1.0 Introduction and Project Description

This Environmental Assessment (EA) was prepared by the U.S. Fish and Wildlife Service (Service) in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500-1508), and Service NEPA guidance and Departmental regulations (43 CFR 46), procedures and memoranda. The EA documents the purpose, issues, alternatives, and analysis for the proposed action (described in Section 1.2) at the Rocky Flats National Wildlife Refuge (NWR or Refuge) in Jefferson County, Colorado.

1.1 Background

Rocky Flats NWR, located 16 miles northwest of Denver, Colorado on the borders of Boulder, Broomfield, and Jefferson counties, was authorized by Congress in 2001. Rocky Flats NWR was once the Rocky Flats Environmental Technology Site, a portion of a 6,240-acre former nuclear defense facility operated by the U.S. Department of Energy (DOE). All weapons manufacturing was performed in a 600-acre area in the middle of the site known as the Industrial Area. In 1992, weapons production at Rocky Flats site ceased and environmental cleanup and closure began. The DOE completed the cleanup in accordance with the Rocky Flats Cleanup Agreement (RFCA) under oversight from the U.S. Environmental Protection Agency (EPA) and the Colorado Department of Public Health and Environment (CDPHE). Under the Rocky Flats National Wildlife Refuge Act of 2001 (Rocky Flats Act), most of the 6,240-acre Rocky Flats Environmental Technology Site became the Rocky Flats NWR in 2007 following certification from the EPA that cleanup and closure had been completed; the Central Operable Unit in the center of the Refuge, which will remain under the jurisdiction of the DOE.

1.2 Proposed Action

In accordance with the Rocky Flats Act (Appendix A), land up to 300 feet in width extending west from the existing Indiana Street transportation corridor shall be made available by easement or sale for the sole purpose of transportation improvements upon application from any county, city, or political subdivision of the State of Colorado, provided that the transportation improvements “are carried out so as to minimize adverse effects on the management of Rocky Flats as a wildlife refuge” and are part of the approved Denver regional transportation plan.

The Service has received proposals related to the 300-foot-wide parcel of land along the eastern boundary of the Refuge from approximately 96th Avenue to State Highway (SH) 128.

The two current applications are from the City of Golden and the Jefferson Parkway Public Highway Authority (JPPHA), and they are discussed in detail in Appendices E and F, respectively. Briefly, the City of Golden initially proposed to acquire the 300-foot-wide transportation corridor for use as a bike path with the remainder of the land reserved for future transportation improvements along Indiana Street, but has since stated that they only intend to use the property as a bike path. Golden has offered to buy the transportation corridor outright for $3 million, which is $200 thousand greater than the current appraised

value of the land. Alternatively, they have offered to exchange the transportation corridor for land of equal value. This could be a portion of land known as section 16 (Section 16, Township 2 South, Range 70 West) on the immediate southwestern corner of the Refuge, or land in inholdings at refuges elsewhere in Colorado. At present, there are inholdings at both Baca and Arapaho National Wildlife Refuges.

The proposal from JPPHA is to acquire the transportation corridor in order to construct a toll highway in the northwest corner of the Denver metropolitan area. Following Golden's submission of a proposal, JHPPA's application was amended to reflect that they too would include a bike path, in addition to their originally intended highway. JPPHA has offered to purchase the land for its appraised value of $2.8 million, or to exchange the parcel for property in section 16. They have brokered a deal with several local municipalities who will donate money and dedicate Natural Resource Damage Assessment funds from the Rocky Flats site to a broader conservation initiative to acquire land and mineral rights on 617 acres of section 16. This deal also includes provisions to buy out the existing mineral estates on 629 acres of Department of Energy lands that are already within the refuge boundary.

The Service proposes to expand the acquisition boundary of Rocky Flats NWR to accommodate a potential land exchange at the Refuge. Acquisition boundaries are administrative lines delineating areas within which the Service has the authority to acquire interests in land.

1.3 Purpose of and Need for Proposed Action

This EA presents and evaluates a proposal for protection and management of wildlife habitats through the expansion of the Rocky Flats NWR approved acquisition boundary. Lands within a refuge acquisition boundary do not become part of the refuge unless and until a legal interest is acquired through an easement, lease, donation, or purchase. Lands within an acquisition boundary are not subject to any refuge regulations or jurisdiction unless and until an interest is acquired. Land interests are typically acquired from willing sellers only. Any landowner whose land is within an approved acquisition boundary, even though the surrounding parcels may have been purchased by the Service, retains all the rights, privileges, and responsibilities of private land ownership. These include, but are not limited to, the rights to allow access, hunting, and vehicle use; control trespass; the right to sell the property to any other party; and the responsibility to pay local real estate or property taxes.

Within approved acquisition boundaries, the Service can enter into negotiations for the protection of environmentally sensitive lands. The land within the proposed Rocky Flats expansion area serves several important environmental functions. First, it contains a large portion of the remaining unprotected xeric tallgrass prairie, a globally rare vegetation community that is dependent upon disturbance by fire and grazing. Acquisition of this land would allow this habitat to be managed for these important disturbance mechanisms, and would protect it from the residential and commercial development that is occurring in adjacent parcels.

Many species of wildlife make use of the land within the proposed expanded boundary. The property includes critical habitat for the Preble's meadow jumping mouse, a Federally threatened species that inhabits the riparian area along Woman Creek. A herd of resident mule deer uses the site, and elk are known to move through this parcel into the adjacent Refuge from mountain habitat in the Front Range of the Rocky Mountains. The acquisition of an interest in this parcel would protect this important wildlife corridor by connecting Rocky Flats NWR to regional open space to the west, providing a permanently

protected path to the Front Range. In addition to allowing normal wildlife movement, the acquisition of this corridor would provide ecological resiliency by allowing migration and re-colonization following major disturbances such as disease, fire, and long-term environmental change.

View from the Refuge into section 16, which serves as an important wildlife corridor linking Rocky Flats with public lands to the west.

The expansion of the Refuge to the west to permanently conserve this land would be in keeping with the vision that was articulated in the Rocky Flats National Wildlife Refuge Comprehensive Conservation Plan (CCP) (2005):

> *Rocky Flats National Wildlife Refuge is a healthy expanse of grasslands, shrublands, and wetlands, including rare xeric tallgrass prairie, where natural processes support a broad range of native wildlife. The Refuge provides striking mountain and prairie views and opportunities to appreciate the refuge resources in an urbanized area through compatible wildlife-dependent public uses and education. Working with others, the Refuge conserves the unique biotic communities and sustains wildlife populations at the interface of mountains and prairies on Colorado's Front Range.*

1.4 Decisions to Be Made

The Service's planning team will complete an analysis of the No Action and action alternatives, and the resulting impacts to the natural, social, and cultural environment. Based on that analysis, the Service's Director of Region 6, with the concurrence of the Director of the U.S. Fish and Wildlife Service, will make three decisions:

- Determine whether the Service should expand the acquisition boundary of Rocky Flats NWR;
- Determine whether the Service should exchange the 300-foot wide transportation corridor for property and mineral rights adjacent to the existing Refuge, or elsewhere in the refuge system; and
- If yes to both of these issues, determine whether the selected alternative would have a significant impact on the quality of the natural and human environment. The National Environmental Policy Act of 1969 requires this analysis. If the quality of the natural and human environment would not be significantly affected, a Finding of No Significant Impact will be signed and made available to the public. If the selected alternative would have a significant impact, completion of an environmental impact statement (EIS) would be required to address those impacts.

1.5 Issues Identified and Selected for Analysis

The Service solicited comments on the proposed Rocky Flats NWR boundary expansion and land exchange from the public and agencies through direct mailings, a news release, a public scoping meeting, and direct contacts.

- On July 7, 2011, the Service issued a scoping notice to local media outlets in Colorado. This information was also posted on www.fws.gov/rockyflats, as well as the Service's Facebook and Twitter profiles. Scoping comments were accepted through July 29, 2011.
- The Service prepared a 2-page fact sheet which was made available through the Refuge Website, and as a handout at the scoping meeting and at the Rocky Mountain Arsenal NWR, which manages the Rocky Flats NWR. The fact sheet was also sent electronically to interested individuals.
- A scoping meeting was held on July 20, 2011 at the Westminster City Park Recreation Center in Westminster, Colorado from 5-8 pm. Sign-in attendance was 80 individuals.
- The Refuge website provided interested parties with updates and information about the proposal.

The Service received 1,163 email and written comments during the scoping period, of which 796 were generated by a change.org petition. Most of the comments reflected concern about the potential use of the 300-foot-wide transportation corridor as a highway rather than a bike path. A substantial number of commentors also expressed concern about potential public health risks related to the disturbance of contaminated surface soil in that corridor as part of any potential transportation improvements on the site. The vast majority of comments expressed support for the proposed expansion of the refuge boundary to include Section 16.

Looking south along Indiana Street along proposed transportation corridor.

The Service's planning team (listed in section 5.4) reviewed all comments collected from the public and agencies, and identified several key issues that were considered in this EA. If comments were substantive and/or provided relevant information, the issues are addressed in this EA. Based on internal discussion and comments received during scoping, the following issues and concerns were identified for discussion in detail in this EA.

- Effects of a land exchange on wildlife habitat, regional open space, and functional and resilient ecosystems
- Potential effects of transportation uses on the Refuge
- Effects of potential highway construction on local communities, including increased traffic, development and urban sprawl, and health impacts of vehicle traffic
- Potential recreational and commuter value of using the transportation corridor for a bike path as well as lack of existing, safe bike commuting options along SH 93 and Indiana Street
- Effects of highway construction on the viewshed, soundscape, and open space aesthetic
- Concern about construction-related disturbance of soil resulting in potential public exposure to plutonium

- Inadequacy of the scope of 2004 Rocky Flats NWR CCP/EIS as it relates to downstream and cumulative effects of the proposed transportation uses

- Lack of attention to environmental justice issues in Rocky Flats NWR CCP/EIS and Northwest Corridor Transportation Study

Existing NEPA Compliance at Rocky Flats NWR

As discussed above (section 1.2), the Rocky Flats Act mandated that the Service make available a parcel up to 300 feet wide from the Indiana Street transportation corridor for transportation improvements, as long as such improvements will be undertaken in a way that does not interfere with the management of Rocky Flats as a National Wildlife Refuge. Following the Rocky Flats Act, but prior to the transfer of Rocky Flats to Service stewardship in 2007, the Service drafted a CCP (USFWS 2005a) detailing the vision for the management of the then-future Refuge. A full NEPA review, which culminated in an EIS (USFWS 2004a), was conducted for the proposed actions in the CCP. Because of the congressionally-mandated transportation corridor provision, the 2004 EIS included an analysis of the impacts from potential transportation improvements along Indiana Street. The impacts analyzed in the 2004 EIS included water quality, noxious weeds, wildlife corridors/habitat fragmentation, noise and aesthetics, public use facilities such as trails, and overall loss of wildlife and cultural resources (USFWS 2004). Based upon this analysis, the Service determined that a land transfer up to the statutory 300 foot width would not adversely affect the management of the Refuge, and that the analysis satisfied its NEPA requirement relating to the mandated land disposal (USFWS 2009). Analysis contained in the 2004 EIS related to transfer of the transportation corridor is still valid and is incorporated into this EA by reference.

The Service is aware that plutonium is present within areas of the former Rocky Flats Environmental Technology Site that have become Rocky Flats NWR, including within the surface soils of the 300-foot wide transportation corridor (USFWS 2004a). The following timeline outlines the actions related to plutonium contamination at the Refuge ending at the Refuge's establishment on August 3, 2007 (72 FR 43293):

- Rocky Flats NWR Act of 2001 -- December 28, 2001
- Rocky Flats NWR Comprehensive Conservation Plan EIS -- September 16, 2004
- Rocky Flats NWR CCP/EIS Record Of Decision -- February 16, 2005
- USFWS Refuge Soil Samples for Modified Level III Contaminants Assessment-- May 8, 2006
- Remedial Investigation/Feasibility Report -- July 2006
- Corrective Action Decision/Record of Decision for Rocky Flats Plant (USDOE) Peripheral Operable Unit and Central Operable Unit -- September 29, 2006
- Notice of Partial Deletion of the Rocky Flats Plant From National Priorities List -- May 25, 2007
- USFWS Modified Level III Contaminants Assessment Report -- May 2007
- Land Transfer -- July 12, 2007
- Refuge Established -- August 3, 2007

The EPA, as the lead Federal regulatory agency for peripheral areas transferred to the Service, has stated that no hazardous substances, pollutants, or contaminants occur above levels that allow for unlimited use and unrestricted exposure (72 FR 11313 & 72 FR 29276). This information has been confirmed by the EPA and the CDPHE. Both the Corrective Action Decision/Record of Decision and delisting action contemplated the eventual transfer of lands for the transportation corridor and are included in the

agency's decision to remove Rocky Flats from the National Priorities List (CDPHE 2011; Appendix G). Included within the CDPHE/EPA letter in Appendix G is updated information and regulatory guidance from EPA and CDPHE on any potentially remaining plutonium contamination and on the safety of refuge workers and visitors on Refuge lands. Refuge lands are currently managed under exclusive Federal jurisdiction whereby current State environmental regulations do not apply. That said, grading and construction activities such as those associated with the proposed bike path (City of Golden) or Jefferson Parkway (Jefferson Parkway Public Highway Authority) construction, after the disposal of the property to a non-Federal entity, would be subject to Colorado Standards for Protection Against Radiation[1]; These control techniques would be required on non-Federal lands and would be similar to those already imposed on any transportation project. For example, dust suppression would likely be required, but is not considered a restriction and would not limit the use of the property proposed for transfer (CDPHE 2011; Appendix G). In addition, the Colorado Air Pollution Prevention and Control Act (§25-7-102 C.R.S), is designed to provide the maximum practical air quality for the residents of Colorado. This act includes regulations to reduce fugitive particulate matter that may arise during ground disturbing techniques, such as watering, chemical stabilization, and speed restrictions for construction vehicles.[2] Similarly, the Water Quality Control Act (§25-8-501(1) C.R.S.), requires control measures for erosion control and stormwater management during construction activities, including development of a stormwater management plan and a variety of tools to reduce the likelihood of spills or other venues where contaminants could be added to surface or groundwater.[3]

Also confirmed is the FWS's 2004 analysis of cultural resources in the transportation corridor. The FWS's work with the State's Historic Preservation Office's staff is described in 3.3 of this EA.

1.6 National Wildlife Refuge System and Authorities

The mission of the National Wildlife Refuge System is "…to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans" (National Wildlife Refuge System Improvement Act of 1997). National wildlife refuges provide important habitat for native plants and many species of mammals, birds, fish, insects, amphibians, and reptiles. They also play a vital role in conserving threatened and endangered species. Refuges offer a wide variety of wildlife-dependent recreational opportunities, and many have visitor centers, wildlife trails, and environmental education programs.

Conservation of additional wildlife habitat in the Rocky Flats NWR would continue to be consistent with the following policies and management plans:

- Migratory Bird Treaty Act (1918)
- Bald Eagle Protection Act (1940)
- U.S. Fish and Wildlife Act (1956)
- Land and Water Conservation Fund Act (1965)

[1] 6 CCR 1007-1 Part 4 – Standards for Protection Against Radiation; effective July 31, 2005

[2] 5 CCR 1001-3 Regulation 1 – Emmission Control for Particulate Matter, Smoke, Carbon Monoxide, and Sulfur Oxides; effective June 21, 2007

[3] 5 CCR 1002-61 – Colorado Discharge Permit System Regulations; effective September 30, 2011

- Endangered Species Act (1973)
- Migratory Non-Game Birds of Management Concern in the U.S. (2002)
- Rocky Flats Comprehensive Conservation Plan (2005)

The acquisition authorities for the proposed refuge boundary expansion and property acquisition are the U.S. Fish and Wildlife Act of 1956 (16 U.S.C. 742a-j) and the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee). Federal money for land acquisition would not be required under the terms of the current land exchange proposals. However, if the boundary is expanded but land is not exchanged within section 16, land could be acquired with the use of the Land and Water Conservation Fund (LWCF). The LWCF is derived primarily from oil and gas leases on the Outer Continental Shelf, motorboat fuel taxes, and the sale of surplus Federal property. There could also be additional money to acquire lands, water, and interests for fish and wildlife conservation purposes as identified by Congress or donations from nonprofit organizations. Any acquisition from willing sellers would be subject to available funding.