

OLD NORTH END NEIGHBORHOOD

MERRILL, ANDERSON, KING & HARRIS, LLC
ATTORNEYS AT LAW

I-25 Project Office
Re: Comments re I-25 Environmental Assessment
May 12, 2004
Page 13

1.... traffic concentrated in the I-25 corridor could cause an eventual violation of the federal
2 standards. Under the CEQ regulations, the fact that an action may “threaten a violation of
3.... Federal, State or local law or requirements imposed for the protection of the environment” is a
4 factor to be considered in reaching the significance determination. 40 C.F.R. § 1508.27(b)(10).
5.... Moreover, the EA contains no discussion of the role of carbon dioxide as a greenhouse gas and
6 its role in potential global climate change. By any measure, however, the impact of adding
7.... capacity for an additional 60,000 vehicles per day is likely to have significant impacts on air
8 quality in the Pikes Peak region. Preparation of an EIS is warranted to take a hard look at these
9... impacts and all past, present and reasonably foreseeable future projects that may contribute to
10 an increase in air pollution in future years and disclose any impacts related to human health.
11....

12 The CEQ regulations also require consideration of “proximity to historic or cultural
13... resources and park lands” in determining significance. 40 C.F.R. § 1508.27(b)(3). In addition,
14 the regulations mandate consideration of “the degree to which the action may adversely affect
15... sites and structures listed in or eligible for listing in the National Register of Historic Places or
16 may cause loss or destruction of significant scientific, cultural or historical resources.” 40 C.F.R.
17... § 1508.27(b)(8). Furthermore, Congress imposed a special obligation on the FHWA to
18 safeguard historic properties, parks and recreation areas in the Transportation Act. Section 4(f)
19... of the Transportation Act, 49 U.S.C. § 303(c), states:
20

21..... [t]he Secretary [of Transportation] may approve a transportation
22 program or project . . . requiring the use of publicly owned land of
23.....a public park [or] recreation area . . . only if —

24
25..... (1) there is no prudent and feasible alternative to using the land; **and**

26
27..... (2) the program or project includes all possible planning to
28 minimize harm to the park [or] recreation area . . . resulting from
29..... the use.

30
31... A virtually identical provision is contained in the Federal-Aid Highways Act, 23 U.S.C. § 138
32 (1988). The DOT has concluded that “[a]ny action having more than a minimal effect on lands
33... protected under section 4(f) of the DOT Act will normally require the preparation of an
34 environmental statement.” Order 5610.1C § 12(a).

35.....
36 An adverse effect under the National Historic Preservation Act exists “when an
37....undertaking may alter, directly or indirectly, any of the characteristics of a historic property that
38 qualify the property for inclusion in the National Register in a manner that would diminish the
39... integrity of the property’s location, design, setting, materials, workmanship, feeling or
40 association.” 36 C.F.R. 800.5. “Adverse effects may include reasonably foreseeable effects
41... caused by the undertaking that may occur later in time, be farther removed in distance or be

RESPONSE

Line 2: The I-25 Proposed Action does not “threaten a violation” of the Clean Air Act. The potential for violations of the ozone standard by 2007, as reported by the Pikes Peak Area Council of Governments (PPACG), is based upon the existing trend of increasing ozone levels over the past several years. The I-25 No-Action Alternative will likely contribute to this trend. The Proposed Action, however, may have some beneficial effect in reducing ozone precursors, but the potential ozone problem in the Pikes Peak Region would require regional-level solutions. PPACG, the region’s designated air quality planning agency, is now beginning to explore potential solutions. If violations do indeed occur, and the region becomes a nonattainment area for ozone, PPACG will be required to develop an ozone element for the air quality State Implementation Plan, which must be approved by EPA. Also, transportation conformity requirements applicable for ozone precursors would go into effect to guide regional and project-level transportation decision-making.

Lines 5-7: Federal and State environmental agencies have not established air quality standards or other regulations applicable to carbon dioxide as a greenhouse gas relating to global climate change. The statement is not relevant at the project level.

Lines 7-8: Growth in population and vehicle-miles traveled (VMT) is occurring and will continue in the region. If capacity on regional-level transportation facilities is not provided, the travel will occur on arterial streets through neighborhoods, at lower speeds generally producing higher emission rates. The Proposed Action, together with all other programmed transportation projects (and increased VMT) in the region, are within the carbon monoxide emissions budget that has been approved by EPA in the State Implementation Plan. Therefore, no violations of the carbon monoxide standard are anticipated by the year 2025. Over time, the Federal Motor Vehicle Control Program has resulted in reduced pollutant emissions per vehicle mile, so emissions have not increased in proportion to changes in regional VMT. Continued benefits from this program are reflected in the carbon monoxide emission projections reported in the EA (at 3-58 and Appendix 3).

Lines 8-10: Past, present and reasonably foreseeable air quality is addressed in the EA at 4-10 to 4-12, as well as in the Air Quality chapter of the regional cumulative effects analysis, EA Appendix 9.

Lines 12-17: The intensity of impacts on historic, cultural resources and parklands was evaluated in the EA. See the sections addressing Parks and Recreation (EA at 3-37), and the Cultural Resources subsection (EA at 3-109).

Lines 17-32: FHWA takes the requirements of Section 4(f) very seriously. A Final Section 4(f) Evaluation has been prepared for the proposed I-25 improvements, and found that: (i) There is no feasible and prudent alternative to the use of land from the property; and (ii) The action includes all possible planning to minimize harm to the property resulting from such use. As required by law, the Draft 4(f) Evaluation was provided to the U.S. Department of Interior (DOI) for review and comment. In a letter dated May 20, 2004, the U.S. Department of Interior concurred with the Draft Section 4(f) Evaluation. The Final Section 4(f) Evaluation, reflecting the result of the DOI consultation, is included in this FONSI, along with the letter from DOI.

Lines 32-34: See response on page 6, line 5.

Lines 36-41: A determination of effects to historic resources was made as part of the EA process, and concurrence with the determination of effects was received from the State Historic Preservation Officer. The Advisory Council on Historic Preservation was also included in the consultation process, and chose not to comment, thereby indicating concurrence with the determination of effects.

OLD NORTH END NEIGHBORHOOD

MERRILL, ANDERSON, KING & HARRIS, LLC
ATTORNEYS AT LAW

I-25 Project Office
Re: Comments re I-25 Environmental Assessment
May 12, 2004
Page 14

1..... cumulative.” *Id.* Adverse effects can include changes to the character of the property’s use and
2 the introduction of visual, atmospheric or audible elements that diminish the integrity of the
3..... property’s significant historic features. *Id.* If adverse effects are found, then the agency must
4 develop measure to mitigate those effects.

5.....
6 According to FHWA regulations, the “use” of park lands that triggers the protections of
7..... section 4(f) includes “constructive use,” defined as proximity impacts that are “so severe that the
8 protected activities, features, or attributes that qualify a resource for protection under section 4(f)
9..... are substantially impaired.” 23 C.F.R. § 771.135(p)(2). “Constructive use” occurs when the
10 projected noise level increase attributable to the project substantially interferes with the
11.... enjoyment of an urban park where serenity and quiet are significant attributes of the park’s
12 significance. 23 C.F.R. § 771.135(p)(4)(i). Constructive use also occurs when the proximity of
13.... the proposed action “substantially impairs esthetic features or attributes” of a park. 23 C.F.R. §
14 771.135(p)(4)(ii).

15.....
16 Designated historic districts and recreational resources are found along the I-25 corridor
17.... and will be adversely impacted by the proposed action; the Historic Resources Survey Report
18 analyzed 32 historic properties within the area of potential effects. The most significant impacts
19.... will clearly be imposed upon Monument Valley Park—a legacy left to the people of the City of
20 Colorado Springs by General William Jackson Palmer nearly one hundred years ago.⁴³ In
21.... addition, a multi-use trail known as the Pikes Peak Greenway parallels I-25 for approximately
22 thirteen miles. The Pikes Peak Greenway serves as the north-south spine of the Colorado
23.... Springs trail system and is heavily used by runners, walkers and bicyclists. Colorado Springs is
24 currently constructing a thirty-acre community park adjacent to I-25 on the southwest edge of
25.... downtown near Cimarron Street, which will be known as Confluence Park due to its proximity to
26 the confluence of Monument and Fountain Creeks. Confluence Park and Dorchester Park will
27.... also both be impacted by noise from I-25. The North End Historic District is also located within
28 the area of potential effects addressed in the Historic Resources Survey Report. The North End
29.... Historic District was listed on the National Register of Historic Places on December 17, 1982,⁴⁴
30 and encompasses an area roughly bounded by Monument Valley Park to the west, Uintah to the
31.... south, Nevada to the east and Madison to the north.

32
33..... At the insistence of historic preservation officials, CDOT has already made a finding of
34 adverse effect for historic resources impacted by the proposed action. On January 8, 2004,
35.... CDOT and the FHWA jointly issued a determination of eligibility and effect for the I-25
36 expansion that included a “no adverse effect” on historic properties. By letter dated February 6,

⁴³ The Historic Resources Survey Report inexplicably provides greater attention and mitigation to the U.S. Air Force Academy, which has facilities located miles from I-25, than to Monument Valley Park and the Historic North End District, which are within hundreds of feet of the highway. *See*, HRSR Vol. II at 36-37.

⁴⁴ *See*, Attachment 5.

RESPONSE

Lines 1-4: The EA properly evaluated the direct, indirect, and cumulative effects of the Proposed Action upon historic properties in accordance with 36 CFR Part 800. Where impacts to historic resources have been identified, appropriate mitigation measures were developed and included in the Memorandum of Agreement between FHWA, CDOT, SHPO and the Advisory Council.

Lines 6-31: It is important to remember that there are key distinctions between a U.S. DOT Act Section 4(f) “use” of a protected resource and a NHPA Section 106 impact to an historic resource. For example, the need to take a few feet square feet from the parking lot of historic St. Mary’s Church is considered a Section 4(f) use, although it has been determined to have “no adverse effect” under Section 106. Similarly, proposed changes at the Bijou Street Entrance Gate to Monument Valley Park are considered an adverse effect on the park (by diminishing its intensity of setting), although the adverse effect does not constitute a Section 4(f) use, because there would be no physical taking and the impact is not so severe that it would substantially diminish the significance of the historic park or of the park land.

As discussed in the EA at 3-112, the Proposed Action would have an adverse effect on the Monument Valley Park and its Rock Entrance Gate, the Air Force Academy, and the WPA Wall. As also indicated in the EA on 3-121, mitigation measures to offset these adverse effects were developed and included in a Memorandum of Agreement which has been executed by FHWA, CDOT, the SHPO and the Advisory Council. A copy of the MOA is included in this FONSI.

As stated in Answer B to Question #1 in FHWA’s Section 4(f) Policy Paper, “A constructive use of a Section 4(f) site can occur when the capability to perform any of the site’s vital functions is substantially impaired by the proximity impacts from a transportation project. Such substantial impairment would occur when the proximity impacts to Section 4(f) lands are sufficiently serious that the value of the site in terms of its prior significance and enjoyment are substantially reduced or lost.” Constructive use pertains, as stated in the policy, when the “vital functions” are so greatly impaired that the “value of the site ... are substantially reduced or lost.” This is clearly not the case with Monument Valley Park or Dorchester Park. As pointed out in the EA, the activities within these parks would not be substantially impaired by the proximity impacts of the Proposed Action, including traffic noise from I-25. Neither park would lose their vital functions or their value as parks, and neither derives its eligibility and importance from any use where serenity and quiet are “significant attributes of the park’s significance.” Furthermore, Monument Valley Park would retain its eligibility for listing on the National Register, and the Proposed Action would have “no adverse effect” on the historic qualities of the park, except for the Bijou Street Entrance Gate.

Lines 16-20: Impacts to Monument Valley Park (which is both an historic resource and a park) are documented in the EA. In consultation with the SHPO, it has been determined that the Proposed Action would result in an adverse effect to the park due to the proposed construction of a short retaining wall along Bijou Street adjacent to the park’s Bijou Street entrance gate. The Proposed Action would result in no physical taking and no constructive use, therefore no Section 4(f) impact would occur to this resource. The assertion that “The most significant impacts will clearly be imposed upon Monument Valley Park ...” is not substantiated. The analysis of potential impacts to Monument Valley Park does not indicate that any would be significant.

RESPONSE to Page 14 comments continues on next sheet...

OLD NORTH END NEIGHBORHOOD

MERRILL, ANDERSON, KING & HARRIS, LLC
ATTORNEYS AT LAW

I-25 Project Office
Re: Comments re I-25 Environmental Assessment
May 12, 2004
Page 14

1..... cumulative.” *Id.* Adverse effects can include changes to the character of the property’s use and
2 the introduction of visual, atmospheric or audible elements that diminish the integrity of the
3..... property’s significant historic features. *Id.* If adverse effects are found, then the agency must
4 develop measure to mitigate those effects.

5.....
6 According to FHWA regulations, the “use” of park lands that triggers the protections of
7..... section 4(f) includes “constructive use,” defined as proximity impacts that are “so severe that the
8 protected activities, features, or attributes that qualify a resource for protection under section 4(f)
9..... are substantially impaired.” 23 C.F.R. § 771.135(p)(2). “Constructive use” occurs when the
10 projected noise level increase attributable to the project substantially interferes with the
11.... enjoyment of an urban park where serenity and quiet are significant attributes of the park’s
12 significance. 23 C.F.R. § 771.135(p)(4)(i). Constructive use also occurs when the proximity of
13.... the proposed action “substantially impairs esthetic features or attributes” of a park. 23 C.F.R. §
14 771.135(p)(4)(ii).

15.....
16 Designated historic districts and recreational resources are found along the I-25 corridor
17.... and will be adversely impacted by the proposed action; the Historic Resources Survey Report
18 analyzed 32 historic properties within the area of potential effects. The most significant impacts
19....will clearly be imposed upon Monument Valley Park—a legacy left to the people of the City of
20 Colorado Springs by General William Jackson Palmer nearly one hundred years ago.⁴³ In
21.... addition, a multi-use trail known as the Pikes Peak Greenway parallels I-25 for approximately
22 thirteen miles. The Pikes Peak Greenway serves as the north-south spine of the Colorado
23....Springs trail system and is heavily used by runners, walkers and bicyclists. Colorado Springs is
24 currently constructing a thirty-acre community park adjacent to I-25 on the southwest edge of
25.... downtown near Cimarron Street, which will be known as Confluence Park due to its proximity to
26 the confluence of Monument and Fountain Creeks. Confluence Park and Dorchester Park will
27.... also both be impacted by noise from I-25. The North End Historic District is also located within
28 the area of potential effects addressed in the Historic Resources Survey Report. The North End
29....Historic District was listed on the National Register of Historic Places on December 17, 1982,⁴⁴
30 and encompasses an area roughly bounded by Monument Valley Park to the west, Uintah to the
31....south, Nevada to the east and Madison to the north.

32
33.....At the insistence of historic preservation officials, CDOT has already made a finding of
34 adverse effect for historic resources impacted by the proposed action. On January 8, 2004,
35....CDOT and the FHWA jointly issued a determination of eligibility and effect for the I-25
36 expansion that included a “no adverse effect” on historic properties. By letter dated February 6,

⁴³ The Historic Resources Survey Report inexplicably provides greater attention and mitigation to the U.S. Air Force Academy, which has facilities located miles from I-25, than to Monument Valley Park and the Historic North End District, which are within hundreds of feet of the highway. *See*, HRSR Vol. II at 36-37.

⁴⁴ *See*, Attachment 5.

RESPONSE

See other Responses to Page 14 on preceding sheet...

Lines 21-23: Impacts to the Pikes Peak Greenway (not an historic resource) are documented in the EA at page 3-45 and 3-69. This trail, built in the 1990s next to the busy freeway, will experience a noise increase of about 2 decibels under the Proposed Action. This change will be barely perceptible and will not substantially impair the use of the facility. In accordance with 23 CFR 771.135(p)(5)(iii), this would not constitute a Section 4(f) use.

Lines 25: Impacts to Confluence Park (not historic and in fact currently under construction) are documented in the EA at pages 3-42 and 3-67. The park has been planned concurrently with development of the I-25 EA, and noise-sensitive features are not planned near the freeway. The Proposed Action would involve no physical taking of land from Confluence Park, and freeway noise would not result in a constructive use. There would be no Section 4(f) use of this resource.

Line 26: Impacts to Dorchester Park (an old park, but not eligible for the National Register of Historic Places) are documented in the EA at pages 3-42 and 3-66. The Proposed Action would involve no physical taking of land from Dorchester Park, and freeway noise would not result in a constructive use. There would be no Section 4(f) use of this resource.

Lines 27-31: As documented in the EA, the Proposed Action would involve no physical taking of land from the North End Historic District, and freeway noise would not result in a constructive use of the District or any property within it. FHWA regulations at 23 CFR 771(p)(5)(i) state that “a constructive use does not occur when...compliance with the requirements of section 106 of the National Historic Preservation Act and 36 CFR part 800 for proximity impacts of the proposed action, on a site listed on or eligible for the National Register of Historic Places, results in an agreement of ‘no effect’ or ‘no adverse effect’.” As stated in the EA at page 3-122, the determination of effects from the Proposed Action on the Old North End Historic District (5EP333) was “no historic properties affected.” The SHPO agreed with this determination.

Similarly, 23 CFR 771.135(p)(5)(ii) indicates that there is no constructive use when “the projected traffic noise levels of the proposed highway project do not exceed the FHWA noise abatement criteria as contained in Table 1, 23 CFR part 772.” Predicted noise levels in the Old North End Neighborhood do not exceed these criteria today and are predicted to not exceed the criteria in the year 2025 with implementation of the Proposed Action.

Lines 33-36: The statement is misleading. Findings of adverse effects were made because they were the outcome of the consultation process with the SHPO, in accordance with the National Historic Preservation Act (NHPA). Findings were made because that is required by law, and not because of “the insistence” of any agency. The consultation process included the Colorado Springs Historic Preservation Board as the Certified Local Government, in accordance with Section 106 of the National Historic Preservation Act. As a consulting party, the Board’s input was considered by the FHWA.

Footnote 43: In regard to the comment in footnote 43 that the historic survey report “inexplicably provides greater attention and mitigation to the U.S. Air Force Academy, which has facilities located miles from I-25, than to Monument Valley Park and the Historic North End District,” it should be clear from a careful reading of the EA that I-25 is on an easement within the grounds of the Academy. Therefore, changes to I-25 would directly affect Academy property, a property eligible for the National Register and a property that in April 2004 was designated as a National Landmark (the Cadet Area only).

OLD NORTH END NEIGHBORHOOD

MERRILL, ANDERSON, KING & HARRIS, LLC
ATTORNEYS AT LAW

I-25 Project Office
Re: Comments re I-25 Environmental Assessment
May 12, 2004
Page 15

1.... 2004, the Colorado Springs Historic Preservation Board dissented, expressing a lack of
2 concurrence with the no adverse effect finding due to, *inter alia*, “the effect of the use on the
3....Park and the visual and auditory aspects of the Park, and the impact on the neighbors.”⁴⁵ On
4 February 10, 2004, the State Historic Preservation Officer also disagreed with the “no adverse
5....effect” determination. Subsequently, CDOT reversed itself and issued a Determination of
6 Finding of Adverse Effect, although the finding was limited to only Monument Valley Park and
7....the Rock Entrance Gate on Bijou Street. CDOT did not respond to the Historic Preservation
8 Board’s concerns about adverse effects on the North End Historic District. Nonetheless, these
9....effects alone warrant preparation of an EIS.

10
11.....However, the EA recognizes that there will be other substantial impacts to section 4(f)
12 properties, including noise levels approaching or exceeding 67 dBA at numerous points in
13...Monument Valley Park and along the Pikes Peak Greenway. The EA summarily dismisses the
14 impacts on these park properties and concludes without support that their protected activities,
15...features and attributes will not be substantially impaired by the proximity impacts of an
16 expanded I-25. EA at 6-2. The EA does not consider the cumulative impacts on parkland
17...resulting from all past, present and reasonably foreseeable future actions. Indeed, the EA
18 erroneously suggests that safety improvements from Bijou to Fillmore need not be considered
19...because those “gradual” actions occurred “when the park was considered not eligible to the
20 National Register of Historic Places.” *See*, EA at 3-115.

21.....
22
23... The EA finding that noise impacts in Monument Valley Park are “not so severe” as to
24 result in substantial impairment is arbitrary and unfounded. Monument Valley Park is eligible
25...Palmer,⁴⁶ who gifted the land to the people of Colorado Springs with the intent that it be
26 reserved in perpetuity as “an open and verdurous space removed from the dust and noise of the
27...streets and roads, yet readily accessible from all parts of the town – where the citizens can come
28 to walk (not ride or drive as that means dust) and his children to play – and all be refreshed by a
29...little taste of country, without going too far afield.”⁴⁷

30
31.... Clearly, the historical importance of Monument Valley Park relates to he its intended use
32 and its rural character, which takes on added importance in light of the urban development that
33...surrounds it. In 1992, the Colorado Springs City Attorney was called upon to interpret the
34 language of the Palmer deed of Monument Valley Park in connection with a proposed
35...subdivision filing. According to the resulting legal opinion, which is memorialized in a
36 memorandum dated June 12, 1992, “[t]he guiding direction of the Palmer deeds is maintenance

⁴⁵ *See*, Attachments 19 & 20, including the February 6, 2004 letter, minutes of the Historic Preservation Board meeting, and CDOT’s February 27, 2004 letter in response to the Board’s action, reversing its position on the “no adverse effect” determination.

⁴⁶ HRSR Vol. II at 35.

⁴⁷ *See*, Attachment 14.

RESPONSE

Lines 3-9: The statement is misleading. CDOT did not “reverse itself,” as asserted. Rather, in consultation with the SHPO, agreement was reached on the effects determination. The SHPO did NOT find that there were auditory impacts meriting a finding of adverse effects on the park or the neighborhood. As is documented in the EA, the consultation process resulted in the following determinations of effect for Monument Valley Park: (1) Fillmore to Fontanero, no historic properties affected; (2) Fontanero to Uintah, no historic properties affected; (3) Uintah to Bijou, adverse effect due to impact at Bijou Street Entrance Gate and a portion of Monument Valley Park on which it is situated; and (4) Bijou to Cimarron, no historic properties affected. In addition, the SHPO concurred with FHWA’s finding of “no historic properties affected” for the North End Historic District. The determination of effect is based on direct, indirect and cumulative impacts, including visual and auditory effects.

Lines 11-15: FHWA does not agree that the noise impacts to Monument Valley Park and trails within the Pikes Peak Greenway would be so severe they would result in a constructive use of these resources. As stated in the response to line 7 on page 14, “A constructive use of a Section 4(f) site can occur when the capability to perform any of the site’s vital functions is substantially impaired by the proximity impacts from a transportation project. Such substantial impairment would occur when the proximity impacts to Section 4(f) lands are sufficiently serious that the value of the site in terms of its prior significance and enjoyment are substantially reduced or lost.” Constructive use applies, as stated in the policy, when the “vital functions” are so greatly impaired that the “value of the site ... are substantially reduced or lost.”

The noise impacts from the Proposed Action were thoroughly evaluated by FHWA in accordance with 23 CFR 772 and CDOT noise abatement guidelines. Noise mitigation will be provided where appropriate and where it has been determined to be reasonable and feasible. In consultation with the Parks, Recreation and Cultural Services Department and its Advisory Board, reasonable and feasible mitigation measures for Monument Valley Park will be provided. FHWA also believes it has correctly interpreted its own regulations, policy, guidance, and case law regarding Section 4(f) to determine that noise and visual impacts to parks and recreation trails from the Proposed Action “are not so severe that the protected activities, features, or attributes that qualify these resources for protection under Section 4(f) are substantially impaired” as stated on Page 6-2 of the EA.

This matter is discussed in further detail in the response to lines 6-31 on page 14a.

Lines 16-20: The statement that “The EA does not consider the cumulative impacts on parkland” is incorrect. With respect to noise, noise abatement criteria call for examination of long-term change in noise, which would normally be applied prospectively from current conditions (e.g., 2000 to 2005 timeframe) to the 2025 planning horizon. In response to concerns from the Old North End Neighborhood, CDOT instead measured the noise change retrospectively from the year 1990, and compared these levels to projected 2025 levels. During this 35-year time frame, changes in noise levels would not exceed a 10-decibel increase, which is the CDOT criterion for a “substantial increase” in noise. The purpose of looking back to 1990 was to consider the cumulative effects of the Bijou-to-Fillmore safety improvements on I-25.

Lines 17-20: FHWA disagrees that the EA “erroneously suggests that safety improvements from Bijou to Fillmore need not be considered because those ‘gradual’ actions occurred ‘when the park was considered not eligible to the National Register of Historic Places.’” This suggests cause and effect in a paragraph of the EA where none was intended. The actual language (EA at 3-115) stated, “Since the construction of Interstate 25 in the late 1950s, there have been gradual changes to the original environmental setting and feeling of the park, including increased traffic and visual impacts such as adding acceleration and deceleration lanes and adding a sound wall on the west side of I-25 opposite the park. The past action occurred when the park was considered not eligible to the National Register of Historic Places.” It was determined that the park is eligible for listing on the National Register of Historic Places after the completion of the I-25 safety improvements between Bijou and Fillmore. Therefore the past improvements had no effect on the park’s eligibility.

Lines 23-29: The fact that the park is eligible for historic listing due to its association with General Palmer is not contested, and is documented in the EA.

Line 23: FHWA disagrees with the assertion that the EA finding regarding the severity of noise impacts to Monument Valley Park was “arbitrary and unfounded.” Noise impacts for Monument Valley Park were carefully evaluated in accordance with FHWA regulations (23 CFR 772). As a result of the analysis, noise mitigation was proposed for the park where it was determined to be feasible and reasonable, in consultation with the City’s Parks and Recreation staff and Advisory Board. As noted previously in the response to page 6, lines 10-11, there will be noise increases in Monument Valley Park, but FHWA has determined that the noise would not substantially impair the use of the park. Therefore there is no constructive use that would result in a Section 4(f) use.

Lines 31 to end of paragraph, page 16: The park at its time of building was indeed rural in character, but the subsequent growth of the City during the 20th century added 500,000 residents to the region and surrounded the park with urban land uses. Today, the park is in the urban center of Colorado’s second most populous city. Not since its construction in 1907 and never again will the park have the original rural setting that it had 100 years ago. Nevertheless, the park remains an important historic resource and is eligible for listing on the National Register of Historic Places.

OLD NORTH END NEIGHBORHOOD

MERRILL, ANDERSON, KING & HARRIS, LLC
ATTORNEYS AT LAW

I-25 Project Office
Re: Comments re I-25 Environmental Assessment
May 12, 2004
Page 16

1.... of a pedestrian park containing a tranquil, quiet atmosphere.”⁴⁸ Furthermore, the City Attorney
2 opined that the Palmer deed could have the effect of forbidding adjacent land uses that “created
3.... excessive noise which might disturb the tranquility of the park” or could “obstruct the view from
4 the park of surrounding properties.”⁴⁹ When viewed in the context of the original gift to the
5.... people of Colorado Springs, it is apparent that the excessive noise and visual obstructions that
6 may result from the proposed action would substantially impair the historical value of Monument
7.... Valley Park.

8
9.... The National Historic Preservation Act protects against changes to the character of a
10 historic property’s use, diminishment of the integrity of the property’s feeling. At the closest
11... point, Monument Valley Park is only 450-500 feet from I-25. HRSR Vol. II at 36, and yet no
12 mitigation is proposed for this section of the park. It is likely that increased noise and its effects
13... will lead to decreased use and disuse of Monument Valley Park and the possible elimination of
14 park events. Therefore, the section 4(f) analysis should have resulted in a finding of adverse
15... effect for the entire length of the park, and the severe noise impacts to and constructive use of
16 parkland caused by the proximity of the proposed highway improvements clearly warrants more
17... attention and abatement.

18
19..... Similarly, the Historic Resources Survey Report should have resulted in a finding of
20 adverse effects on the North End National Historic District, which is located within 1,250 feet of
21... the highway. The North End Historic District is historically important not only because of the
22 architecture of the homes in the neighborhood, but also because of the history of the
23... neighborhood. HRSR Vol. I at 61. Indeed, it was only through the efforts of residents in the
24 District that the neighborhood was listed on the National Register of Historic Places in the first
25.... place. HRSR Vol. I at 31. This area was home to some of Colorado Springs’ most prominent
26 citizens, and the Historic Resources Survey Report acknowledges that the District today “still
27.... reflects this same blend of residents. Even the introduction of electric streetcars in the northern
28 neighborhood did not impact the quiet residential streets.” HRSR Vol. I at 30. The Report
29.... affirms the importance of the “neighborhood” concept of this area, noting that “[e]ven though
30 one is driving a modern automobile down the wide, landscaped streets, one almost expects to
31.... see white-clad ‘genteel’ ladies exiting their houses for a stroll down the avenue or perhaps to
32 have tea on the verandah.” HRSR Vol. I at 31.

33.....
34 Even though CDOT’s modeling predicts that noise levels in the neighborhood will not
35.... rise to levels where abatement is mandatory, the information presented in the EA clearly
36 demonstrates that there is a likelihood of adverse effects on the characteristics that helped
37.... qualify the North End Historic District for the National Register of Historic Places. The noise

⁴⁸ See, Attachment 21. The memorandum also notes that “General Palmers vision was to provide a downtown park along the creek, with easterly and westerly views of the City and the mountains, with a primary mission of provide picnic and other family activities.”

⁴⁹ *Id.*

RESPONSE

Lines 1-7: As noted previously, the determination of adverse effect on Monument Valley Park was based solely upon the effects of the Proposed Action on the Bijou Street Entrance Gate, where the addition of a short retaining wall, steps and a handrail would change the historic setting of the entrance gate. Noise and visual effects were not found to adversely effect the eligibility of Monument Valley Park for listing to the National Register of Historic Places.

Lines 10-12: On the same page cited, HRSR Vol. II at 36 (EA Appendix 6, Volume II), it is stated that CDOT proposed mitigation strategies designed to protect the affected resource, in this case a 50-foot section of trail. The Parks and Recreation Advisory Board did not support the potential strategies, and it was concluded that mitigation was not feasible and reasonable at this location. Mitigation was proposed (and endorsed by the Parks Board) for noise-sensitive uses in the park south of Uintah Street. The Parks Board deliberations and decisions are documented in Section 12 of the EA (Agency Correspondence), in the meeting minutes attached to letters from Paul Butcher, Director of the Parks Department.

Lines 13-17: This section of the park, between Recreation Way and Monument Creek, is only wide enough to accommodate the trail. There are no other park uses in this area. In 2025, with implementation of the Proposed Action, the predicted noise level at this location would be 66 dBA. It is highly unlikely that a park event would be eliminated due to this magnitude of noise on this short section of trail. It is estimated that a person walking at a moderate pace would traverse this 50-foot distance in less than 20 seconds. Noise on this 50-foot section of trail is not so severe as to substantially impair this activity and therefore result in a constructive use. As there is no physical taking of resources and no constructive use, FHWA has concluded that there is no Section 4(f) use of this resource.

Lines 19-21: Located “within 1,250 feet of the highway,” the North End Historic District is well outside of the approximately 500 feet distance where the projected future noise contour line for 66 decibels is expected. Predicted noise levels for two modeled locations in the Old North End in the year 2025 are 55 dBA and 59 dBA, both well under the abatement criterion. These noise levels would not diminish the qualities that made the neighborhood an historic district.

Lines 35-37: FHWA disagrees with the statement that “the EA clearly demonstrates that there is a likelihood of adverse effects on the characteristics that helped qualify the North End District for the National Register of Historic Places.” The District is eligible because of the age, condition, and architecture of the homes and for its association with prominent citizens from the past who resided there. In making a determination as to whether or not there will be an impact to an historic property, the SHPO takes into account any changes to the characteristics that make the resource eligible for listing. In this case, the SHPO concurred with FHWA’s finding that the appropriate impact determination for the North End District is “no historic properties affected.” See EA at page 3-122 and EA Appendix 6.

OLD NORTH END NEIGHBORHOOD

MERRILL, ANDERSON, KING & HARRIS, LLC
ATTORNEYS AT LAW

I-25 Project Office
Re: Comments re I-25 Environmental Assessment
May 12, 2004
Page 17

1..... levels predicted in the EA will negatively affect the feeling of the neighborhood by disturbing
2 the quiet, and diminish the likelihood that residents will “stroll down the avenue” or “have tea
3..... on the verandah.” Also, CDOT and the FHWA are required to take into account the potential
4 indirect impacts that the proposed action will have on the neighborhood—even if those effects
5..... will occur later in time as a result of cumulative impacts. It is reasonably foreseeable that the
6 visual and noise impacts from the proposed action area will depress property values and
7... undermine the neighborhood’s stability, threatening not just the quality of life of people who
8 live there but even the historic structures themselves. None of these potential impacts have been
9..... analyzed in the draft section 4(f) documentation or historic resources survey as required by law,
10 but if they were they would surely lead to a determination of adverse effect on these historic
11..... resources.

12
13..... The section 4(f) documentation is also flawed because it failed to recognize the proposed
14 action’s constructive use of the Pikes Peak Greenway and Confluence Park.⁵⁰ There is active
15..... outdoor use along the entire length of the Greenway, not merely in certain sections as claimed.
16 One of the goal’s of the Pikes Peak Greenway Master Plan is to “[m]aximize visual
17..... compatibility between I-25 and the recreational amenities within the corridor.”⁵¹ The proximity
18 of the highway improvements to the Greenway will substantially impair the aesthetic experience
19..... trail users. 23 C.F.R. § 771.135(p)(4)(ii). “Constructive use” also occurs when the projected
20 noise level increase attributable to the project substantially interferes with the enjoyment of an
21..... urban park where serenity and quiet are significant attributes of the park’s significance. 23
22 C.F.R. § 771.135(p)(4)(i). Project noise levels along the Greenway will demonstrably interfere
23..... with the enjoyment of this public recreational amenity and CDOT should have engaged in “all
24 possible planning” to mitigate the impacts to the park to the fullest extent possible unless no
25..... prudent and feasible alternative existed.

26
27..... CDOT’s decision to analyze noise mitigation only for ball fields, gardens, ponds, and
28 trails on the west side of Monument Creek north of Uintah Street does not meet the letter or
29..... spirit of the 4(f) requirements. The Transportation Act requires extraordinary attention to public
30 lands, and CDOT has unaccountably failed to include “all possible planning to minimize harm
31..... to the park.” For example, The City of Colorado Springs Comprehensive Plan, adopted
32 unanimously by City Council in 2001, expressly endorses a strategy of designing and
33..... constructing roads, bridges and other transportation facilities to minimize adverse noise impacts
34 and working to reduce excessive noise levels.⁵² The Comprehensive Plan specifically calls for
35..... the use of “paving and surface materials that minimize noise.”⁵³ The EA fails to take a hard
36 look at innovative, aggressive mitigation measures, such as rubberized asphalt, a prudent and

⁵⁰ CDOT’s noise modeling predicts that noise levels at the Confluence Park water feature/sculpture in the center of the park will reach 66 dBA. See Attachment 22, Parks Department Memorandum.

⁵¹ See Attachment 23, Excerpt of Pikes Peak Greenway Master Plan at 8.

⁵² See Attachment 11, Strategy T 201c.

⁵³ *Id.*

RESPONSE

Lines 5-8: Given the historic preservation overlay ordinance, the distance of the neighborhood from the highway, and the proximity of the neighborhood to Monument Valley Park, Colorado College, and other important cultural amenities, the speculated negative effects are unlikely. To the contrary, the historic neighborhood is very likely to remain an attractive, desirable location into the foreseeable future.

Line 8: It is unclear what impact could represent a hypothetical threat to historic structures in the Old North End Neighborhood, which are located some 1,250 feet distant from the highway, not in range of noise or vibration impacts related to the Proposed Action.

Lines 8-11: The Proposed Action would not substantially impair the characteristics that make this neighborhood historic, nor would it result in an adverse effect to an historic resource. As there would be no physical taking and no constructive use (i.e., noise and visual impacts), there would be no Section 4(f) use.

Lines 13 to 25: Regarding the Pikes Peak Greenway (constructed during the 1990’s next to the existing, busy Interstate highway) and Confluence Park (now being constructed next to the existing, busy Interstate highway), these facilities were planned with the understanding that traffic noise and transportation facilities would be a part of their auditory and visual setting (see EA at page 3-42 and 3-45). Note that planning for Confluence Park, which occurred concurrently with I-25 EA development, recognized the park’s urban setting and purposefully sited no noise-sensitive activity areas (e.g. amphitheater or other outdoor performance venue) on the park’s west side, closest to the existing freeway. For this reason, and in accordance with 23 CFR 771.135(p)(v), there would be no Section 4(f) constructive use at Confluence Park. Due to their proximity to I-25, portions of the Greenway and planned park currently experience noise in excess of 66 decibels. As a result of the Proposed Action, these areas can expect to experience a noise increase of about 2 decibels, which is considered a change imperceptible to the human ear. At Confluence Park, visibility into the park is a high priority; therefore, noise barriers were not desired by the City of Colorado Springs. Along the Greenway, construction of noise barriers along the Greenway would be impractical and would have adverse impacts to trail users, such as the loss of an open setting and reduced safety due to isolation. Therefore, mitigation is not proposed for these locations. This information is presented in the EA at 3-42 and 3-45. In accordance with 23 CFR 771.135(p)(5)(iii), a constructive use does not occur when the increase in the projected noise levels under the Proposed Action, compared with the projected noise levels under the No-Action Alternative, are barely perceptible (3 dBA or less).

Lines 27 to end of paragraph: FHWA and CDOT evaluated noise impacts in accordance with 23 CFR 772. In doing so, consideration was given to all areas where frequent human use occurs, including those within Monument Valley Park. Noise mitigation was proposed at locations in the park that exceed the 66 dBA noise abatement criteria and where frequent human use occurs as defined by the Parks, Recreation, and Cultural Services staff and agreed upon by their Advisory Board. These locations were then evaluated to determine the feasibility and reasonableness of mitigation, and the recommended mitigation plan contained in the EA was agreed to by Parks staff and the Advisory Board. Section 4(f) would only apply if there were a direct taking or substantial impairment of park activities, features or attributes. As pointed out in the EA, there is no direct taking, or substantial impairment, of the park; therefore there is no 4(f) use.

Line 36: It is the policy of the Federal Highway Administration that alternative pavement surfaces are not considered as noise abatement measures. See EA at 3-66. Therefore, mitigation for noise-impacted resources must include use of conventional measures such as noise walls or berms, from which noise reduction may reliably be expected. Rubberized asphalt therefore is not considered a noise mitigation measure, nor an “aggressive mitigation measure,” as asserted.

OLD NORTH END NEIGHBORHOOD

MERRILL, ANDERSON, KING & HARRIS, LLC
ATTORNEYS AT LAW

I-25 Project Office
Re: Comments re I-25 Environmental Assessment
May 12, 2004
Page 18

1.... feasible alternative to tined concrete that could provide noise mitigation while at the same time
2 preserving the view corridor from Monument Valley Park to the mountains and from passing
3.... motor vehicles into the park.⁵⁴ In other areas of the United States with similar climates,⁵⁵ the use
4 of rubberized asphalt has reduced highway noise by an average of 4-6 dBA while
5.... simultaneously reducing maintenance costs and improving safety.⁵⁶
6
7..... Despite direction from the City's Comprehensive Plan and specific requests from user
8 groups to consider alternative road surfacing technology, CDOT dismissed potential mitigation
9....in the form of alternative pavement types without ever taking a hard look at the evidence.⁵⁷ In
10 response to an April 12, 2004 Open Records Act request for "any and all documents concerning
11...asphalt rubber and its effectiveness as a surface material used to mitigate highway noise,
12 including but not limited to reports, studies, data, memoranda, correspondence and/or notes,"
13...which was submitted after the EA was released for public comment, CDOT produced only three
14 articles and one set of test data that suggests that rubberized asphalt is effective at noise
15...reduction when compared with the concrete surfaces used on sections of I-25 adjacent to the
16 park and neighborhood.⁵⁸ Alternative methods of noise mitigation such as paving with more
17...quiet materials such as has been used in many states and countries and should have been more
18 rigorously explored. CDOT's lack of knowledge about pavement materials such as asphalt

⁵⁴ See, Attachment 24, Comments of Dr. Louis Cohn. Dr. Cohn is a nationally-recognized expert on highway noise who has completed several projects for CDOT and has trained many of CDOT's employees and consultants in highway noise analysis and noise study report preparation.

⁵⁵ In particular, a 1989 project on Interstate 40 in Flagstaff, Arizona—at a similar elevation and climate—has yielded impressive results. See, <http://www.dot.state.az.us/ABOUT/materials/pavedsgn/project1.ppt>.

⁵⁶ The Arizona Department of Transportation is a national leader in using rubberized asphalt to reduce noise impacts; information about the Arizona program can be viewed at <http://www.quietroads.com/>. Similar projects have resulted in beneficial results in California, Texas and other states. The Friends of Monument Valley Park and Old North End presented extensive information to CDOT about rubberized asphalt in the past several years, to no avail. A selection of this material is attached hereto as Attachment 25.

⁵⁷ See, EA at Page 3-66 ("Through the EA public involvement process, some citizens suggested the use of a rubberized asphalt pavement on I-25 for the purpose of noise reduction. However, alternative pavement types are not considered a proven noise mitigation measure by FHWA and CDOT. Instead, pavement selection is based upon life cycle costs, taking into account durability, maintenance, and traffic disruption factors."); see also Noise Impacts Technical Memorandum at 20 (indicating no consideration of pavement type).

⁵⁸ See, Attachment 26. After the ORA was submitted, CDOT released a Tire/Pavement Noise Study that appears to indicate success in reducing noise through the use of alternative pavement types. See, Attachment 27. At the very least, this study indicates that CDOT had access to information about possible mitigation measures that was not seriously considered, or presented to the public and local government officials. Similarly, the CDOT Aeronautics-Division paved a runway at the Glenwood Springs Municipal Airport and reported that the material should extend pavement life by 7 to 10 years. See, Attachment 28. The failure to consider a prudent and feasible measure capable of mitigating impacts to Monument Valley Park renders the section 4(f) analysis deficient.

RESPONSE

Lines 1-3: Regarding obstruction of mountain views, the proposed noise barriers would block mid-range views from the park to the highway, but would not obstruct the longer views to Pikes Peak and the mountains to the west (EA at 3-42). The letter from Dr. Cohn referenced in Footnote 54 identifies as the "best solution" an approach that includes noise barriers, "because the rubberized asphalt would not have to be classified as a noise abatement measure." Dr. Cohn's letter acknowledges that alternative pavement types are not recognized as noise mitigation by FHWA.

Lines 3-5: It should be noted that a variety of studies indicate different performance qualities, however, as stated above, rubberized asphalt is not a proven noise-mitigation measure recognized by FHWA.

Lines 7 to end of paragraph: CDOT's pavement engineers frequently review industry literature and conduct tests as appropriate to evaluate pavement alternatives for their durability, safety and other characteristics, including tire/pavement noise. Pavement selection, however, is currently based upon life cycle analysis, as correctly pointed out in footnote 57. CDOT is actively investigating noise effects of alternative pavements, as evidenced by the study referenced in footnote 58.

Footnote 56: The Arizona and California departments of transportation are currently implementing pilot programs intended to demonstrate the effectiveness of quiet pavement strategies and evaluate any change in their noise mitigation properties over time. At present, knowledge on changes with time is extremely limited, the pilot programs will collect data and information for at least a five to ten year period, and FHWA will then determine if policy changes are warranted. Until then, it is FHWA policy that alternative pavement types are not considered noise mitigation measures.

Footnote 58: FHWA disagrees with the assertion that "the failure to consider a prudent and feasible measure capable of mitigating impacts to Monument Valley Park renders the section 4(f) analysis deficient." First, as noted previously, there is no taking of Monument Valley Park land and no constructive use, therefore there are no uses of this resource under Section 4(f). Second, in accordance with the requirements of 23 CFR 772, appropriate mitigation measures for Monument Valley Park were incorporated into the Proposed Action. Third, the alternative pavement suggested in the comment is not recognized as mitigation by FHWA and is not recognized as feasible by CDOT.

OLD NORTH END NEIGHBORHOOD

MERRILL, ANDERSON, KING & HARRIS, LLC
ATTORNEYS AT LAW

I-25 Project Office
Re: Comments re I-25 Environmental Assessment
May 12, 2004
Page 19

1.... rubber does not satisfy its obligation to engage in “all possible planning” under section 4(f) and
2 determine that no prudent and feasible alternative exists. *See, Davis v. Mineta*, 302 F.3d 1104
3.... (10th Cir. 2002).⁵⁹
4
5..... CEQ regulations instruct that if a project’s effects on the quality of the human
6 environment are likely to be highly controversial or are uncertain, then an EIS may be warranted.
7.... 40 C.F.R. § 1508.27(b)(4). Since the scoping process began, the public has consistently
8 expressed concern about highly controversial impacts on the human communities in the I-25
9.... corridor and in the area that are impacted by the highway. On April 24, 2000, City Council
10 authorized Mayor Mary Lou Makepeace to write a letter to CDOT expressing concerns Council
11... wanted to be addressed through the EA process. The April 28, 2000 letter expressed City
12 Council’s concerns about potential noise and air quality impacts on neighborhoods and parks
13... associated with I-25 improvements, and requested CDOT’s diligence “in recognizing the value
14 of neighborhoods and parks in the area and in striving to avoid or mitigate adverse impacts upon
15... them.”⁶⁰
16
17..... During the EA comment period, a community-wide coalition of local groups urged
18 CDOT to provide additional noise mitigation for Monument Valley Park, the Pikes Peak
19... Greenway, surrounding neighborhoods and the environment. Language supporting additional
20 mitigation was incorporated into a resolution from the City of Colorado Springs supporting the
21... proposed action on April 27, 2004, and numerous City Council members spoke in favor of
22 mitigation.⁶¹ In addition to the City Council, the resolution language was supported by the
23... Citizens’ Transportation Advisory Board, the Trails & Open Space Coalition, the Voters
24 Network, the Historic Preservation Alliance, Friends of Monument Valley Park, the League of
25... Women Voters of the Pikes Peak Region, the Council on Neighbors and Organizations, the Pikes
26 Peak Group, Rocky Mountain Chapter of the Sierra Club, and the Old North End
27... Neighborhood.⁶² This public support for additional mitigation of impacts to section 4(f)

⁵⁹ An alternative is feasible if it can be constructed as a matter of sound engineering. The U.S. Supreme Court has defined an alternative as not prudent only if it involves “truly unusual factors” or “unique problems” or the cost of community disruption reaches “extraordinary magnitudes.”

⁶⁰ *See*, Attachment 29. This description of the April 28, 2000 letter is taken verbatim from an April 7, 2004 memorandum to the Colorado Springs City Manager regarding the I-25 EA. The memo also notes that attached to the letter was a list of noise mitigation measures suggested by the Old North End Neighborhood.

⁶¹ A videotape of the April 27, 2004 City Council meeting is included with these comments as Attachment 30.

⁶² *See*, Attachments 31 to 37. Colorado College also wrote a letter supporting urging consideration of quieter pavement alternatives. *See*, Attachment 38. CDOT purports to rely upon the opinion of the Colorado Springs Parks, Recreation & Cultural Services Advisory Board (“Parks Board”) with respect to proposed mitigation for the park. First, the Parks Board is advisory to City Council, so the City Council’s request for additional mitigation supersedes any recommendation by the Parks Board. Second, the Parks Board made its recommendation in December 2002, nearly 18 months ago and long before the release of

RESPONSE

Lines 1 to 3 As there are no physical takings of Monument Valley Park land, and no constructive use, there is no Section 4(f) use. Therefore the requirement for “all possible planning” does not pertain in this situation.

Lines 5 to 15: Regarding the statement that “the public has consistently expressed concern about highly controversial impacts on the human communities in the I-25 corridor,” it is unclear what is meant by “highly controversial impacts.” FHWA recognizes that noise is of concern to the Old North End Neighborhood, based upon the input from this neighborhood throughout the EA process. Also, during the 45-day public comment period, most comments that dealt with a noise issue came from that neighborhood.

The EA has made clear what the noise effects of the Proposed Action on the human environment would be. The EA identified areas that would exceed the noise abatement criteria, and the Old North End is not one of these areas. The noise analysis for the EA was conducted in accordance with FHWA noise regulations at 23 CFR 772, which have as their stated purpose the protection of public health and safety. The noise analysis was conducted using an FHWA-approved model and methods, and this process included a calibration effort to verify model performance using actual field measurements. The model demonstrated that traffic noise from I-25 does not, and would not in the future, exceed the noise abatement criteria anywhere in the Old North End Neighborhood. It would appear that some residents of the neighborhood are not satisfied with this fact.

During the EA public comment period, the modeling approach was scrutinized by a leading national expert, Dr. Louis Cohn, on behalf of the Old North End Neighborhood. Dr. Cohn subsequently reported that the traffic noise predictions for the Old North End Neighborhood “do not quite rise to the level of impact.”

After hearing testimony from the public at a City Council meeting on April 27, 2004, including testimony from representatives of the Old North End Neighborhood, the Colorado Springs City Council passed a resolution of support for the Proposed Action, as noted on line 21. The project also received resolutions of support from El Paso County Board of County Commissioners, the Pikes Peak Area Council of Governments, the Greater Colorado Springs Chamber of Commerce, and others. These resolutions can be found in Appendix A of this decision document.

FHWA has considered the issue of “controversy” in evaluating the intensity of impacts, and has determined that the severity of impact does not rise to the level of significance.

Lines 17 to end of paragraph: The resolution approved by the City Council did not call for “additional” mitigation. Instead, it said, “we strongly urge the Colorado Department of Transportation to use available materials, methods and practices that will provide the highest and best mitigation of negative impacts to Monument Valley Park, the Pikes Peak Greenway, surrounding neighborhoods and the environment.”

Line 27: The reference to “[t]his public support for additional mitigation to section 4(f) properties” is inaccurate because the language did not call for “additional” mitigation. Also, as noted in the EA, the three resources in the I-25 corridor with section 4(f) uses are the United States Air Force Academy, the Saint Mary’s Church (land needed from parking lot), and the Works Progress Administration floodwall.

Footnote 62: After considering input from the Parks Board and others, the City Council passed its resolution of support for the proposed action. Their decision was based on a review of the EA, including the impacts and proposed mitigation identified therein, as well as input from the public, including all of the groups noted earlier on this page. The Parks Board, which had made recommendations about noise mitigation for Monument Valley Park in December 2002 (reserving its prerogative to revisit the matter later in the process) had an opportunity to review the EA and its mitigation in April 2004, and elected to not revise its December 2002 recommendations to the City Council.

OLD NORTH END NEIGHBORHOOD

MERRILL, ANDERSON, KING & HARRIS, LLC
ATTORNEYS AT LAW

I-25 Project Office
Re: Comments re I-25 Environmental Assessment
May 12, 2004
Page 20

1.... properties provides further justification for preparation of an EIS and consideration of prudent
2 and feasible alternatives to the constructive use of Monument Valley Park and the Pikes Peak
3.... Greenway.

4
5..... The standards of judicial review require courts to defer to an agency's reasonable
6 determinations of significance unless they are arbitrary or capricious or clearly contrary to
7.... reason. Thus, the question before the FHWA is whether it believes that it can reasonably
8 conclude that the I-25 expansion contemplated by the EA would have no significant impacts on
9.... the quality of the human environment, even when considered in conjunction with indirect
10 impacts of the expansion and the cumulative actions of all past, present and reasonably
11... foreseeable future actions.

12
13..... In the past, CDOT has artificially segmented related planning actions and projects
14 regarding the El Paso County stretch of I-25 into smaller pieces for purposes of NEPA analysis.
15... The purpose of this segmentation has been to divert attention from the State's overarching
16 transportation objective for I-25 and the corresponding impacts on the quality of the human
17... environment. CDOT seeks to avoid consideration of impacts from earlier, segmented projects so
18 it can claim that the proposed action here does not rise to the level of significance and escape the
19... requirement of preparing an EIS. While numerous EISs have been prepared in the Denver
20 metropolitan area for projects of a smaller scope and with more limited environmental impacts,
21... no such EIS has ever been prepared for a project in El Paso County. When examined rationally,
22 it is obvious that this proposed action does warrant an EIS—the proposed action is nothing less
23... than a blueprint for determining motor vehicle traffic volume, patterns and impacts for the next
24 twenty years and beyond.

25.....
26 The United States Supreme Court has held that section 102(2)(C) of NEPA may require a
27.... comprehensive impact statement in certain situations -- where several proposed actions are
28 pending at the same time. *Kleppe v. Sierra Club*, 427 U.S. 390, 409 (1976). For the reach of I-
29....25 that extends through El Paso County, the time for a comprehensive EIS and detailed
30 consideration of transportation alternatives is now. To put it differently, if this project doesn't
31....rise to the level of significance, what project would? Colorado Springs is the second most
32 populated city in Colorado, home to over 500,000 people. Is it reasonable to conclude that
33... accommodating the transportation needs of an additional 250,000 residents will not have
34 significant impacts. CDOT is certainly capable of undertaking such an effort. In February 2004,
35....CDOT and the FHWA announced plans to prepare the North I-25 Front Range Environmental

the findings of the EA. In fact, the Parks Board was only presented with three non-feasible sound barrier options for mitigation, and was never presented with information about all prudent and feasible alternatives such as rubberized asphalt for mitigation as required by section 4(f) of the Transportation Act. See, Attachment 23. Nonetheless, the Parks Board requested mitigation of all impacts to the park "to the fullest extent possible" and reserved the right to submit additional input after release of the EA. See, Attachment 39.

RESPONSE

Lines 1-3: Again, FHWA has concluded that the proposed action would not substantially diminish the attributes of these resources and therefore would not result in constructive use of Monument Valley Park and the Pikes Peak Greenway.

Lines 7-11: FHWA has concluded that the Proposed Action would have no significant impacts.

Line 13: FHWA disagrees with the assertion that "In the past, CDOT has artificially segmented related planning actions and projects regarding the El Paso County stretch of I-25 into smaller pieces for purposes of NEPA analysis." CDOT's Corridor Feasibility Study in 1991 examined the 30-year old interstate highway and identified specific safety needs at five interchanges and between Bijou and Fillmore. Therefore the purpose was not to avoid NEPA requirements but rather to address urgent safety needs. For example, as I-25 traffic volumes approached capacity, 30-year old short on-ramps and off-ramps provided inadequate weaving distances for these congested conditions. The safety problems continued to worsen as the region waited for the improvements to begin: from 1991 to 1995, total accidents on I-25 nearly doubled and rear-end collisions more than doubled. The proposed I-25 safety projects were thoroughly examined in accordance with NEPA requirements, resulting in Categorical Exclusions approved by the Federal Highway Administration.

Lines 15-17: FHWA disagrees with the statement that "[t]he purpose of this segmentation has been to divert attention..." CDOT conducted extensive public involvement efforts and clearly communicated that the overall strategy for corridor improvements was to begin with necessary safety improvements, followed by the implementation of transportation system management strategies, and finally to evaluate capacity needs. This is acknowledged in comments on page 23, item number 2 ("Improvement Feasibility Study"). When the safety improvements were proposed, there was no clear likelihood of the availability of future funding for the subsequent steps. Therefore the safety projects were built as stand-alone improvements when funds became available.

The environmental documentation prepared for the safety projects was developed in compliance with NEPA requirements and FHWA regulations. These projects were safety improvements with independent utility, logical project termini, and non-significant environmental impacts. The March 2004 EA was prepared for the proposed I-25 improvements to determine whether or not there would be significant impacts, and not to avoid an EIS. Indeed, one possible outcome of the NEPA process could have been a finding of significant impacts which could have required preparation of an EIS. However, based on an evaluation of all impacts, this was not the outcome of the process.

Lines 17-19: Again, the purpose of the safety projects was to focus on immediate safety concerns. CDOT did not then, and does not today, seek to avoid any NEPA requirements. The I-25 Environmental Assessment was comprehensive, and its cumulative effects analysis incorporated effects from public and private, past, present and reasonably foreseeable projects. For example, the EA at 4-5 indicates that the safety projects resulted in "substantial acquisitions" of homes in the I-25 corridor. Additional detail is provided in EA Appendix 9 at page 2-14. As another example, cumulative traffic noise change was analyzed using a 1990 base year, to account for I-25 roadway changes resulting from the safety improvements. This is not typically done, but was accomplished by CDOT to respond specifically to the concerns of the Old North End Neighborhood.

RESPONSE to Page 20 comments continues on next sheet...

OLD NORTH END NEIGHBORHOOD

MERRILL, ANDERSON, KING & HARRIS, LLC
ATTORNEYS AT LAW

I-25 Project Office
Re: Comments re I-25 Environmental Assessment
May 12, 2004
Page 20

1.... properties provides further justification for preparation of an EIS and consideration of prudent
2 and feasible alternatives to the constructive use of Monument Valley Park and the Pikes Peak
3.... Greenway.

4
5..... The standards of judicial review require courts to defer to an agency's reasonable
6 determinations of significance unless they are arbitrary or capricious or clearly contrary to
7.... reason. Thus, the question before the FHWA is whether it believes that it can reasonably
8 conclude that the I-25 expansion contemplated by the EA would have no significant impacts on
9.... the quality of the human environment, even when considered in conjunction with indirect
10 impacts of the expansion and the cumulative actions of all past, present and reasonably
11... foreseeable future actions.

12
13..... In the past, CDOT has artificially segmented related planning actions and projects
14 regarding the El Paso County stretch of I-25 into smaller pieces for purposes of NEPA analysis.
15... The purpose of this segmentation has been to divert attention from the State's overarching
16 transportation objective for I-25 and the corresponding impacts on the quality of the human
17... environment. CDOT seeks to avoid consideration of impacts from earlier, segmented projects so
18 it can claim that the proposed action here does not rise to the level of significance and escape the
19... requirement of preparing an EIS. While numerous EISs have been prepared in the Denver
20 metropolitan area for projects of a smaller scope and with more limited environmental impacts,
21... no such EIS has ever been prepared for a project in El Paso County. When examined rationally,
22 it is obvious that this proposed action does warrant an EIS—the proposed action is nothing less
23... than a blueprint for determining motor vehicle traffic volume, patterns and impacts for the next
24 twenty years and beyond.

25.....
26 The United States Supreme Court has held that section 102(2)(C) of NEPA may require a
27....comprehensive impact statement in certain situations -- where several proposed actions are
28 pending at the same time. Kleppe v. Sierra Club, 427 U.S. 390, 409 (1976). For the reach of I-
29....25 that extends through El Paso County, the time for a comprehensive EIS and detailed
30 consideration of transportation alternatives is now. To put it differently, if this project doesn't
31....rise to the level of significance, what project would? Colorado Springs is the second most
32 populated city in Colorado, home to over 500,000 people. Is it reasonable to conclude that
33... accommodating the transportation needs of an additional 250,000 residents will not have
34 significant impacts. CDOT is certainly capable of undertaking such an effort. In February 2004,
35...CDOT and the FHWA announced plans to prepare the North I-25 Front Range Environmental

the findings of the EA. In fact, the Parks Board was only presented with three non-feasible sound barrier options for mitigation, and was never presented with information about all prudent and feasible alternatives such as rubberized asphalt for mitigation as required by section 4(f) of the Transportation Act. See, Attachment 23. Nonetheless, the Parks Board requested mitigation of all impacts to the park "to the fullest extent possible" and reserved the right to submit additional input after release of the EA. See, Attachment 39.

RESPONSE

See other Responses to page 20 on preceding sheet...

Lines 19-21: The determination of whether to prepare an EA or an EIS should be based on the expected project impacts, and not based on geographical area. Therefore it is not pertinent for I-25 in Colorado Springs what NEPA documents were prepared for the Denver metro area.

Lines 23-24: It is unclear what is meant by, "The proposed action is nothing less than a blueprint...for the next twenty years and beyond." Federal regulations require the analysis of transportation projects to look out into the future within the context of the region's long-range transportation plan, which typically reflects a 20-year planning horizon. It is the responsibility of the regional planning process, through the Pikes Peak Area Council of Governments, to determine region-wide transportation needs and travel patterns. The capacity needs for I-25 were identified through the regional planning process. It is the responsibility of CDOT and FHWA to determine the impacts of the proposed capacity improvements. The purpose of the Proposed Action is "to relieve existing traffic congestion and address projected future congestion on I-25 within the Colorado Springs Urbanized Area," as stated in the EA at page 1-4.

Lines 26 to end of paragraph: As noted earlier, it is not the size of the project but the magnitude of impacts that determines whether or not project impacts would be significant.

Line 35: The statement suggests that the circumstances around the I-25 project in Colorado Springs are "remarkably similar" to the North Front Range EIS in northern Colorado. The statement is incorrect, however, regarding the degree of similarity. The purpose of the North Front Range EIS is to improve mobility between the Fort Collins area and the Denver metropolitan area, so a wider range of alternatives may be feasible. Two of the alternatives under consideration in that corridor are passenger rail service and construction of a highway on a new location. These are types of actions for which an EIS is normally required, per 23 CFR 771.115(a). The I-25 Mode Feasibility Alternatives Analysis determined that such alternatives would not carry enough passengers to relieve I-25 congestion within the Colorado Springs Urbanized Area and therefore would not meet the purpose and need as stated in the EA.

Footnote 62: (continued from preceding page): The remark in footnote 62 stating that "the Parks Board was only presented with three non-feasible sound barrier options for mitigation" is not accurate. Multiple mitigation alternatives were presented to the Board for six different areas of the park. The Board concurred in an earth berm protecting the ball field and noise barriers to protect the volleyball courts, Demonstration Garden, and Willow Haven Lake. Only the proposed mitigation alternatives to protect a small section of the Pikes Peak Greenway trail north of Uintah were rejected by the Board because they would result in unacceptable impacts, such as closing Recreation Way. The alternatives were indeed feasible, but they were not considered reasonable or prudent due to the associated negative impacts.

OLD NORTH END NEIGHBORHOOD

MERRILL, ANDERSON, KING & HARRIS, LLC
ATTORNEYS AT LAW

I-25 Project Office
Re: Comments re I-25 Environmental Assessment
May 12, 2004
Page 21

1.... Impact Statement under circumstances remarkably similar to those here.⁶³ In fact, the North I-25
2 EIS addresses “26 miles of highway” and will evaluate “interchange reconstruction, highway
3....widening and capacity improvements that will accommodate multi-modal transportation
4 improvements well into the future.”⁶⁴ In the case of the northern reach of I-25, CDOT didn’t
5....need to prepare an EA to tell them what they already knew—long-range highway improvement
6 planning creates significant impacts on the quality of the human environment that require
7....preparation of an EIS under NEPA.

8
9..... NEPA’s description of the proper scope of an EIS in 40 C.F.R. § 1508.25 instructs that
10 (1) connected actions should be discussed in the same EIS, and (2) similar actions should be
11...discussed in the same EIS when the best way to assess adequately the combined impacts of the
12 similar actions or reasonable alternatives to such actions is to treat them in a single impact
13...statement. 40 C.F.R. § 1508.25(a)(1), (3). The regulations define “connected actions” as those
14 that: (a) automatically trigger other actions which may require environmental impact statements;
15... (b) cannot or will not proceed unless other actions are taken previously or simultaneously; or (c)
16 are interdependent parts of a larger action and depend on the larger action for their justification.
17... 40 C.F.R. § 1508.25(a)(1). Similar actions are actions that “when viewed with other reasonably
18 foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their
19... environmental consequences together, such as common timing or geography.” 40 C.F.R. §
20 1508.25(a)(3).

21.....
22 CEQ regulations mandate that “[p]roposals or parts of proposals which are related to each
23...other closely enough to be, in effect, a single course of action shall be evaluated in a single
24 impact statement.” 40 C.F.R. § 1502.4(a). The aim of the regulations is to prevent federal
25...agencies from segmenting large projects into smaller pieces for purposes of the NEPA analysis
26 of impacts. This objective is also advanced by the requirement that agencies evaluate all
27...cumulative impacts, or impacts that result “from the incremental impact of the action when
28 added to other past, present and reasonably foreseeable future actions.” 40 C.F.R. § 1508.7.
29...The CEQ recognizes that “[c]umulative impacts can result from individually minor but
30 collectively significant actions taking place over a period of time.” *Id.*

31...
32 One factor to be considered in determining significance is “whether the action is related
33...to other actions with individually insignificant but cumulatively significant impacts.” 40 C.F.R.
34 § 1508.27(b)(7). “Significance exists if it is reasonable to anticipate a cumulatively significant
35...impact on the environment. Significance cannot be avoided by terming an action temporary or

⁶³ See, Attachment 40, “Connections” (February 2004). To quote CDOT: the project is designed to address “increasing congestion and a growing concern for safety. After 40 years, daily volumes of traffic on the highway now exceed what it was intended to serve.” CDOT indicates that the EIS will “look at ways to improve safety and mobility, including those alternatives developed in previous area transportation feasibility and investment studies.” *Id.*

⁶⁴ <http://www.i25northforty.com/>. The project is located in Region 6 of CDOT.

RESPONSE

Lines 9-20: This and the next four paragraphs all focus on the issue of segmentation. Once again, FHWA disagrees that segmentation has occurred because it has taken actions within the same corridor, unrelated to the purpose and need of this Proposed Action. As stated above, FHWA has not divided a larger project into smaller ones to avoid NEPA analysis. The Proposed Action is a capacity project, while previous I-25 improvements were safety projects with independent utility.

Line 9: The safety improvement projects cannot be seen as “connected actions,” “cumulative actions,” or “similar actions” as defined in the citation. The safety projects had independent utility and did not depend on any other actions. See response to line 13 on page 20.

Lines 32-35: The EA examined cumulative impacts with respect to the I-25 Proposed Action and other past, present and reasonably foreseeable projects, including I-25 safety projects. FHWA has determined that the I-25 Proposed Action would not result in significant direct, indirect or cumulative impacts.

OLD NORTH END NEIGHBORHOOD

MERRILL, ANDERSON, KING & HARRIS, LLC
ATTORNEYS AT LAW

I-25 Project Office
Re: Comments re I-25 Environmental Assessment
May 12, 2004
Page 22

1.... by breaking it down into small component parts.” *Id.* Cumulative impacts when viewed with
2 other proposed actions should be discussed in the same impact statement. 40 C.F.R. §
3....1508.25(a)(2). Although impacts of a particular action may seem minor when viewed in
4 isolation, the cumulative impacts of a series of smaller actions may rise to the level of
5....significance. NEPA instructs that significant cumulative impacts are not to be made to appear
6 insignificant by breaking a project down into small component parts. 40 C.F.R. § 1508.27(b)(7);
7....*Utahns for Better Transportation v. U.S. Dept. of Transp.*, 305 F.2d 1152, 1182 (10th Cir. 2002).

8
9..... Generally, “segmentation of highway projects is improper for the purpose of preparing
10 environmental documentation.” *Ross v. Federal Highway Admin.*, 162 F.3d 1046, 1049 n. 3
11 ..(10th Cir. 1998) (*citing Village of Los Ranchos de Albuquerque v. Barnhart*, 906 F.2d 1477,
12 1483 (10th Cir. 1990)). Planning and building highways in a piecemeal fashion frustrates this
13...policy by allowing gradual, day-to-day growth without providing an adequate opportunity to
14 assess the overall, long-term environmental effects of that growth. *Indian Lookout Alliance v.*
15...*Volpe, supra*; *Appalachian Mountain Club v. Brinegar*, 394 F. Supp. 105, 114 (D.N.H. 1975);
16 *Daly v. Volpe*, 376 F. Supp. 987 (W.D.Wash. 1974), *aff’d*, 514 F.2d 1106 (9th Cir. 1975);
17...*Conservation Society of Southern Vermont v. Secretary of Transportation*, 362 F. Supp. 627
18 (D.Vt. 1973), *aff’d*, 508 F.2d 927 (2^d Cir. 1974); *vacated*, 423 U.S. 809, 96 S.Ct. 19, 46 L.Ed.2d
19...29 (1975); *Sierra Club v. Volpe*, 351 F. Supp. 1002 (N.D.Cal. 1972); *Thompson v. Fugate*, 347
20 F. Supp. 120 (E.D.Va. 1972); *Committee to Stop Route 7 v. Volpe*, 346 F. Supp. 731 (D.Conn.
21...1972). In many instances, construction of one segment will affect more than just the immediate
22 area through which that segment is built. It may cause an increase in traffic through another area.
23...*Appalachian Mountain Club v. Brinegar, supra*, 394 F. Supp. at 115. Placement of one highway
24 segment tends to limit the range of alternatives for placement of succeeding segments.
25...*Committee to Stop Route 7, supra*, 346 F. Supp. at 740. As a practical matter, commitment of
26 resources in one section tends to make further construction more likely. *Named Individual*
27...*Members of San Antonio Conservation Society v. Texas Highway Department*, 446 F.2d 1013,
28 1023 (5th Cir. 1971).

29.....
30 Most of the cases addressing segmentation have focused on the question of whether an
31...individual action qualifies for a categorical exclusion or FONSI or whether reasonably
32 foreseeable projects make it necessary for the agency to prepare a full-blown EIS. The
33...circumstances here are subtly different—CDOT has previously segmented so many connected
34 and similar actions that clearly, when viewed in the context of cumulative impacts, the current
35...proposed action will result in significant impacts. The significance of the impacts of the
36 proposed action must be considered in light of the cumulative impacts of numerous past related
37...actions that have been taken by CDOT to improve I-25 with federal funding but that have
38 escaped rigorous scrutiny under NEPA in the past.

39...
40 CDOT has taken a piecemeal approach in its NEPA analysis of improvements to I-25
41...under the guise of safety improvements apparently in an effort to avoid the requirement of

RESPONSE

Lines 9-28: As was discussed in the responses to lines 13 and 15-17 on page 20, CDOT has not engaged in any such segmentation.

Lines 23-25: The earlier I-25 safety projects had independent utility and were designed to not preclude future transportation improvements, including alternative modes and other corridors. The resources committed to the safety improvements were justifiable based on the safety needs and were not investments in other future actions. The safety projects needed to be made whether or not future capacity improvements would occur.

Lines 29-37: As was discussed in the responses to lines 13 and 15-17 on page 20, FHWA disagrees with the assertions that CDOT has “previously segmented” actions, that the cumulative impacts are significant, and that “rigorous scrutiny under NEPA” did not occur.

Lines 37-38: The I-25 safety projects were undertaken because there were immediate safety needs. The projects had independent utility and logical termini for NEPA analysis. There was no effort to “avoid preparing an EIS.”

OLD NORTH END NEIGHBORHOOD

MERRILL, ANDERSON, KING & HARRIS, LLC
ATTORNEYS AT LAW

I-25 Project Office
Re: Comments re I-25 Environmental Assessment
May 12, 2004
Page 23

- 1.... preparing an EIS.⁶⁵ During the past ten years, CDOT has engaged in several planning processes
2 that form the basis of the proposed action, and invoked Categorical Exclusions (“CE”) or
3.... FONSI for at least eight projects along the stretch of I-25 subject to this EA,⁶⁶ without ever
4 having prepared an EIS to evaluate the environmental impacts of the overall project:
5.....
- 6 (1) The I-25 Corridor Feasibility Study completed in 1991 “identified the looming
7..... need for I-25 capacity improvements.”⁶⁷
8
- 9..... (2) Improvement Feasibility Study, completed November 1992. Examined
10 improvement needs from North Academy Boulevard to South Academy
11..... Boulevard and identified a three-phase improvement program consisting of (1)
12 non-capacity safety improvements from Bijou to Fillmore, Circle/Lake,
13..... Nevada/Tejon and Woodmen interchanges; (2) implementation of congestion
14 mitigation strategies; and (3) construction and implementation of the regionally
15..... approved long-range transportation plan for the corridor.
16
- 17..... (3) North Academy Safety Improvements. CE approved December 2, 1996.
18
- 19..... (4) Circle/Lake Interchange Safety Improvements. CE approved on April 2, 1998.
20 Additional acceleration/deceleration lanes constructed for interchange ramps.
21.....
- 22 (5) South Front Range Corridor Assessment Study, completed April 1998.
23..... According to CDOT, the “study assessed the long-term inter-regional passenger
24 and freight transportation problems and needs for a 100 mile segment of I-25
25..... between Denver and Pueblo. The assessment objective was to evaluate a range of
26 options, including additional capacity on I-25 as well as alternative modes, to
27..... determine a practical, cost-effective approach to reduce the growing congestion
28 problem along the south Front Range.”⁶⁸ Although no NEPA analysis was
29..... performed, the study analyzed 24 alternatives, and concluded 14 were infeasible
30 because of prohibitive costs.

⁶⁵ The EA refers to these individual projects as “gradual” changes, EA at 3-17 & 3-115, and candidly admits that “[a] motorist driving through Colorado Springs on I-25 at any time since 1997 would have noticed major construction activity and may have assumed that capacity improvements were underway.” EA at 1-6.

⁶⁶ See, Attachment 41. CDOT documents indicate that the EA here was originally planned as two EAs, with the I-25 Corridor Environmental Assessment Phase I covering South Academy Boulevard to Briargate Parkway, and the I-25 Corridor Environmental Assessment Phase II covering Briargate Parkway to the El Paso County Line. At some point a decision was apparently made to combine the two into one EA, despite the fact that an EIS was clearly warranted.

⁶⁷ EA at 1-6.

⁶⁸ See, Attachment 41.

RESPONSE

Lines 1-4: The projects referred to here are not part of an “overall project.” The 12 items listed on pages 23 and 24 are addressed below.

Lines 6-15: The first two items are actually the same study, completed to identify a logical strategy for addressing safety and capacity concerns in the I-25 corridor.

Lines 17 to end of list, next page: The projects listed as number 3, 4, 6, 8, 9, 11 and 12 were evaluated in accordance with NEPA and met the requirements for Categorical Exclusions. These projects were all safety projects that had independent utility and logical termini. These improvements did not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Lines 22-30: Item 5, the South Front Range Corridor Assessment Study, was a needs study which helped identify a potential range of reasonable corridor alternatives and priorities. It examined the question of whether or not there were larger transportation solutions to address capacity problems (for example passenger rail).

Footnote 65: We are unable to find mention of gradual changes on EA page 3-17. Regarding page 3-115, naturally, “there have been changes to the original environmental setting and feeling [of Monument Valley Park]” since the construction of Interstate 25 in the late 1950s. Four decades ago, the region had 400,000 fewer residents. Regarding safety project construction activity underway since 1997, the meaning and relevance of the comment are unclear. The purpose of the statement in the EA (at 1-6) was to place the safety projects in context with the proposed capacity improvements.

Footnote 66: CDOT did indeed consider two EAs, based upon priority of need. As seen in the EA (See Figure 1-5 on page 1-5), existing traffic volumes exceed capacity through central Colorado Springs, while future traffic growth will cause the problem to spread northward to Monument. The traffic patterns illustrate the basis for project priorities. However, CDOT and FHWA determined that a single EA should address the entire future capacity problem, as shown in Figure 1-5. No aspect of this decision supports the assertion that “an EIS was clearly warranted.”

OLD NORTH END NEIGHBORHOOD

MERRILL, ANDERSON, KING & HARRIS, LLC
ATTORNEYS AT LAW

I-25 Project Office
Re: Comments re I-25 Environmental Assessment
May 12, 2004
Page 24

- 1..... (6) Bijou to Fillmore Southbound Safety Improvements. CE approved on April 3,
2 1998. Project included demolition of more than 200 homes, construction of a
3.....noise wall on the west side of I-25 and construction of continuous
4 acceleration/deceleration lanes.⁶⁹ Also reconstructed Fontanero interchange with
5.....new bridges and longer ramps, apparently to accommodate a future connection an
6 east-west transportation corridor.
7.....
8 (7) New Interquest Parkway Interchange. Previous EA & FONSI for private project
9.....approved on September 19, 1998.⁷⁰
10
11..... (8) Bijou to Fillmore Northbound Safety Improvements. CE approved on December
12 1, 1999. Project included construction of a noise wall to protect the picnic
13.....pavilion in Monument Valley Park and construction of continuous
14 acceleration/deceleration lanes.⁷¹ Also reconstructed Fontanero interchange with
15.....new bridges and longer ramps, apparently to accommodate a future connection an
16 east-west transportation corridor.
17.....
18 (9) Nevada/Tejon Interchange Safety Improvements. CE approved on April 12,
19.....1999. Project included the extension of acceleration/deceleration lanes between
20 Cimarron Street and the Martin Luther King Jr./US 24 Bypass.
21.....
22 (10) Mode Feasibility Analysis. Analysis of feasible alternatives and mode options for
23.....projects that increase highway capacity for single-occupant vehicles in urban
24 areas as required by Transportation Efficiency Act for the 21st Century. Used to
25.....identify the proposed action for the current EA.
26
27..... (11) Woodmen Interchange Safety Improvements. CE approved and construction
28 began in January 2001. Project extends acceleration/deceleration lanes on the
29.....interstate.
30
31..... (12) Monument Interchange Safety Improvements. CE approved and construction
32 started in August 2002.
33.....

34The EA additionally reports that “[a] study of the potential for fixed guideway transit will be
35initiated by the City of Colorado Springs in mid-2003, with completion anticipated by the end of
362004. EA at 2-11.

⁶⁹ The Historic Resources Survey Report prepared in conjunction with the EA states that this project “was intended to allow for future capacity increases between Fillmore and Bijou.” See, HRSR Vol. 1 at 8.

⁷⁰ It is interesting that the only I-25 improvement project in El Paso County that was subject to an EA was a privately funded project.

⁷¹ *Id.*

RESPONSE

Lines 1-32: It was noted on the preceding page that the projects listed as number 6, 8, 9, 11 and 12 were evaluated in accordance with NEPA and met the requirements for Categorical Exclusions. These projects were all safety projects that had independent utility and logical termini. These improvements did not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Lines 1-6: Regarding item 6, the Fontanero Interchange was reconstructed to address the inadequate acceleration/deceleration length afforded by the original ramps. The design was consistent with the roadway system envisioned in the PPACG long-range regional transportation plan then in effect.

Lines 8-16: Item 7, Interquest Parkway EA, was a re-evaluation of previous NEPA analysis for a new interchange at Interquest Parkway, formerly called Stout Allen Road (and later, Fairlane Parkway). This interchange is located on U.S. Air Force Academy land and required an additional easement from the Academy.

Lines 22-25: Item 10, the *Mode Feasibility Alternatives Analysis* (MFAA) did not evaluate only single-occupant vehicle needs, but investigated a variety of alternatives that would address capacity issues in the I-25 corridor. (Note: limiting the investigation to SOVs only would not have been consistent with TEA-21 requirements). The MFAA was the first step in the EA process, and was used to identify a proposed action. It is described in the EA at page 2-1 and is included in full as EA Appendix 1.

Lines 34-36: As reported in the Colorado Springs *Gazette* on June 14, 2004, the transit study is well underway. The recommended corridors comprising a hypothetical future system do not include the I-25 corridor. If Federal funds are used, an appropriate NEPA document will be prepared for any proposed rapid transit project.

Footnote 70: This comment is irrelevant and incorrect. An EIS was prepared for the US24 Bypass (I-25 Exit 139), and EAs were prepared for the North Powers extension (I-25 interchange near Exit 156) and for the Briargate Interchange (I-25 Exit 151).