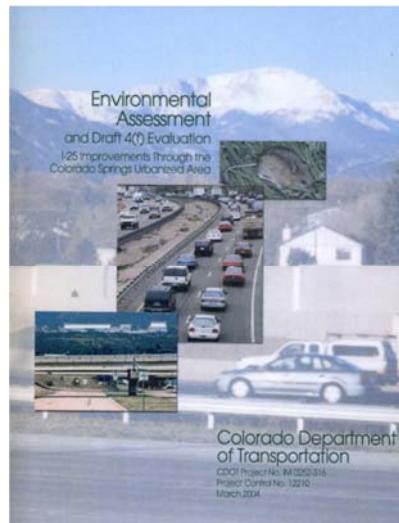




RE-EVALUATION, Mileposts 149 to 161

Interstate 25 Improvements through the Colorado Springs Area Environmental Assessment



NATIVE AMERICAN CONSULTATION TECHNICAL MEMO April 2012

Prepared for:
CDOT Region 2

Prepared by:
Doug Eberhart, Telephone (719) 520-5800

Introduction

The Colorado Department of Transportation (CDOT) has prepared this technical memorandum to update findings with regards to the socioeconomic conditions described in the original 2004 I-25 Environmental Assessment (EA) with regard to the portion of the Proposed Action between Woodmen Road (Exit 149) in Colorado Springs and State Highway 105 in Monument (Exit 161). The purpose of the EA's Proposed Action is to relieve existing traffic congestion and address project future congestion on I-25 within the Colorado Springs Urbanized Area.

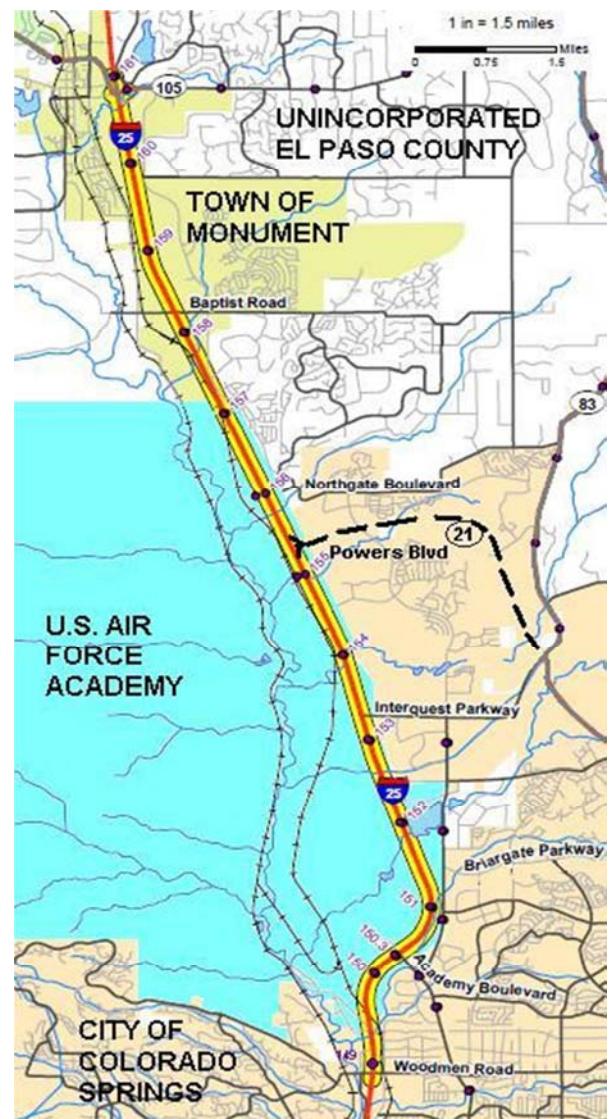
The I-25 EA originally evaluated impacts for the widening of I-25 between South Academy Boulevard (Exit 135) and SH 105, together with reconstruction of various I-25 interchanges within this corridor. Page 2-10 of the EA stated that, "Consistent with projected traffic demand in the I-25 corridor, the conceptual phasing for the Proposed Action calls for:

- (1) initially six-laning through central Colorado Springs, then
- (2) six-laning in northern El Paso County, and finally
- (3) adding HOV [High-Occupancy Vehicle] lanes through central Colorado Springs and widening to six lanes south to South Academy Boulevard."

For the year 2012, CDOT has received funding to begin the second phase, meaning to widen I-25 to six lanes in northern El Paso County. The EA calls for eventually widening I-25 all the way to SH105. The 2012 project will begin north of Woodmen Road (Exit 149) and may be able to widen I-25 to the North Gate Interchange (Exit 156) or slightly beyond, perhaps to Black Squirrel Creek. Nevertheless, to be prepared for possible additional funding availability in the near future, CDOT's current EA re-evaluation effort is covering all Phase 2 improvements. Therefore, the study area for this re-evaluation extends northward all the way to Monument. See Figure 1.

The I-25 EA included a new connection with Powers Boulevard (now State Highway 21), following SH 21 eastward to just past the Powers Boulevard/Voyager Boulevard interchange. The design and analysis of this connection in the I-25 EA superseded what was proposed earlier in the North Powers Boulevard EA that was approved in 1999. The current EA re-evaluation also includes this portion of Powers Boulevard from I-25 to just east of Voyager Parkway.

Figure 1. I-25 EA Re-evaluation Project Vicinity



Summary of the 2004 EA Native American Consultation

The 2004 EA included discussion of Native American Consultation, which was conducted in conjunction with the development of project documentation under the National Environmental Policy Act. Section 106 of the National Historic Preservation Act (as amended) and the Advisory Council on Historic Preservation regulations (36 CFR 800) mandate that Federal agencies must involve interested Native American tribes in the planning process for federal undertakings. Consultation with a Native American tribe recognizes the government-to-government relationship between the United States government and sovereign tribal groups. Federal agencies must be sensitive to the fact that properties of religious and cultural significance to one or more tribes may be located on ancestral, aboriginal, or ceded lands beyond modern reservation boundaries.

In May 2003, eleven federally recognized tribes with an established interest in El Paso County, Colorado, were invited via letter to participate as consulting parties. Five of these tribes expressed in writing the desire to be consulting parties for the project:

- Southern Ute Indian Tribe
- Cheyenne and Arapaho Tribes of Oklahoma
- Pawnee Nation of Oklahoma
- Kiowa Tribe of Oklahoma
- Northern Cheyenne Tribe

The 2004 EA included a draft programmatic agreement on Native American Consultation, indicating the roles and responsibilities of the parties involved. For example, the Federal Highway Administration and CDOT are required to inform the consulting tribes of any upcoming projects that are part of the I-25 Proposed Action.

The Programmatic Agreement included a discussion of the fact that about seven miles of I-25 are located within the boundaries of the United States Air Force Academy. Section 2, Consultation, stated the following:

“A portion of I-25 is within an easement on the United States Air Force Academy (USAFA), which is responsible for administration of the property. However, the USAFA has delegated tribal consultation for property within the easement to FHWA. If Native American issues as outlined in this document arise during project construction, FHWA and CDOT will notify USAFA and coordinate as appropriate.”

This delegation of consultation responsibility by USAFA regarding the I-25 easement was a separate action from the Programmatic Agreement. USAFA was not a signatory to the CDOT and FHWA agreement with the consulting tribes.

Changes to the Project that Would Affect the Resource Differently

CDOT has not proposed to change the project in any way that would affect archaeological resources differently from what was described in the EA. Since the EA was approved in 2004, the Baptist Road interchange was reconstructed (I-25 Exit 158), and the COSMIX project widened I-25 from South Circle Drive (Exit 138) to North Academy Boulevard (Exit 150).

FHWA and CDOT kept the consulting tribes informed of its plans for the actions listed above, in accordance with the executed final programmatic agreement included in the September 2004 Finding of No Significant Impacts for the Proposed Action.

The USAFA easement modifications described in the EA have not yet been transacted. CDOT needs additional easement land for the Northgate and North Powers Boulevard interchange complex, and for a new Ackerman Overlook that would replace the existing roadside parking area. When these easement modifications are finalized, CDOT and FHWA will become responsible for Native American consultation regarding these additional 53.6 acres of land.

Changes in Resources, Analysis Data, Analysis Methods or Applicable Regulations

As of 2012, there have been no new regulatory changes or resource discoveries that affect the I-25 Proposed Action with regard to Native American Consultation.

In March 2012, CDOT contacted the five consulting tribes regarding the upcoming Phase 2 of the I-25 Proposed Action. In April 2012, the Cheyenne and Arapaho tribes of Oklahoma responded to indicate that they have a specific interest in this project and would like to kept apprised of any pertinent issues that arise.

Changes in Proposed Mitigation

There is no need to change any mitigation commitments previously made for the project, as detailed in the Programmatic Agreement. If any Native American cultural resources are discovered during implementation of the Proposed Action, appropriate mitigation will be determined in consultation with the participating tribes and SHPO. Please see the Programmatic Agreement for more details.

Conclusion

While no impacts to Native American cultural resources are anticipated, FHWA and CDOT will keep its tribal consulting partners apprised of any developments that may arise, in accordance with its Programmatic Agreement for the I-25 Proposed Action, and will consult with USAFA on these matters as appropriate.

Summary of Previously and Currently Identified Native American Cultural Resource Impacts and Mitigation

EA 2004 – No-Action Alternative	EA 2004 – Impacts of Proposed Action	EA 2004 - Mitigation	2012 – What Has Changed	Re-evaluation 2012 – Impacts of No Action	Re-evaluation 2012 – Impacts of Proposed Action	Re-evaluation 2012 – Mitigation
The No-Action Alternative would not have impacts on Native American cultural resources.	Based on consultation conducted to date, no impacts to Native American cultural resources are foreseen.	A Section 106 Programmatic Agreement has been prepared, addressing all issues in the corridor pertinent to agencies and tribes.	The draft programmatic agreement included in the EA was finalized and included in the September 2004 FONSI for the I-25 proposed improvements. In accordance with the programmatic agreement, CDOT sent letters to the five consulting tribes in March 2012, informing them of the upcoming Phase 2 of the Proposed Action. As of April 2012, the Cheyenne & Arapaho tribes of Oklahoma responded that they are interested pursuing consultation.	No change. The No-Action Alternative would not have impacts on Native American cultural resources.	No change. The I-25 Proposed Action in the EA re-evaluation area would not affect any known Native American cultural resources.	No change. If any Native American cultural resources are discovered during implementation of the Proposed Action, appropriate mitigation will be determined in consultation with SHPO and the consulting tribes.

APPENDIX

2012 CORRESPONDANCE REGARDING NATIVE AMERICAN CONSULTATION

- CDOT letter to Cheyenne & Arapaho Tribes of Oklahoma
- CDOT letter to Kiowa Tribe of Oklahoma
- CDOT letter to Northern Cheyenne Tribe
- CDOT letter to Pawnee Nation of Oklahoma
- CDOT letter to Southern Ute Indian Tribe
- Response to CDOT from Cheyenne and Arapaho Tribes of Oklahoma

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION

Environmental Programs Branch
4201 East Arkansas Avenue
Shumate Building
Denver, Colorado 80222
(303) 757-9281



March 8, 2012

Ms. Janice Prairie Chief-Boswell, Chairwoman
Cheyenne & Arapaho Business Committee
Cheyenne & Arapaho Tribes of Oklahoma
P.O. Box 38
Concho, OK 73022

SUBJECT: Request for Section 106 Consultation, Interstate 25 Corridor Environmental Assessment
Re-evaluation, El Paso County, Colorado

Dear Ms. Prairie Chief-Boswell:

In 2004, the Federal Highway Administration (FHWA) and Colorado Department of Transportation (CDOT) completed an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for proposed improvements to a 26-mile segment of Interstate 25 through El Paso County, Colorado. Under Section 106 of the National Historic Preservation Act (NHPA), FHWA and CDOT consulted with Native American tribal governments, including yours, during the environmental documentation process. That consultation resulted in the execution of a Programmatic Agreement (PA) that guides how the agencies will conduct consultation with consulting Tribes for all future transportation undertakings in the corridor. A copy of the PA is enclosed for your review.

The first major project in the I-25 corridor, in central Colorado Springs, was completed in 2007. Prior to construction, however, the agencies consulted with your tribe regarding effects to a significant Native American archaeological site, and forwarded you the final excavation report in October 2005. The second construction phase in the corridor, north of the city, is presently being studied, as described below.

The agencies are preparing a re-evaluation of the 2004 EA that will address the effects of proposed improvements to the northernmost 12-mile segment of I-25 as originally studied (refer to the enclosed map). The project proposes to widen I-25 to six lanes (three northbound, three southbound) beginning at Woodmen Road/Exit 149 and continuing north to the State Highway 105/Exit 161 interchange (the end point dependent on funding). The EA Re-evaluation will explore reasonable and feasible solutions to address congestion and safety issues in the corridor. Pursuant to the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality (CEQ) implementing regulations (40 CFR 1500-1508), FHWA and CDOT are re-evaluating the potential social, economic and environmental consequences of this action.

FHWA will serve as the lead agency for this undertaking, and CDOT staff will facilitate the tribal consultation process (as noted in Stipulation 3 of the PA). As a consulting party under the Section 106 regulations, you are offered the opportunity to identify concerns about cultural resources and comment on how the project might affect them. Further, if it is found that the project will impact cultural resources that are eligible for inclusion on the National Register of Historic Places and are of religious or cultural significance to your tribe, your role in the consultation process would include participation in resolving how best to avoid, minimize, or mitigate those impacts. It is our hope that by describing the proposed undertaking we can be more effective in protecting areas important to American Indian people.

Ms. Prairie Chief-Boswell

March 8, 2012

Page 2

The project corridor is located partially in a developed urban center as well as in a less developed suburban/rural setting north of the city. The Area of Potential Effects (APE) established for cultural resource analysis was established during the original EA documentation, and included the I-25 right-of-way as well as areas beyond it. The APE was intensively surveyed for historic properties in 2002 during the initial EA studies, and consequently no additional inventory is required. Three sites within the APE (5EP755, 5EP2239 & 5EP2245) eligible for the National Register of Historic Places (NRHP) exhibit evidence of Native American occupation. However, all three sites are located beyond the areas ultimately proposed for improvements, and therefore they will be completely avoided. However, any information you may have regarding places or sites important to your tribe that are located within or near the project area would assist us in our efforts to comprehensively identify and evaluate historic properties.

We are committed to ensuring that tribal governments are informed of and involved in decisions that may impact places with cultural significance. Per Stipulation 5 of the PA, if you have specific interest in the I-25 EA Re-evaluation, please complete and return the enclosed Consultation Interest Response Form to CDOT Native American consultation liaison Dan Jepson **within 30 days** via US Mail, fax or Email, as listed at the bottom of that sheet. The 30-day period has been established to encourage your participation at this early stage in project development. Failure to respond within this time frame will not prevent your tribe from entering consultation at a later date. However, studies and decision making will proceed and it may be difficult to reconsider previous determinations or findings, unless significant new information is introduced.

If you have questions or concerns about the project or the role of your tribe in the consultation process, please contact Mr. Jepson at (303) 757-9631 or daniel.jepson@dot.state.co.us, or FHWA Colorado Division Environmental Program Manager Stephanie Gibson at (720) 963-3013 or stephanie.gibson@dot.gov.

Thank you for considering this request for consultation.

Sincerely,



Dan Jepson, Senior Archaeologist
Section 106 Native American Liaison

Enclosures: 2004 Section 106 Programmatic Agreement
 Map of Project Corridor
 Consultation Interest Response Form

cc: C. Horn & S. Gibson, FHWA
 R. Frei, CDOT Region 2
 D. Eberhart, Wilson & Co.
 D. Hamilton & K. Little Coyote, Tribal Heritage Program

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION
Environmental Programs Branch
4201 East Arkansas Avenue
Shumate Building
Denver, Colorado 80222
(303) 757-9281



March 8, 2012

Mr. Ronald Twohatchet, Chairman
Kiowa Business Committee
Kiowa Tribe of Oklahoma
P.O. Box 369
Carnegie, OK 73015

SUBJECT: Request for Section 106 Consultation, Interstate 25 Corridor Environmental Assessment
Re-evaluation, El Paso County, Colorado

Dear Mr. Twohatchet:

In 2004, the Federal Highway Administration (FHWA) and Colorado Department of Transportation (CDOT) completed an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for proposed improvements to a 26-mile segment of Interstate 25 through El Paso County, Colorado. Under Section 106 of the National Historic Preservation Act (NHPA), FHWA and CDOT consulted with Native American tribal governments, including yours, during the environmental documentation process. That consultation resulted in the execution of a Programmatic Agreement (PA) that guides how the agencies will conduct consultation with consulting Tribes for all future transportation undertakings in the corridor. A copy of the PA is enclosed for your review.

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Mr. Twohatchet
March 8, 2012
Page 2

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Sincerely,



Dan Jepson, Senior Archaeologist
Section 106 Native American Liaison

Enclosures: 2004 Section 106 Programmatic Agreement
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cc: C. Horn & S. Gibson, FHWA
 R. Frei, CDOT Region 2
 D. Eberhart, Wilson & Co.
 J. Eskew, Tribal NAGPRA Rep.

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION
Environmental Programs Branch
4201 East Arkansas Avenue
Shumate Building
Denver, Colorado 80222
(303) 757-9281



March 8, 2012

Mr. Leroy Spang, President
Northern Cheyenne Tribal Council
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

SUBJECT: Request for Section 106 Consultation, Interstate 25 Corridor Environmental Assessment
Re-evaluation, El Paso County, Colorado

Dear Mr. Spang:

In 2004, the Federal Highway Administration (FHWA) and Colorado Department of Transportation (CDOT) completed an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for proposed improvements to a 26-mile segment of Interstate 25 through El Paso County, Colorado. Under Section 106 of the National Historic Preservation Act (NHPA), FHWA and CDOT consulted with Native American tribal governments, including yours, during the environmental documentation process. That consultation resulted in the execution of a Programmatic Agreement (PA) that guides how the agencies will conduct consultation with consulting Tribes for all future transportation undertakings in the corridor. A copy of the PA is enclosed for your review.

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Mr. Spang
March 8, 2012
Page 2

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Thank you for considering this request for consultation.

Sincerely,



Dan Jepson, Senior Archaeologist
Section 106 Native American Liaison

Enclosures: 2004 Section 106 Programmatic Agreement
 Map of Project Corridor
 Consultation Interest Response Form

cc: C. Horn & S. Gibson, FHWA
 R. Frei, CDOT Region 2
 D. Eberhart, Wilson & Co.
 C. Fisher, Tribal Historic Preservation Officer

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION

Environmental Programs Branch
4201 East Arkansas Avenue
Shumate Building
Denver, Colorado 80222
(303) 757-9281



March 8, 2012

Mr. Marshall R. Gover, President
Pawnee Nation of Oklahoma
881 Little Dec Drive
Pawnee, OK 74058

SUBJECT: Request for Section 106 Consultation, Interstate 25 Corridor Environmental Assessment
Re-evaluation, El Paso County, Colorado

Dear Mr. Gover:

In 2004, the Federal Highway Administration (FHWA) and Colorado Department of Transportation (CDOT) completed an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for proposed improvements to a 26-mile segment of Interstate 25 through El Paso County, Colorado. Under Section 106 of the National Historic Preservation Act (NHPA), FHWA and CDOT consulted with Native American tribal governments, including yours, during the environmental documentation process. That consultation resulted in the execution of a Programmatic Agreement (PA) that guides how the agencies will conduct consultation with consulting Tribes for all future transportation undertakings in the corridor. A copy of the PA is enclosed for your review.

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Dan Jepson, Senior Archaeologist
Section 106 Native American Liaison

Enclosures: 2004 Section 106 Programmatic Agreement
 Map of Project Corridor
 Consultation Interest Response Form

cc: C. Horn & S. Gibson, FHWA
 R. Frei, CDOT Region 2
 D. Eberhart, Wilson & Co.
 G. Adams, Tribal Historic Preservation Officer

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION

Environmental Programs Branch
4201 East Arkansas Avenue
Shumate Building
Denver, Colorado 80222
(303) 757-9281



March 8, 2012

Mr. Jimmy Newton, Jr., Chairman
Southern Ute Indian Tribe
P.O. Box 737
Ignacio, CO 81137

SUBJECT: Request for Section 106 Consultation, Interstate 25 Corridor Environmental Assessment
Re-evaluation, El Paso County, Colorado

Dear Mr. Newton:

In 2004, the Federal Highway Administration (FHWA) and Colorado Department of Transportation (CDOT) completed an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for proposed improvements to a 26-mile segment of Interstate 25 through El Paso County, Colorado. Under Section 106 of the National Historic Preservation Act (NHPA), FHWA and CDOT consulted with Native American tribal governments, including yours, during the environmental documentation process. That consultation resulted in the execution of a Programmatic Agreement (PA) that guides how the agencies will conduct consultation with consulting Tribes for all future transportation undertakings in the corridor. A copy of the PA is enclosed for your review.

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FHWA will serve as the lead agency for this undertaking, and CDOT staff will facilitate the tribal consultation process (as noted in Stipulation 3 of the PA). As a consulting party under the Section 106 regulations, you are offered the opportunity to identify concerns about cultural resources and comment on how the project might affect them. Further, if it is found that the project will impact cultural resources that are eligible for inclusion on the National Register of Historic Places and are of religious or cultural significance to your tribe, your role in the consultation process would include participation in resolving how best to avoid, minimize, or mitigate those impacts. It is our hope that by describing the proposed undertaking we can be more effective in protecting areas important to American Indian people.

The project corridor is located partially in a developed urban center as well as in a less developed suburban/rural setting north of the city. The Area of Potential Effects (APE) established for cultural resource analysis was established during the original EA documentation, and included the I-25 right-of-way as well as areas beyond it. The APE was intensively surveyed for historic properties in 2002 during the initial EA studies, and consequently no additional inventory is required. Three sites within the APE (5EP755, 5EP2239 & 5EP2245) eligible for the National Register of Historic Places (NRHP) exhibit evidence of Native American occupation. However, all three sites are located beyond the areas ultimately proposed for improvements, and therefore they will be completely avoided. However, any information you may have regarding places or sites important to your tribe that are located within or near the project area would assist us in our efforts to comprehensively identify and evaluate historic properties.

We are committed to ensuring that tribal governments are informed of and involved in decisions that may impact places with cultural significance. Per Stipulation 5 of the PA, if you have specific interest in the I-25 EA Re-evaluation, please complete and return the enclosed Consultation Interest Response Form to CDOT Native American consultation liaison Dan Jepson **within 30 days** via US Mail, fax or Email, as listed at the bottom of that sheet. The 30-day period has been established to encourage your participation at this early stage in project development. Failure to respond within this time frame will not prevent your tribe from entering consultation at a later date. However, studies and decision making will proceed and it may be difficult to reconsider previous determinations or findings, unless significant new information is introduced.

If you have questions or concerns about the project or the role of your tribe in the consultation process, please contact Mr. Jepson at (303) 757-9631 or daniel.jepson@dot.state.co.us, or FHWA Colorado Division Environmental Program Manager Stephanie Gibson at (720) 963-3013 or stephanie.gibson@dot.gov.

Thank you for considering this request for consultation.

Sincerely,



Dan Jepson, Senior Archaeologist
Section 106 Native American Liaison

Enclosures: 2004 Section 106 Programmatic Agreement
 Map of Project Corridor
 Consultation Interest Response Form

cc: C. Horn & S. Gibson, FHWA
 R. Frei, CDOT Region 2
 D. Eberhart, Wilson & Co.
 A. Naranjo, Tribal NAGPRA Coordinator

FEDERAL HIGHWAY ADMINISTRATION/COLORADO DEPARTMENT OF TRANSPORTATION
SECTION 106 TRIBAL CONSULTATION INTEREST RESPONSE FORM

PROJECT: I-25 Environmental Assessment Re-evaluation, El Paso County
The Cheyenne and Arapaho Tribe [is / is not] (circle one) interested in becoming a consulting party for the Colorado Department of Transportation project referenced above, for the purpose of complying with Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR 800). If your tribe will be a consulting party, please answer the questions below.

Signed:

Name and Title

Janice Prairie Chief Bowdoin / Governor
Cheyenne & Arapaho Tribes

CONSULTING PARTY STATUS [36 CFR §800.2(c)(3)]

Do you know of any specific sites or places to which your tribe attaches religious and cultural significance that may be affected by this project?

Yes No If yes, please explain the general nature of these places and how or why they are significant (use additional pages if necessary). Locational information is not required.

*South Central and South eastern Colorado -
camp sites, Possible battle sites*

SCOPE OF IDENTIFICATION EFFORTS [36 CFR §800.4(a)(4)]

Do you have information you can provide us that will assist us in identifying sites or places that may be of religious or cultural significance to your tribe?

Yes No If yes, please explain.

CONFIDENTIALITY OF INFORMATION [36 CFR §800.11(c)]

Is there any information you have provided here, or may provide in the future, that you wish to remain confidential?

Yes No If yes, please explain.

Please complete and return this form within 30 days via US Mail, fax or Email to:

Dan Jepson, Section 106 Native American Liaison
Colorado Department of Transportation
Environmental Programs Branch
4201 E. Arkansas Ave., Shumate Bldg.
Denver, CO 80222
FAX: (303) 757-9445
daniel.jepson@dot.state.co.us