructure deficiencies, limited capacity, safety concerns, and community support. Beyond the aforementioned structural deficiencies for the viaduct, the Respondent's travel model shows that I-70 between I-25 and Tower Road is one of the most heavily traveled and congested highway corridors in the region and state. The largest factor contributing to the increase in traffic on I-70 for the Build Alternatives is the increase of capacity which results in a decrease in drivers that would use local streets to complete trips. Maximizing the capacity of I-70 will result in lower volumes on the local streets, including 46th Avenue, as drivers will choose to use the freeway for a faster trip. Conversely, not improving I-70 capacity increases the traffic on local streets like 46th Avenue and may result in an increase in crashes and safety issues along

⁸⁰ *Sandoval*, 7 F.Supp. 2d 1234, 1278 (M.D. Ala. 1998), *aff'd*, 197 F.3d 484 (11th Cir. 1999), *rev'd* on other grounds, *Alexander*, 532 U.S. 275 (2001) (quoting *Elston*, 997 F.2d at 1413).

⁸¹ *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1418 (11th Cir. 1985); See, e.g., *Elston*, 997 F. 2d at 1413 (In an education context, the practice must be demonstrably necessary to meeting an important educational goal, i.e. there must be an "educational necessity" for the practice).

with reducing the overall quality of life for the neighborhood residents.⁸² Increasing capacity is necessary because existing traffic models predict that overall demand for I-70 will increase in the future, without the improved capacity more traffic will be diverted onto the local street network. However, with capacity improvements, even in the form of managed lanes, traffic that already wants to use I-70 will now have the ability to use the facility and not divert to the local streets.⁸³

FHWA finds the FEIS data support that the Respondent has established purposes and needs that are legitimate, important, and integral to the [recipient's] institutional mission and that the preferred alternative bears a manifest demonstrable relationship to those needs.

c. Less Discriminatory Alternatives

FHWA does not find evidence that a less discriminatory alternative exists in this case. If a substantial legitimate justification for the recipient's discriminatory policy or practice is identified, the investigating agency must also determine whether there are alternative practices that may be comparably effective with less disparate impact. Title VI requires recipients to implement a "less discriminatory alternative" if it is feasible and meets their legitimate objectives.⁸⁴ If a substantial legitimate justification for the recipient's discriminatory policy or practice is identified, the investigating agency must also determine whether there are alternative practices that may be comparably effective with less disparate impact. Title VI requires recipients to implement a "less discriminatory alternative" if it is feasible and meets their legitimate objectives.⁸⁵ The Complainant alleges Respondent failed to adequately study project alternatives that would either completely remove and relocate the I-70 corridor, or would otherwise realign it to follow an existing rail corridor—and that these alternatives would have had a lesser adverse impact on the Elyria-Swansea neighborhoods. Specifically, the Complainant believes Respondent must include the Reroute (removing the Brighton Blvd. to Colorado Blvd. viaduct and realigning I-70 around Denver using the existing I-270 and I-76 corridors) in the FEIS alternatives evaluation.

However, the Respondent did acknowledge the public comments regarding the Reroute in the STIP development, and the Respondent did offer a written response in that regard. Later, the Respondent provided a study of the alternatives, including the Reroute, which is available on the Project website and was published in 2012 and updated in 2015.⁸⁶ There, the Respondent showed evidence that the Reroute would result in major traffic increases and shift more traffic onto local streets. Taken as a whole, the Reroute was eliminated because it did not meet the purpose and need of the Project, which is why it was not considered as an alternative in the FEIS. Moreover, while the PACT was unable to select a suitable alternative in the wake of the 2008 Draft EIS, it did conclude that the existing alignment should be retained as it most closely matched project objectives.

⁸² I-70 East Final Environmental Impact Statement and Section 4(f) Evaluation, Volume 1, Section 4-33, Colorado Department of Transportation, January 2016, http://www.i-70east.com/FinalEIS/I-70EastEIS_FEIS-Volume1.pdf.

⁸³ *Id.* at 4-33.

⁸⁴ *Elston*, 997 F.2d at 1407, 1413; *Georgia State Conf.*, 775 F.2d at 1417.

⁸⁵ *Elston*, 997 F.2d at 1407, 1413; *Georgia State Conf.*, 775 F.2d at 1417.

⁸⁶ Alternative Analysis Technical Report Addendum, I-70 East Final Environmental Impact Statement, Appendix A to Attachment C, http://www.i-70east.com/FinalEIS/chapters/I-70EastFEIS_Vol2AttC_Alternative-Analysis.pdf.

FHWA finds the available evidence supports the Respondent's justifications for eliminating these alternatives from consideration.

V. Conclusion

Based on the available data and information, FHWA finds that there is insufficient evidence that the Project, itself—and the Respondent's advancement of the Project when it approved the 2017-2020 STIP—will create adverse, disparate impacts. FHWA finds, however, that even if the selection of the preferred alternative would result in adverse, disparate impacts, the Respondent has provided a substantial legitimate justification for its actions and shown that a less discriminatory alternative has not been identified.

FHWA looks forward to working with the Respondent to continue to improve its compliance with Title VI and assist the affected community for the Project.

This letter concludes FHWA's investigation, and the case will be closed with no further action. If you have any questions regarding this matter, please contact Kevin Resler, FHWA National Title VI Coordinator, at (202) 366-2925, or kevin.resler@dot.gov.

Sincerely yours,



Irene Rico

Associate Administrator for Civil Rights

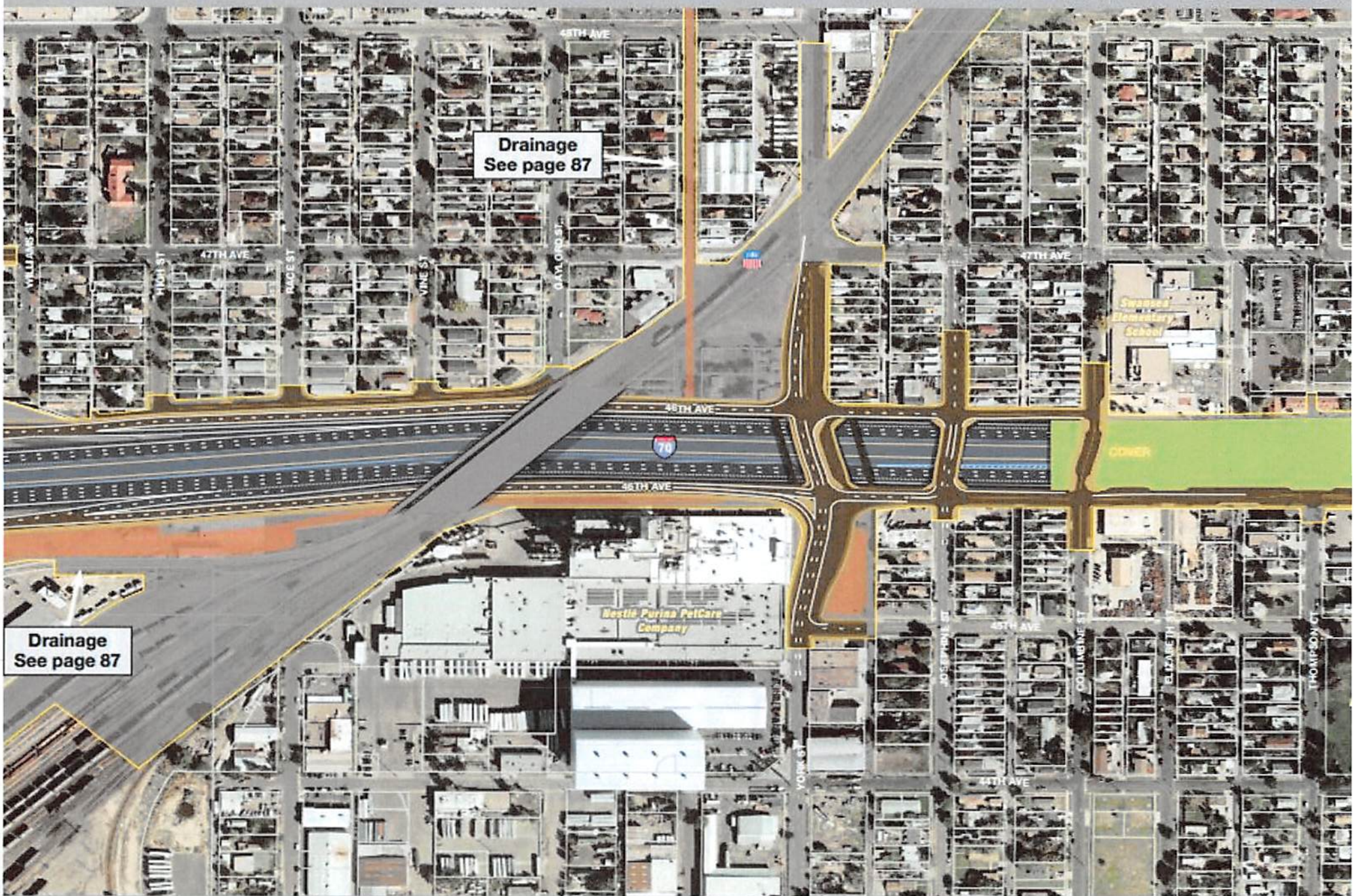
cc: John Cater, Division Administrator, FHWA CO Division Office
Alicia Nolan, Assistant Division Administrator, FHWA CO Division Office
Nicole Bumpers, Civil Rights Program Manager, FHWA CO Division Office
Carey Shepherd, Civil Rights Program Manager, FHWA FL Division Office
James Esselman, Senior Attorney Advisor, FHWA Office of Chief Counsel (HCC-40)
Yvette Rivera, Associate Director, Equity and Access Division



U.S. Department
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**Federal Highway
Administration**

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APPENDIX
Map of Preferred Alternative



Proposed highway and ramps

Proposed street configuration

Proposed sidewalk and median

Existing Pavement

General-purpose lanes

Managed lanes

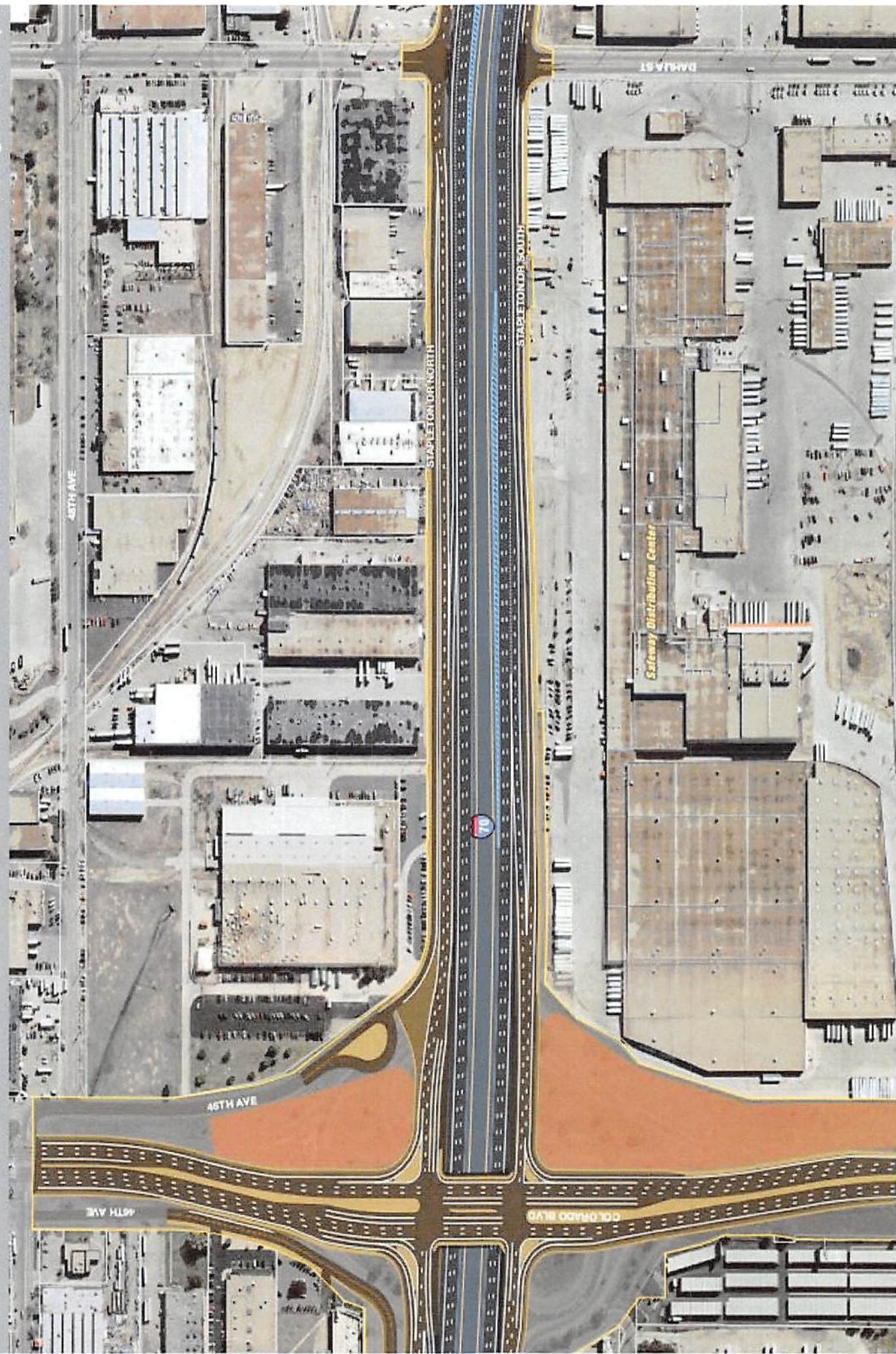
Striped buffer

Drainage

Construction limits

Parcel boundaries

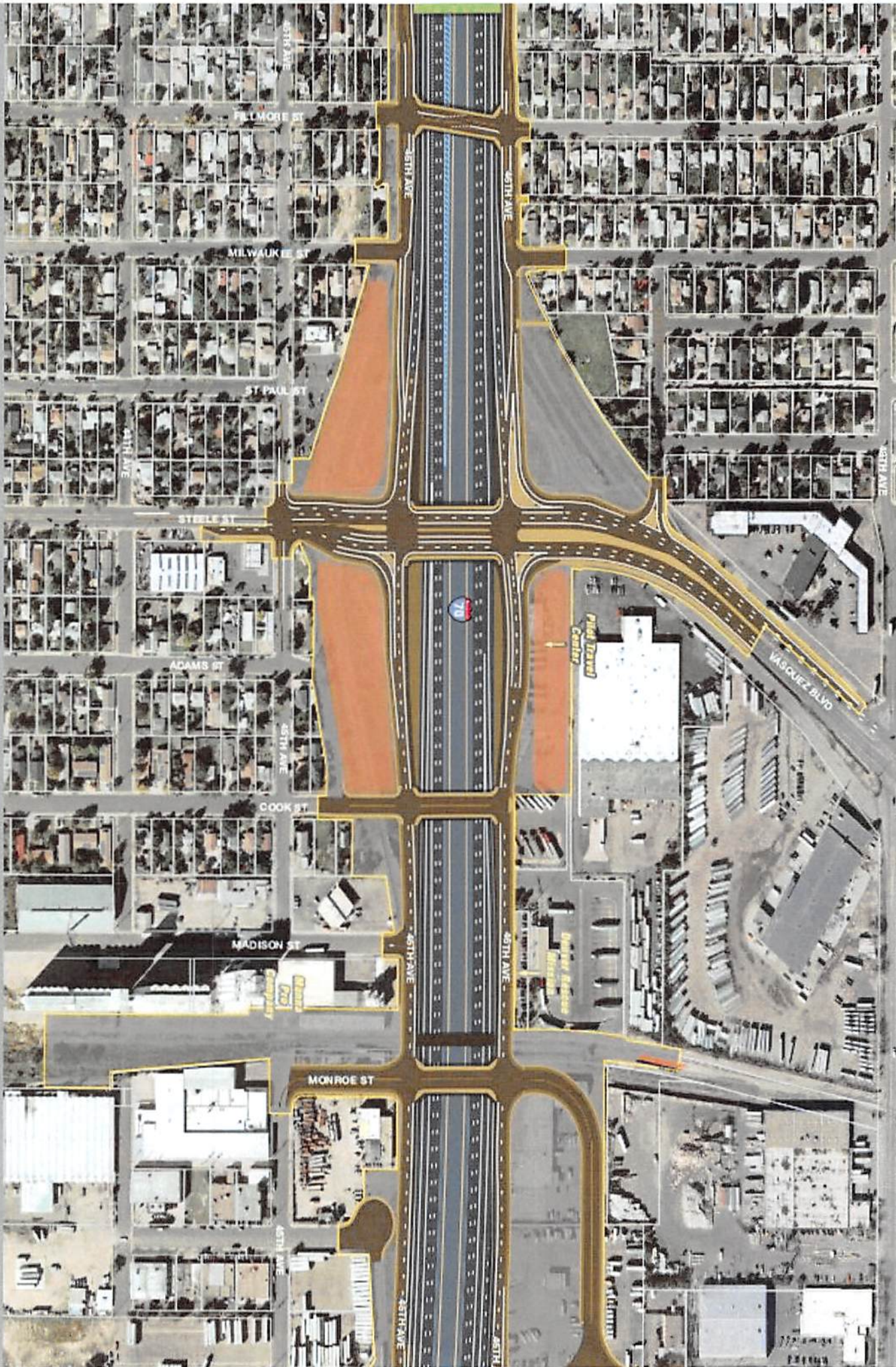
Provided in this attachment are graphical representations of the alternatives evaluated in the Final EIS. They show the alternatives at a point in time that is preliminary in design, and details are subject to change through final design and construction. The information presented in this attachment is intended for illustration purposes only, and is not suitable for site specific decision making or impact determinations.



- Proposed sidewalk and median
- Existing Pavement
- Central-purpose lanes
- Managed lanes
- Striped buffer
- Drainage
- Construction limits
- Parcel boundaries

posed highway and ramps
posed street configuration
used in this attachment are graphical representations of the alternatives evaluated in the Final EIS. They show the alternatives at a point in time that is preliminary in design, and details are subject to change through final design and construction. The information presented in this attachment is intended for illustration purposes only, and is not suitable for site specific decision making or impact determinations.

Final Cover Lowered Alternative • Managed Lanes Option



Proposed highway and ramps
 Proposed sidewalk and median
 Existing Pavement
 General-purpose lanes
 Managed lanes
 Sloped buffer
 Drainage
 Construction limits
 Parcel boundaries

Note: The information presented in this document is for informational purposes only and is not intended to be used for any other purpose. The information is subject to change without notice.