

West Two Creeks Park Section 4(f) Research

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COPIES:

PROJECT: US 6 and Wadsworth Boulevard Interchange Environmental Assessment

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This memo documents the research conducted for the West Two Creeks Park site vis-a-vis Section 4(f) designation. Exerpts from relevant sections of FHWA's *Section 4(f) Policy Paper* are included later in this memo.

Section 4(f) Designation for Planned Parks

FHWA guidance states that "Section 4(f) applies when the land is one of the enumerated types of publicly owned lands and the public agency that owns the property has formally designated and determined it to be significant for park, recreation area, wildlife and waterfowl refuge purposes. Evidence of formal designation would be the inclusion of the publicly owned land, and its function as a 4(f) resource, into a city or county Master Plan. A mere expression of interest or desire is not sufficient."

During a telephone conversation with Ross Williams, Park Planner for Lakewood, on December 10, 2007, he stated that the park was not listed in the current Department of Community Resources Comprehensive Master Plan and would not be included in the update to the master plan, which was adopted in April 2008. He is familiar with Section 4(f), and in his mind, there is no question that the park is a 4(f) resource. His reasoning for this is because the park was purchased with Jefferson County open space funds, with the stipulation that the property not be used for any use other than park or open space.

The need for a park in this area is well-documented in the Molholm Area Plan (July 1996) and the City of Lakewood Department of Community Resources Comprehensive Master Plan.

West Two Creek Park Boundaries

The existing vacant parcel, located at 12th Avenue and Wadsworth, occupies 3.35 acres. CDOT right-of-way extends about 20 feet further east along this section of Wadsworth than the rest of the corridor, situating the parcel farther away from the existing roadway alignment. Additionally, the grade separation between the roadway and Dry Gulch provides a buffer from traffic on Wadsworth. Dry Creek enters this property through a box culvert and flows across the property from the northwest to the southeast. Ross Williams

noted that the City would like to include a trail that follows the drainage channel from Wadsworth into the park, but the channel is too constrained in its current configuration.





Photographs of Two Creeks Park Property



1. View to northwest. Wadsworth and car wash in background



2. Dry Gulch drains through property



3. Existing culvert outfall at western boundary of property



4. Dry Gulch next to car wash property - southern boundary of property



5. View to southeast across property



6 View to northwest from southern boundary of property

Other Project Examples

The open space on US 36 was designated 4(f) because it's actively managed for wildlife, and so was determined to meet the Wildlife and Waterfowl Refuges portion of 4(f). (I think Boulder may have created management plans for these areas in response to the initiation of the EIS, so that they would be considered as 4(f) resources. Regardless, they have active management plans associated with them now.)

FHWA Section 4(f) Policy Paper (March 1, 2005) Exerpts

2. Public Parks, Public Recreation Areas and Wildlife and Waterfowl Refuges

Question A: When is publicly owned land considered to be a park, recreation area or wildlife and waterfowl refuge and who makes this determination?

Answer A: Publicly owned land is considered to be a park, recreation area or wildlife and waterfowl refuge when the land has been officially designated as such by a Federal, State or local agency and the officials of these governmental entities, having jurisdiction over the land, determine that one of its major purposes and functions is for park, recreation or as a refuge. Incidental, secondary, occasional or dispersed park, recreational or refuge activities do not constitute a major purpose.

For the most part the "officials having jurisdiction" are the officials of the agency owning or administering the land. There may be instances where the agency owning or administering the land has delegated or relinquished its authority to another agency, via an agreement on how some of its land will function or be managed. FHWA will review this agreement and determine

which agency has authority on how the land functions. If the authority has been delegated or relinquished to another agency, that agency must be contacted to determine the major purpose(s) of the land. Management plans that address or officially designate the major purpose(s) of the property should be reviewed as part of this determination. After consultation, and in the absence of an official designation of purpose and function by the officials having jurisdiction, FHWA will base its decision on its own examination of the actual functions that exist.

The final decision on applicability of Section 4(f) to a particular property or type of land is made by FHWA. In reaching this decision, however, FHWA will rely on the official having jurisdiction over the resource to identify the kinds of activities and functions that take place, and that these activities constitute a major purpose. Documentation of the determination of non-applicability should be included in the environmental document or project record.

Question B: How should the significance of public parks, recreation areas and wildlife and waterfowl refuges be determined?

Answer B: "Significance" determinations, on publicly owned land considered to be parks, recreation areas or wildlife and waterfowl refuges, pursuant to Answer 2 A above, are made by the Federal, State, or local officials having jurisdiction over the land. As discussed above, the "officials having jurisdiction" are officials of the agency owning or administering the land. For certain types of 4(f) resources, more than one agency may have jurisdiction or interest in the property.

Except for certain multiple-use land holdings, discussed in Question 6, significance determinations must consider the entire property and not just the portion of the property proposed for use by the project. The meaning of the term "significance", for purposes of Section 4(f), should be explained to the officials having jurisdiction. Significance means that in comparing the availability and function of the park, recreational area or wildlife and waterfowl refuge, with the park, recreation or refuge objectives of the community or authority, the resource in question plays an important role in meeting those objectives. Management plans or other official forms of documentation regarding the land, if available and up-to-date, are important in this determination. If a determination from the official with jurisdiction cannot be obtained, and a management plan is not available or does not address significance of the 4(f) land, it will be presumed to be significant until FHWA reviews the determination and reaches a different conclusion. All determinations, whether stated or presumed, are subject to review by FHWA for reasonableness.

17. Planned 4(f) Resources

Question: Do the requirements of Section 4(f) apply to publicly owned properties "planned" for park, recreation area, wildlife refuge, or waterfowl refuge purposes even though they are not presently functioning as such?

Answer: Section 4(f) applies when the land is one of the enumerated types of publicly owned lands and the public agency that owns the property has formally designated and determined it to be significant for park, recreation area, wildlife and waterfowl refuge purposes. Evidence of formal designation would be the inclusion of the publicly owned land, and its function as a 4(f) resource, into a city or county Master Plan. A mere expression of interest or desire is not sufficient. When privately held properties of these types are formally designated into a Master Plan, Section 4(f) is not applicable. The key is whether the planned facility is presently publicly owned, formally designated and significant. When this is the case, Section 4(f) would apply.

Conclusions

Even though the park is not listed specifically in a currently adopted plan, the need for a park in this area has been well documented in adopted plans, and it is not simply "a mere expression of interest or desire." Ross Williams believes it would be a Section 4(f) resource.

The property boundary is set back quite a bit from the highway. Mr. Williams noted that Lakewood would like to include a trail along the drainage channel from Wadsworth into the park, but the channel is too constrained for a trail, in its current configuration.

CDOT contacted the City of Lakewood twice in 2007 and one in 2008 to discuss the Two Creeks Park. CDOT originally contacted the Property Management division shortly after Lakewood acquired the parcel. Ted Van Horn, from Property Management, indicated that there are no plans to develop the park within the next five years, and it will remain an open space park until design plans are developed.

CDOT also contacted Ross Williams, a Parks Planner in the Community Resources department, who stated the updated Parks Master Plan identifies the need for a park in this area of Lakewood. Mr. Williams also informed CDOT that the park was purchased with Jefferson County Open Space funds, which limits the use of the parcel to strictly a park use.

During a second phone call with Mr. Williams, he indicated the City's flexibility about the potential impacts to the park and mentioned the desire to have a trail along the gulch, leading into the park from Wadsworth.

The project team met with the FHWA Environmental Manager on April 2, 2008 to discuss the Section 4(f) applicability for Two Creeks Park. Because the park acquisition was so recent, she advised that it would qualify even though it is not included in any official plans (that is, not enough time had passed for the City to incorporate it into its plans).