US 36 Managed Lane Project:
Federal Boulevard To Interlocken Loop With A Potential Extension To McCaslin Boulevard

Attachment I:
Section 4(f) Documentation

January 25, 2012

TABLE OF CONTENTS

Page No.

INTRODUCTION

The US 36 Managed Lane Project represents one phase of planned improvements identified as Phase 1 of the Preferred Alternative in the US 36 Record of Decision (ROD). The US 36 Managed Lane Project is a multi-modal, toll integrated project that will include reconstruction of the US 36 mainline pavement from Federal Boulevard to Interlocken Loop, with a potential extension to McCaslin Boulevard. The project will also include widening to accommodate a new buffer-separated Managed Lane in each direction of US 36, replacement of the Wadsworth Parkway, Wadsworth Boulevard, and Lowell Boulevard bridges, construction of retaining walls and sound walls, installation of Intelligent Transportation Systems, and construction of portions of a commuter bikeway.

The purpose of this report is to provide Section 4(f) documentation associated with changes in impacts which have changed from those evaluated in the Final Environmental Impact Statement (FEIS) or ROD. Changes could include new impacts that occur outside of the original US 36 EIS study area for this first phase of planned improvements. Additional changes to the FEIS environmental impacts (design related) have occurred since the release of the ROD in December 2009 because of ongoing design activities and refinements. The quantitative analysis of direct permanent impacts presented in the FEIS was based on conceptual roadway plans and assumed highway configurations while the current level of design for the US 36 Managed Lane Project has advanced to preliminary design. This NEPA re-evaluation is being conducted pursuant to the requirements of 23 CFR 771.129.

SECTION 4(F) COORDINATION AND DOCUMENTATION

These letter attachments constitute Section 4(f) coordination and documentation.

September 16, 2011, Letter to John M. Cater (FHWA) from CDOT containing Finding of Section 4(f) De Minimis Impact for the BNSF Railroad Bikeway Crossing.
(See attached letter.)

January 23, 2012, Letter to John M. Cater (FHWA) from CDOT containing Finding of Section 4(f) De Minimis Impact for the Niver Canal.
(See attached letter.)

August 3, 2011, Letter of concurrence for a change in the noise wall on the Rotary Park property, agreeing that this is not a Section 4(f) use.
(See attached letter.)

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION

Region 6 Planning and Environmental Section
2000 S. Holly Street
Denver, CO 80222
303-757-9929
Fax 303-757-9036

September 16, 2011

John M. Cater, P.E.
FHWA Division Administrator
12300 W. Dakota Avenue, Suite 180
Lakewood, CO 80228

SUBJECT: Finding of Section 4(f) *De Minimis* Impact, CDOT Project NH 0361-093 (SA 17516) US 36 Managed Lane Project, Westminster, Jefferson County

Dear Mr. Cater:

This letter and the attached materials constitute a request for review and concurrence on a finding of *de minimis* impact for the project referenced above. The US 36 Managed Lane Project represents one phase of planned improvements identified as Phase 1 of the Preferred Alternative in the U.S. 36 Record of Decision. The U.S. 36 Managed Lane Project is a multi-modal, toll integrated project that will include reconstruction of the U.S. 36 mainline pavement from Federal Blvd. to Interlocken Loop as the base project, with a potential extension to McCaslin Blvd. if funds allow.

Changes to design from the Final Environmental Impact Statement (FEIS) have occurred since the release of the Record of Decision (ROD) in December 2009 because of ongoing design activities and refinements. The project will be constructed as a Design/Build project. The quantitative analysis of direct permanent impacts presented in the FEIS was based on conceptual roadway plans and assumed highway configurations while the current level of design for the U.S. 36 Managed Lane Project has progressed to 30 percent. CDOT, on behalf of FHWA, and in cooperation with RTD and FTA, determined that project will have No Adverse Effect on the BNSF Railroad (5JF519.7). Based on these findings, CDOT has determined that this resource will require a *de minimis* determination as described in 23 CFR Part 774.

Project Description

The original plan in the FEIS did not show any crossing of the BNSF railroad (5JF.519.5) by a bikeway. The revised plan (Attachment 1) proposes crossing this resource 175' southwest of the point where US36 crosses the railroad line. The bikeway would cross the railroad line in an underpass. BNSF underpass design and construction must meet the requirements outlined in the joint BNSF Railway – Union Pacific Railroad Guidelines for Railroad Grade Separation Projects. This includes the proper geometric clearances and dimensions between tracks, operations, and access. The design shall meet the rail live load and impact as specified by the current edition of the American Railway Engineering and

Maintenance-of-Way Association (AREMA) Manual, dead load of up to 30 inches of ballast and additional loads as applicable, defined by AREMA.

Description of Resource: Burlington, Northern, Santa Fe Railroad, 5JF.519.5
This resource was described as 5JF.519.7 in the FEIS. It had been previously surveyed as 5JF.519.5 and should have been referred to by that number and not by 5JF.519.7. A Re-Visitation form was prepared for this property and is attached (Attachment 2).

The resource is a historic railroad segment that measures approximately four miles long. The US 36 alignment crosses the BNSF Railway alignment just northwest of the Church Ranch Boulevard interchange. The bridge that carries US 36 over the railroad was constructed in the 1990s following an accident on the rail line that occurred under the previous bridge.

CDOT determined this segment of the BNSF Railway supports the overall eligibility of the entire railroad, which is eligible under NRHP Criterion A for its association with the development of railway transportation in this region.

The integrity of the railroad's setting has been compromised by nearby development. The historic setting for this property was agricultural. Lower Church Lake is immediately northwest of the right-of-way for the BNSF railroad line. In recent years, a large commercial development, the Shops at Walnut Creek, has been constructed to the southeast of the railroad line. The RTD US 36 and Church Ranch park-n-Ride abuts the railroad property on the southeast, and the big box store Petsmart, a part of the Shops at Walnut Creek, is directly southeast of the park-n-ride. The setting is now commercial instead of agricultural. Even though the setting around the railroad has changed over the years, this segment of the railroad supports the overall eligibility of the entire railroad.

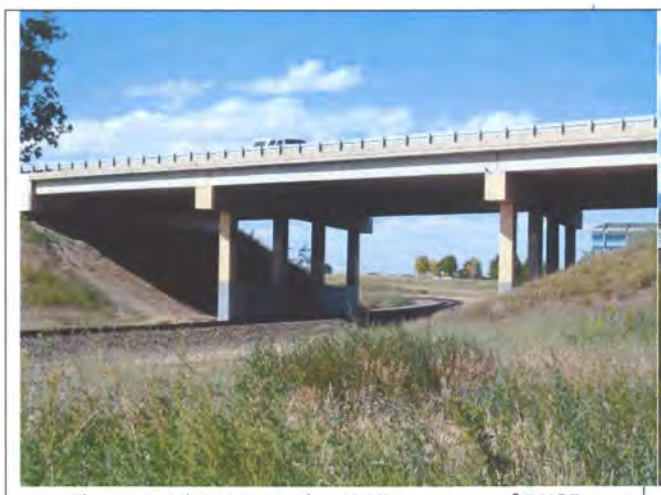


Figure 1: View to north, US36 overpass of BNSF

Figure 2: BNSF adjacent to Lower Church Lake View to NW

The construction of a bikeway underpass that crosses under the railroad will not alter the qualities that have made this railroad eligible for the NRHP because the proposed work will not change or modify the

historic significance of the line. This underpass would be one of thirty underpasses and overpasses of the BNSF Railway between downtown Denver and Longmont. The proposed undertaking would not change the ability of this rail segment to convey its significance under Criterion A. Therefore, CDOT and FHWA have determined that the revised plan which includes this bikeway underpass would result in *no adverse effect*.

De Minimis Use

The planned bikeway would follow along an existing sidewalk on the northeast side of the Shops at Walnut Creek and the RTD park-n-ride lot. That bikeway would continue in the same alignment extending the sidewalk to the northwest and crossing under the BNSF railroad line approximately 175 feet southwest of the point where US 36 crosses the railroad line. It would require a 0.11 acre permanent easement from the railroad as shown on the attached plan (see Attachment 1), and thus a Section 4(f) use. There would be some change in the setting from the introduction of the planned bikeway underpass. As described above, there have been many other changes to the railroad setting in this area and numerous over and underpasses constructed on the BNSF line.

All Possible Planning to Minimize Harm

- All construction would meet BNSF requirements to maintain railroad operations during construction and to ensure the structural sufficiency of the underpass to carry freight and passenger loads.
- Disturbed areas will be reseeded with native grasses.
- Appropriate erosion and sediment control BMPs will be employed to ensure protection of resource during construction.

Finding of _De Minimis_ Impact

FHWA, FTA, RTD, and CDOT have determined that the project would result in a *no adverse effect* to the BNSF Railway as a result of the bikeway underpass construction because the impact would not "alter, directly or indirectly, any of the characteristics of the historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the properties' location, design, setting, materials, workmanship, feeling, or association" as described in 36 CFR §800.5(a)(1).

The State Historic Preservation Officer (SHPO) concurred with the determination of No Adverse Effect and also acknowledged that FHWA may make a *de minimis* finding for the Section 4(f) requirements for this historic resource in in correspondence dated August 29, 2011. Copies of the National Historic Preservation Act Section 106 correspondence and site form are attached for your review (Attachments 2 and 3).

Based on the information presented above and in the attached documentation, and taking into consideration the minimization measures that have been incorporated into the proposed action as documented in this Section 4(f) Evaluation, the effects of the proposed action constitute a *de minimis* impact and an analysis of feasible and prudent avoidance alternatives under Section 4(f) is not required. The requirements of 23 USC 138, 49 USC 303, and 23 CFR 774 have been satisfied. This determination is considered valid unless new information is obtained or the proposed effects change to the extent that consultation under Section 106 must be reinitiated. FHWA's approval of the US36 NEPA reevaluation will also serve as its *de minimis* determination.

If you concur with this finding, please sign below. Any questions regarding this matter should be directed to CDOT Senior Staff Historian Dianna Litvak at (303) 757-9461.

Very truly yours,

FOR

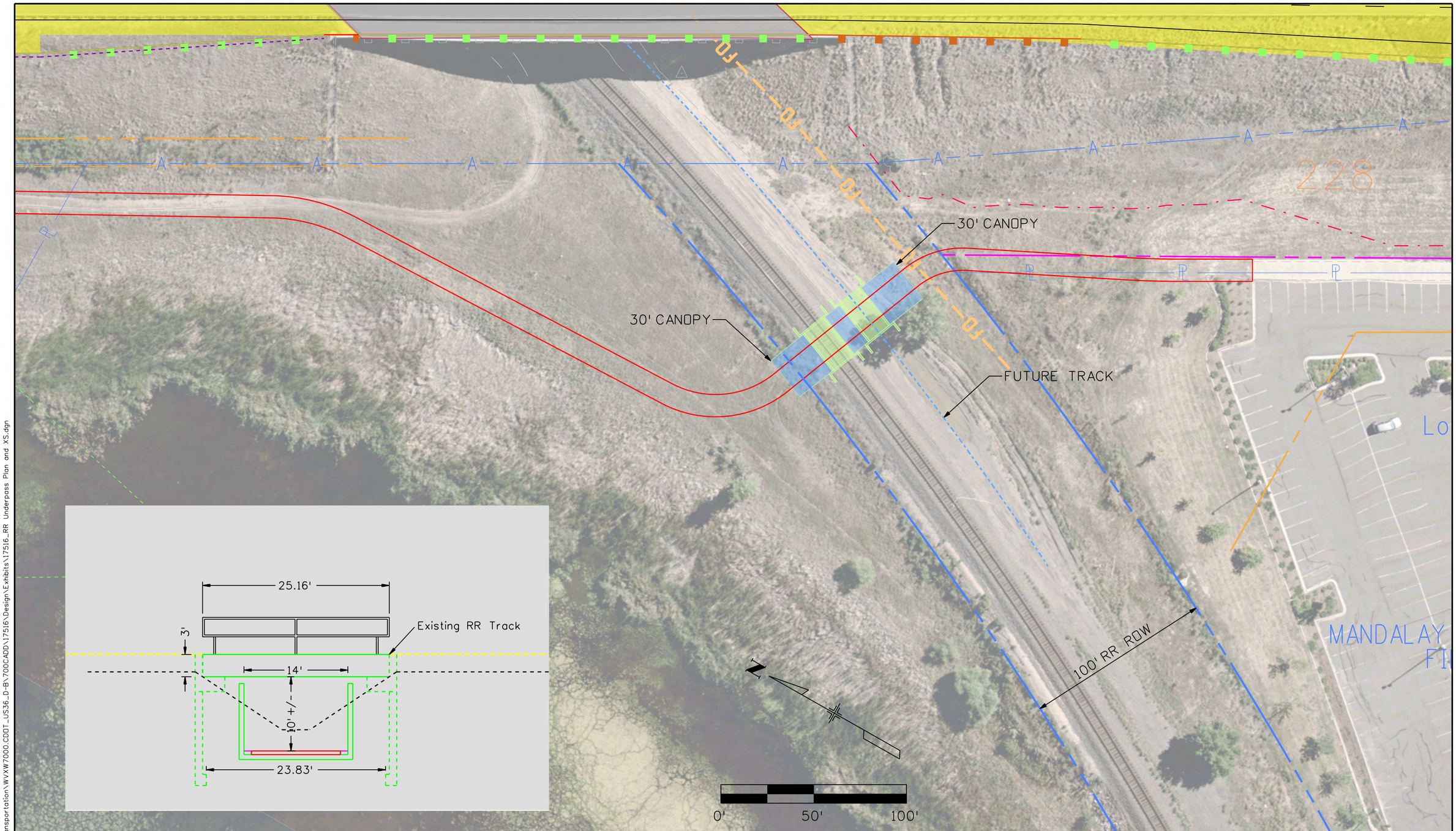
Elizabeth Kemp-Herrera
Region 6 Planning and Environmental Manager

Attachments: 1. Plan sheet
2. Site form
3. Section 106 correspondence

cc: Lisa Schoch, EPB
David Singer, Region 6
File

I concur:_____

John M. Cater, P.E. Date
Administrator, Colorado Division
Federal Highway Administration



kingem 11:19:16 AM J:_Transportation\WVXW7000.CDOT_US36_D-B\700CADD\17516\Design\Exhibits\17516_RR Underpass Plan and XS.dgn

Print Date: 7/6/2011	Sheet Revisions			Colorado Department of Transportation	As Constructed	US-36 BNSF RR UNDERPASS	Project No./Code
File Name: 17516_RR Underpass Plan and XS.dgn	Date:	Comments	Init.	4670 Holly Street Denver, Co 80216-6408 Phone: 303-398-6765 FAX: 303-398-6781	No Revisions:		NH 0361-093
Horiz. Scale: 1:50 Vert. Scale: As Noted				Region 6 JO	Revised:	Designer: / Detailer: / Structure Numbers	17516
					Void:	Sheet Subset: / Subset Sheets:	Sheet Number

Cultural Resource Re-Visitation Form

A Re-Visitation Form can only be used when a Management Data Form and component forms have been previously filed with the land managing agency and/or the Colorado Office of Archaeology and Historic Preservation and no substantive changes to the character of the site are required as a result of the current re-visitation. Please use the Management Data Form and supporting forms (archaeological component, linear, vandalism, etc.) when changes are required to:

- Site type
- Linear resources
- Additional artifact assemblages and/or features
- Boundary size
- Vandalism
- NRHP recommendations

Official determination (OAHP use only)

☐ Determined Eligible NR\SR
☐ Determined Not Eligible NR\SR
☐ Nominated
☐ Need Data NR\SR
☐ Contributing to NR Dist.\SR Dist.
☐ Not Contributing to NR Dist.\SR Dist.
☐ Supports overall linear eligibility NR\SR
☐ Does not support overall linear eligibility NR\SR

1. **Resource Number**: 5JF.519.5 2. **Temporary Resource Number**:

3. **Resource Name**: Burlington Northern Santa Fe Railway (Colorado and Southern Railway)

4. **Project Name/Number**: US 36 Managed Lane Project

5. **Government Involvement**: ☐ Local ☒ State ☒ Federal
Agency: CDOT-Region 6, FHWA

6. **Site Categories**: (Check as many as apply)
Prehistoric: ☐ Archaeological site ☐ Paleontological site
In existing National Register District? ☐ Yes ☒ No Name:
Local Landmark? ☐ Yes ☒ No Name:

Historic: ☐ Archaeological site ☐ Building (s) ☒ Structure(s) ☐ Object(s)
In existing National Register District? ☐ Yes ☒ No Name:

Local Landmark? ☐ Yes ☒ No Name:

7. **Owner(s) Name and Address**: Burlington Northern Santa Fe Railway, 2650 Lou Menk Drive, Fort Worth, TX 76131-2830

8. **Was the site relocated?** ☒ Yes ☐ No If no, why? (100% collected in previous recording, ground disturbance, etc.)

9. **Previous recordings**: This site was previously recorded on 2/17/2004 by Erik M. Gantt, Centennial Archaeology, Inc.for the Cultural Resource Inventory of the Proposed US 36 Underpass at Church Ranch Boulevard, Jefferson County, Colorado.

10. **Most recent National Register Eligibility Assessment**: ☒ Eligible ☐ Not Eligible ☐ Need Data
Explain: Officially determined eligible for NRHP on 4/27/04.

11. **Listed on Register**: ☐ National ☐ State ☒ None
Date Listed:

12. **Condition (describe)**: The condition is good. The railroad is well maintained in this area. There is some graffitti painted on the piers of the US36 overpass over the railroad.

13. **Threats to Resource**: ☐ Water Erosion ☐ Wind Erosion ☐ Grazing ☐ Neglect ☐ Vandalism ☐ Recreation ☒ Construction ☐ Other (specify):

14. **Existing Protection**: ☒ None ☐ Marked ☐ Fenced ☐ Patrolled ☐ Access controlled ☐ Other (specify):
Comments:

15. **Recorder's Management Recommendations**: Avoid

Cultural Resource Re-Visitation Form

Resource Number: 5JF.519.5 **Temporary Resource Number**:

16. **Known Collections, Reports, or Interviews**: Existing survey forms for 5JF.519, 5JF.519.1, 5JF.519.2, 5JF.519.3; Gantt, Erik M., A Cultural Resource Inventory of the Proposed U.S. 36 Underpass at Church Ranch Boulevard, Jefferson County, Colorado, March 2004; Robertson, Donald B., The Encyclopedia of Western Railroad History, Volume II, The Mountain States: Colorado, Idaho, Montana, Wyoming, Taylor Publishing Company, Dallas, TX , 1988

17. **Site Description/Update**: This site was originally recorded in 2004 for the US36 EIS. That project has progressed and further design has necessitated this revisitation. Current plans call for a bikeway to cross underneath the railway slightly east of US36.

This revisitation shows that the railway is basically the same as it was in 2004 when the original survey was prepared. It does not appear that any changes have been made to the railroad alignment, bed or tracks since the time of the original survey.

18. **Photograph Numbers**: P1100242, P1100243, P1100317, P1100318, P1100322, P1100324
    Digital files at: Hermsen Consultants
19. **Artifact and Field Documentation Storage Location**:

20. **Report Title**: US 36 Managed Lane Project

21. **Recorder(s)**: Gail Keeley
    Date: 8/16/2011
22. **Recorder Affiliation**: Hermsen Consultants
    Phone Number/Email: 303-797-6337 / gailkeeley@msn.com

Note: Please attach a sketch map, a photocopy of the USGS quad. map indicating resource location, and photographs.

Resource Number: 5JF.519.5

BNSF Railroad

P1100242 View to northeast from west side of US36

P1100322 View to northeast from under US36

Resource Number: 5JF.519.5

BNSF Railroad

P1100317 View to northeast from east side of US36

P1100324 View to southwest from east side of US36

Resource Number: 5JF.519.5

BNSF Railroad

P1100318 Close-up of tracks. View to southwest from under US36

P1100243 View to northwest from west side of US36 showing Lower Church Lake north of BNSF tracks

Resource Number: 5JF.519.5

N

0 1,000 2,000 Feet

Site: 5JF.519.5
BNSF Railroad
USGS Quad Location Map

Resource Number: 5JF.519.5

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION

Region 6, Planning and Environmental
2000 South Holly Street
Denver, CO 80222
(303) 757-9929
(303) 757-9036 FAX

August 18, 2011

Mr. Edward Nichols
State Historic Preservation Officer
1560 Broadway
Suite 400
Denver, CO 80203

SUBJECT: US 36 Highway Corridor Managed Lane Project (Update of Section 106 Determinations of Effect for Historic Properties and Notification of Section 4(f) *De Minimis* for the US 36 Corridor Final Environmental Impact Statement and Record of Decision (CHS Project #41960)

Dear Mr. Nichols:

This letter and enclosed materials constitute a request for SHPO concurrence and consulting party comments on Determinations of Eligibility and Effects for the project referenced above.

Introduction

The US 36 Managed Lane Project represents one phase of planned improvements identified as Phase 1 of the Preferred Alternative in the U.S. 36 Record of Decision. The U.S. 36 Managed Lane Project is a multi-modal, toll integrated project that will include reconstruction of the U.S. 36 mainline pavement from Federal Blvd. to Interlocken Loop as the base project, with a potential extension to McCaslin Blvd. if funds allow.

The purpose of this letter is to present cultural resource impacts which have changed from those evaluated in the FEIS or ROD, and per the US 36 Corridor Programmatic Agreement (specifically, Section 1.c. of the agreement). Changes to design from the Final Environmental Impact Statement (FEIS) have occurred since the release of the Record of Decision (ROD) in December 2009 because of ongoing design activities and refinements. The project will be constructed as a Design/Build project. The quantitative analysis of direct permanent impacts presented in the FEIS was based on conceptual roadway plans and assumed highway configurations while the current level of design for the U.S. 36 Managed Lane Project has progressed to 30 percent.

Ditch Crossings

Allen Ditch, 5AM.1132.3
The crossing of the Allen Ditch west of 80th Ave. is currently in a 173 ft. long 8' X 5' concrete box culvert (CBC). The revised plans show a crossing that will now be 208' long in a new 8' X 5' CBC. When assessed in the FEIS,

the plans showed a 70' extension of the culvert. The current plan (see Attachment A), shows a replacement of the culvert with one that is 35' longer than the existing culvert.

Allen Ditch, 5AM.1132.1
This crossing of the Allen Ditch east of Sheridan is currently in a 151 ft. long 8' X 5' concrete box culvert (CBC). The revised plans show a crossing that will now be 315' long in a new 8' X 5' CBC. When assessed in the FEIS, the plans showed an additional 330' of this segment of the ditch that would be affected. The current plan (Attachment B) shows a replacement of the culvert with one that is 164' longer than the existing culvert.

Allen Ditch, 5AM.1132.4
This crossing of the Allen Ditch east of 80th Ave. is currently in a 203 ft. long 8' X 5' concrete box culvert (CBC). The revised plans show a crossing that will now be 376' long in a new 8' X 5' CBC. When assessed in the FEIS, the plans showed a 120' extension of the culvert. The current plan (Attachment C), shows a replacement of that culvert with one that is 173'longer than the existing culvert.

Allen Ditch, 5JF1762.4:
Impacts to this segment of ditch have not changed because it is not within this phase of improvements (no attachment).

Overall Effect Determination for Allen Ditch 5AM1132:
CDOT and FHWA determined that the improvements will still affect the ditch in three locations and affect the ability of the ditch to convey its historic significance. Therefore, CDOT and FHWA have determined that the replacement of these culverts still supports the original Section 106 determination of Adverse Effect.

Niver Canal, 5JF 3787
The Niver Canal, which is parallel to the Farmer's Highline Canal, has been abandoned (Attachment D). The FEIS showed that the existing 120 ft. culvert under the canal would be extended 190 ft. and it was determined that there would be No Adverse Effect. Since the canal is now abandoned, the current plan is to leave the existing culvert in place. CDOT and FHWA have determined that there will be no impact to the canal, and the Section 106 determination of effect should be changed to No Historic Properties Affected.

Farmers Highline Canal 5JF.250/5JF.250.4
The existing ditch crossing under US36 is in a 14' X 4'CBC that extends a length of 143 ft. The FEIS had showed the ditch crossing to be extended an additional 280 ft. for a total length of 423 ft. It was determined that this action would be a No Adverse Effect. The revised plans (Attachment D) show that instead of extending the 14' X 4' concrete box culvert (CBC), it will be replaced with a 288' long 16' X 6' CBC. This length of culvert is 135' less than was proposed in the design assessed in the FEIS. A shorter segment of the ditch will be impacted by the replacement of the culvert. CDOT and FHWA have determined that the replacement of the CBC supports the original Section 106 determination of No Adverse Effect.

<u>Buildings</u>

3050 Industrial Lane, 5BF.243
This property was not impacted by the design in the FEIS. Recent design necessitated the location of a water quality pond on part of this parcel. Consequently this parcel was surveyed and that survey form is attached.

CDOT and FHWA have determined that the property is not eligible for the NRHP. Since the property is not eligible, the Section 106 determination is No Historic Properties Affected. **Community Ditch (5BF.67.5)** crosses through the east side of this property. There will be no change in impacts to this ditch from the impacts that were shown in the FEIS.

11415 Wadsworth Blvd., 5BF.109

This property had been surveyed in 2004 and officially determined eligible for the NRHP on 2/20/06. There was no direct impact to this property in the plans assessed in the US36 FEIS and CDOT and FHWA determined that the proposed undertaking would result in the Section 106 determination of No Adverse Effect due to the proximity of a retaining wall of the edge of the property that would not prevent the site from conveying its significance.

A new survey form has been prepared for this property and is attached. 5BF.109 was originally found eligible for the NRHP under Criterion C as a good example of a Craftsman-style single family dwelling. Since that time, the dwelling has been clad in vinyl siding causing a loss of integrity. The dwelling has had an addition built on the northwest corner. Building permit records were not available in either Broomfield or Jefferson County to provide a date of that addition. That construction of that addition compromised the integrity of the structure by altering the roofline as shown on the following photo.

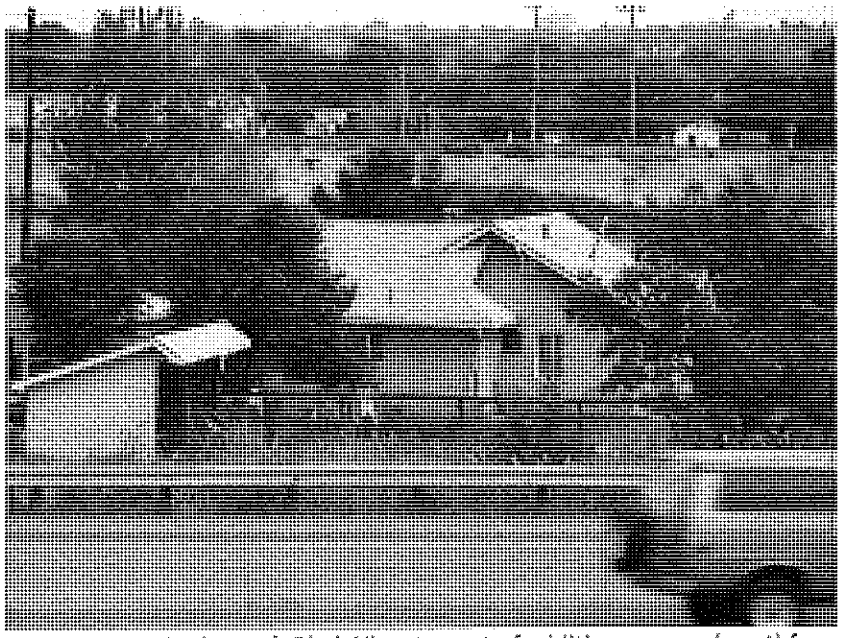


Figure1: 111415 Wadsworth Blvd. View to east of addition on rear (west) façade.

A new garage was built adjacent to the north side of the house. The addition, the vinyl siding and the new garage have diminished the integrity of the site in terms of materials, design and setting. Broomfield has other good examples of Craftsman style residences. In particular, there is a very good example of an intact Craftsman-style residence just a few blocks north at 7970 W. 120th Ave. There are no known significant historical associations for this property. It has lost its integrity from the addition, the construction of the large new garage and the cladding of the house in vinyl siding. For these, reasons, CDOT and FHWA have determined that this property is not eligible for the National Register.

The current plan calls for a take of this property. Since the property is not eligible, CDOT and FHWA have determined that the original Section 106 determination of Adverse Effect should be changed to No Historic Properties Affected.

BNSF Railroad, 5JF.519.5

This resource was described as 5JF.519.7 in the FEIS. It had been previously surveyed as 5JF.519.5 and should have been referred to by that number and not by 5JF.519.7. A Re-Visitation form has been prepared for this property and is attached.

The original plan did not show any crossing of the BNSF railroad (5JF.519.5) by a bikeway. The revised plan (Attachment E) does show a crossing of this resource. The crossing would take place 175' southwest of the point where US36 crosses the railroad line. The bikeway would cross the railroad line in an underpass. BNSF underpass design and construction must meet the requirements outlined in the joint BNSF Railway – Union Pacific Railroad Guidelines for Railroad Grade Separation Projects. This includes the proper geometric clearances and dimensions between tracks, operations, and access. The design shall meet the rail live load and impact as specified by the current edition of the American Railway Engineering and Maintenance-of-Way Association (AREMA) Manual, dead load of up to 30 inches of ballast and additional loads as applicable, defined by AREMA.

The integrity of the railroad's setting has been compromised by nearby development. The historic setting for this property was agricultural. Lower Church Lake, part of Westminster's Open Space, is immediately northwest of the ROW for the BNSF railroad line. In recent years, a large commercial development, the Shops at Walnut Creek , has been constructed to the southeast of the railroad line. The RTD US36 & Church Ranch Park N Ride abuts the railroad property on the southeast and the big box store Petsmart, a part of the Shops at Walnut Creek, is directly southeast of the Park N Ride. The setting is now commercial instead of agricultural. The land on the east side of US36 and northeast of the railroad tracks is vacant land that is for sale. The large Westminster Promenade development is on the east side of US 36 with a parking area for a business titled "Fat Cats" immediately south of the railroad tracks on the east side of US36.

Even though the setting around the railroad has changed over the years, this segment of the railroad supports the overall eligibility of the entire railroad which is eligible for the NRHP under Criterion A for its association with the development of railway transportation in Colorado. Railway transportation was key to the settlement of Colorado and the West.

Figure 2: View to the southeast. The bikeway will be an extension of the sidewalk shown here

Figure 3: View to the northwest. The bikeway would go under the railroad tracks slightly to the right of the tree.

The planned bikeway would follow along an existing sidewalk on the northeast side of the Shops at Walnut Creek and the RTD Park N Ride lot as shown in the following photo. That bikeway would continue in the same alignment extending the sidewalk to the northwest and crossing under the BNSF railroad line.

Construction of the bikeway underpass would require a .11 acre permanent easement from the railroad as shown on the attached plan. There would be some change in the setting from the introduction of the planned bikeway underpass. As described above, there have been many other changes to the railroad setting in this area.

The construction of a bikeway underpass that crosses under the railroad will introduce a new visual element into the landscape. However, the BNSF tracks are crossed many times with overpasses and underpasses to convey streets, highways and multi-use paths along the US Corridor. Between Downtown Denver and Longmont there are a total of 30 underpasses and overpasses. There are 16 overpasses for streets and highways, 5 underpasses for streets and highways and 9 underpasses for bikeways and other multi-use paths. An underpass for this bikeway will not be an unusual element for the BNSF setting.

CDOT and FHWA have determined that the construction of an underpass on the BNSF for a bike/pedestrian trail will not alter the qualities that have made this railroad eligible for the NRHP. The proposed undertaking would not change the ability of this rail segment to convey its significance under Criterion A. Therefore, CDOT and FHWA have determined that the revised plan which includes this bikeway underpass would result in No Adverse Effect.

Notification of Section 4(f) *De Minimis*

The project has been determined to have No Adverse Effect to the BNSF Railroad, pending SHPO concurrence. Based on these findings, FHWA may make a *de minimis finding for* Section 4(f) requirements.

The FHWA and CDOT requests the written concurrence of the SHPO and comments from Section 106 consulting parties based on the information presented above and in the attachments to this letter. SHPO's written concurrence is necessary for the FHWA's compliance with Section 106 of the National Historic Preservation Act (as amended) and with the Advisory Council on Historic Preservation's regulations.

Please provide any comments, questions, or concerns to Dianna Litvak at (303) 757-9461 or at Dianna.litvak@dot.state.co.us.

Sincerely,

for Elizabeth Kemp-Herrera
Region 6 Planning and Environmental Manager

cc: David Singer, CDOT Region 6 US 36 Managed Lane project
File

Attachments:

Site Forms
5BF.243
5BF.109
5JF519.5

Design sheets
Allen Ditch (5AM1132.1, 5AM1132.3, and 5AM1132.)
Farmer's Highline Canal (5JF250.4) & Niver Canal
BNSF Railroad (5JF519.5)

HISTORY Colorado

August 29, 2011

Elizabeth Kemp-Herera
Region 6 Planning and Environmental Manager
Colorado Department of Transportation, Region 6
2000 South Holly Street
Denver, CO 80222

Re: US 36 Highway Corridor Managed Lane Project (CHS #41960)

Dear Ms. Kemp-Herrera:

Thank you for your correspondence dated August 18, 2011 and received by our office on August 22, 2011 regarding the consultation of the above-mentioned project under Section 106 of the National Historic Preservation Act (Section 106).

After review of the provided additional information, we concur with the finding of National Register eligibility for the resources listed below.

- 5BF.243
- 5BF.109
- 5JF.519.5

After review of the provided assessment of adverse effect, we concur with the recommended findings of effect presented in your submission. We acknowledge that FHWA intends to make a *de minimis* determination in respect to the requirements of Section 4(f).

If unidentified archaeological resources are discovered during construction, work must be interrupted until the resources have been evaluated in terms of the National Register criteria, 36 CRF 60.4, in consultation with this office.

We request being involved in the consultation process with the local government, which as stipulated in 36 CFR 800.3 is required to be notified of the undertaking, and with other consulting parties. Additional information provided by the local government or consulting parties might cause our office to re-evaluate our eligibility and potential effect findings.

Please note that our compliance letter does not end the 30-day review period provided to other consulting parties. If we may be of further assistance, please contact Amy Pallante, our Section 106 Compliance Manager, at (303) 866-4678.

Sincerely,

Edward C. Nichols
State Historic Preservation Officer

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION

Region 6, Planning and Environmental
2000 South Holly Street
Denver, CO 80222
(303) 757-9929
(303) 757-9036 FAX

January 23, 2012

John M. Cater, P.E.
FHWA Division Administrator
12300 W. Dakota Avenue, Suite 180
Lakewood, CO 80228

SUBJECT: Finding of Section 4(f) *De Minimis* Impact, CDOT Project NH 0361-093 (SA 17516)
US 36 Managed lane Project, Westminster, Jefferson County

Dear Mr. Cater:

This letter and the attached materials constitute a request for review and concurrence on a finding of *de minimis* impact for the project referenced above. The US 36 Managed Lane Project represents one phase of planned improvements identified as Phase 1 of the Preferred Alternative in the US 36 Record of Decision. The US 36 Managed Lane Project is a multi-modal, toll-integrated project that will include reconstruction of the US 36 mainline pavement from Federal Boulevard to Interlocken Loop as the base project, with a potential extension to McCaslin Boulevard if funds allow.

Changes to design from the Final Environmental Impact Statement (FEIS) have occurred since the release of the Record of Decision (ROD) in December 2009 because of ongoing design activities and refinements. The project will be constructed as a Design/Build project. The quantitative analysis of direct permanent impacts presented in the FEIS was based on conceptual roadway plans and assumed highway configurations while the current level of design for the US 36 Managed lane Project has progressed to 30 percent. CDOT, on behalf of FHWA, and in cooperation with RTD and FTA, determined that the project will have No Adverse Effect on the Niver Canal (5JF.3787.2). Based on these findings, CDOT has determined that this resource will require a *de minimis* determination as described in 23 CFR Part 774.

Project Description

In our August 2011 assessment we indicated that the Niver Canal had been abandoned. The original EIS for the US 36 project showed that the existing 120-foot concrete box culvert under the canal would be extended 190 feet and it was determined that there would be *No Adverse Effect*. Since the canal has now been abandoned, the August 2011 plan was to leave the existing culvert in place. CDOT and FHWA determined that there will be no impact to the canal, and the Section 106 determination of effect was *No Historic Properties Affected.*

The design has once more been modified and approximately 250 linear feet of the existing 10-foot by 4-foot concrete box culvert will be removed and replaced with a 36-inch pipe that will also function as a

small mammal wildlife crossing. We have attached both the old figure of impacts to the Niver Canal and the new plan sheet that shows the revised impacts. The abandoned ditch in a concrete box culvert does not convey significance and integrity has been compromised in terms of materials, feel, and association. The concrete box culvert was not an original feature of the ditch and the structure is no longer used to convey irrigation water.

Description of Resource: Niver Canal, 5JF. 3787.2

According to the US36 FEIS (page 4.7-24 in the Historic and Archaeological Preservation chapter), additional research was necessary to determine whether the Niver Canal meets the National Register of Historic Places criteria. The canal was built in 1912, and the segment placed under US 36 (a total of 120 linear feet) has lost integrity. CDOT has not prepared a revised eligibility determination for the canal and will continue to assume that this segment supports the eligibility of the overall resource. Because the proposed work will take place in an area that was previously disturbed, it will not change or modify the characteristics that make the canal a potentially eligible resource. For these reasons, CDOT and FHWA have determined that the Section 106 determination of effect to 5JF3787 will be *No Adverse Effect.*

***De Minimis* Use**

The revised design for the Niver Canal uses 250 linear feet of the canal. The abandoned ditch in a concrete box culvert does not convey significance and integrity has been compromised in terms of materials, feel, and association. The concrete box culvert was not an original feature of the ditch and the structure is no longer used to convey irrigation water.

All Possible Planning to Minimize Harm

- Disturbed areas will be reseeded with native grasses.
- Appropriate erosion and sediment control BMPs will be employed to ensure protection of resource during construction.

Finding of *De Minimis* Impact

FHWA, FTA, RTD, and CDOT have determined that the project would result in a *no adverse effect* to the Niver Canal as a result of highway construction, because the impact would not "alter, directly or indirectly, any of the characteristics of the historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the properties' location, design, setting, materials, workmanship, feeling, or association" as described in 36 CFR §800.5(a)(1).

The State Historic Preservation Officer (SHPO) concurred with the determination of *No Adverse Effect* and also acknowledged that FHWA may make a *de minimis* finding for the Section 4(f) requirements for this historic resource in a correspondence dated January 17, 2012. Copies of the National Historic Preservation Act Section 106 correspondence and site form are attached for your review (Attachments 2 and 3).

Based on the information presented above and in the attached documentation, and taking into consideration the minimization measures that have been incorporated into the proposed action as documented in this Section 4(f) Evaluation, the effects of the proposed action constitute a *de minimis* impact and an analysis of feasible and prudent avoidance alternatives under Section 4(f) is not required.

The requirements of 23 USC 138, 49 USC 303, and 23 CFR 774 have been satisfied. This determination is considered valid unless new information is obtained or the proposed effects change to the extent that consultation under Section 106 must be reinitiated. FHWA's approval of the US36 NEPA re-evaluation will also serve as its *de minimis* determination.

If you concur with this finding, please sign below. Any questions regarding this matter should be directed to COOT Senior Staff Historian Dianna Litvak at (303) 757-9461.

Very truly yours,

Elizabeth Kemp Herrera

Elizabeth Kemp-Herrera
Region 6 Planning and Environmental Manager

cc: Lisa Schoch, EPB
David Singer, Region 6
File

Attachments:
1. Old conceptual design for Niver Canal and new plansheet
2. 5JF3787.2 Site Form
3. Section 106 Correspondence

I concur: Morgan C Parick
for John M. Cater, P.E.
Administrator, Colorado Division
Federal Highway Administration

Jan 24, 2012
Date

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION

Region 6, Planning and Environmental
2000 South Holly Street
Denver, CO 80222
(303) 757-9929
(303) 757-9036 FAX

December 27, 2011

Mr. Ed Nichols
State Historic Preservation Officer
Colorado Historical Society
1200 Broadway
Denver, CO 80202

RE: US36 Highway Corridor Managed Lane Project Revised Section 106 Determination of Effect and Section 4(f) *De Minimis* for the US36 Corridor Final Environmental Impact Statement and Record of Decision (CHS Project #41960)

Dear Mr. Nichols:

On August 18, 2011, we provided an assessment of the impacts to several properties for the US36 transportation improvement project, which your office concurred with in correspondence dated August 29, 2011. Since that time, the design has changed and the impacts to the Niver Canal (5JF.3787.2) have changed. The purpose of this letter is to describe the revised effects and request your concurrence with our determination of effect. Even though the Niver Canal parallels the Farmer's Highline Canal (5JF250), there are no changes in impacts to this resource and the original determination of effect (No Adverse Effect) from our initial correspondence.

In our August 2011 assessment, we indicated that the Niver Canal had been abandoned. The original EIS for the US 36 project showed that the existing 120 ft. concrete box culvert under the canal would be extended 190 ft. and it was determined that there would be *No Adverse Effect*. Since the canal has now been abandoned, the August 2011 plan was to leave the existing culvert in place. CDOT and FHWA determined that there will be no impact to the canal, and the Section 106 determination of effect was *No Historic Properties Affected.*

The design has once more been modified and approximately 250 linear feet of the existing 10' X 4' concrete box culvert will be removed and replaced with a 36" inch pipe that will also function as a small mammal wildlife crossing. We have attached both the old figure of impacts to the Niver Canal and the new plansheet that shows the revised impacts. The abandoned ditch in a concrete box culvert does not convey significance and integrity has been compromised in terms of materials, feel and association. The concrete box culvert was not an original feature of the ditch and the structure is no longer used to convey irrigation water.

According to the US36 FEIS (page 4.7-24 in the Historic and Archaeological Preservation chapter), additional research was necessary to determine whether the Niver Canal meets the National Register of Historic Places criteria. CDOT has not prepared a revised eligibility determination for the canal and will continue to assume that this segment supports the eligibility of the overall resource. Because the proposed work will take place in an area that was previously disturbed, it will not change or modify the characteristics that make the canal a

potentially eligible resource. For these reasons, CDOT and FHWA have determined that the Section 106 determination of effect to 5JF3787 will be *No Adverse Effect.*

Notification of Section 4(f) De Minimis

The project has been determined to have No Adverse Effect to the Niver Canal, pending SHPO concurrence. Based on these findings, FHWA may make a *de minimis* finding for Section 4(f) requirements.

The FHWA and CDOT request the written concurrence of the SHPO. This written concurrence is necessary for the FHWA's compliance with Section 106 of the National Historic Preservation Act (as amended) and with the Advisory Council on Historic Preservation's regulations.

This revised Section 106 effect determination is also being forwarded to the City of Westminster. If we receive comments on these findings, we will forward them to you. Please provide any comments, questions, or concerns to Dianna Litvak at (303) 757-9461 or Dianna.litvak@dot.state.co.us.

Sincerely,

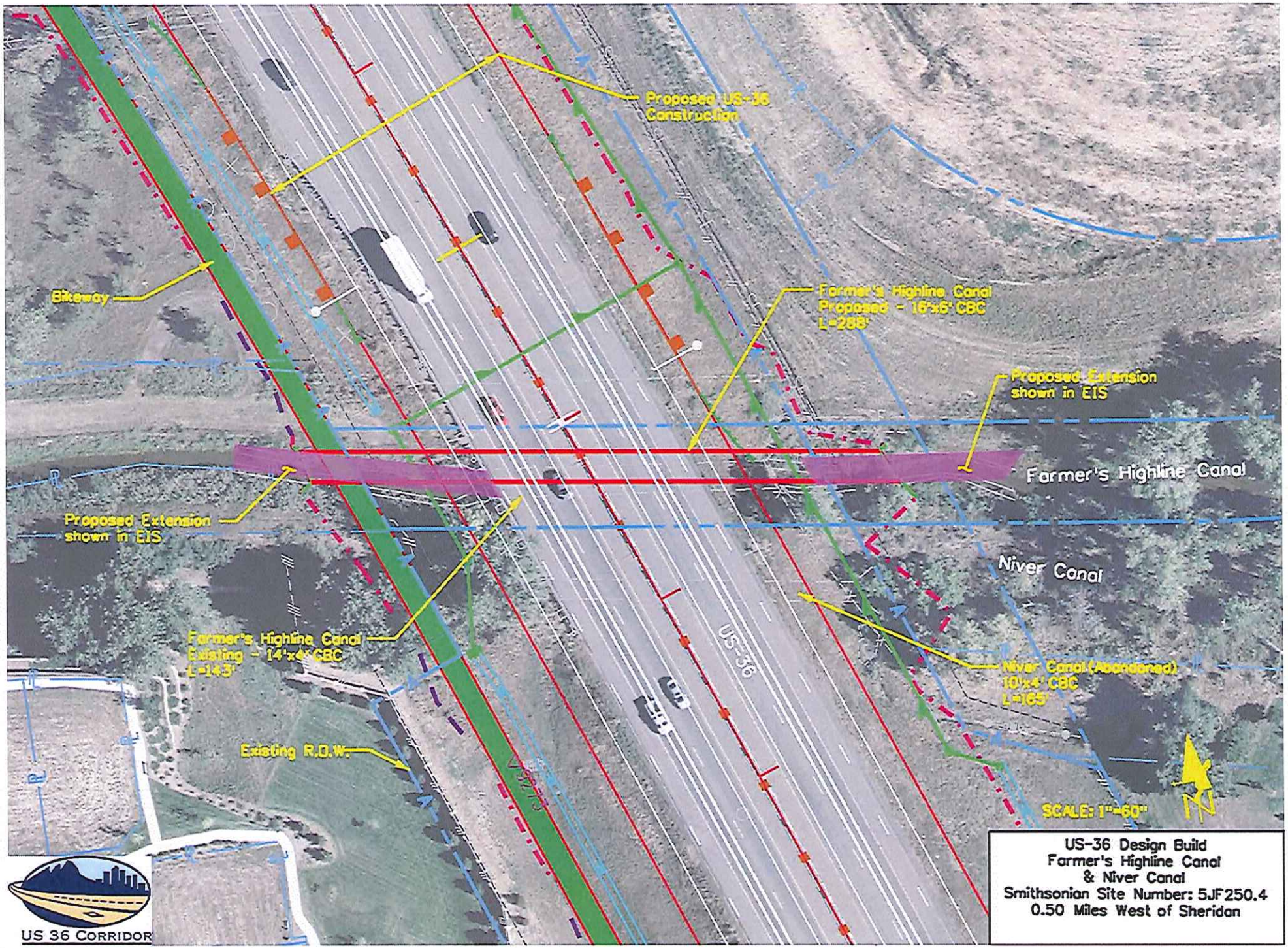
Elizabeth Kemp-Herrera

Elizabeth Kemp-Herrera
Region 6 Planning and Environmental Manager

cc: Dianna Litvak
David Singer

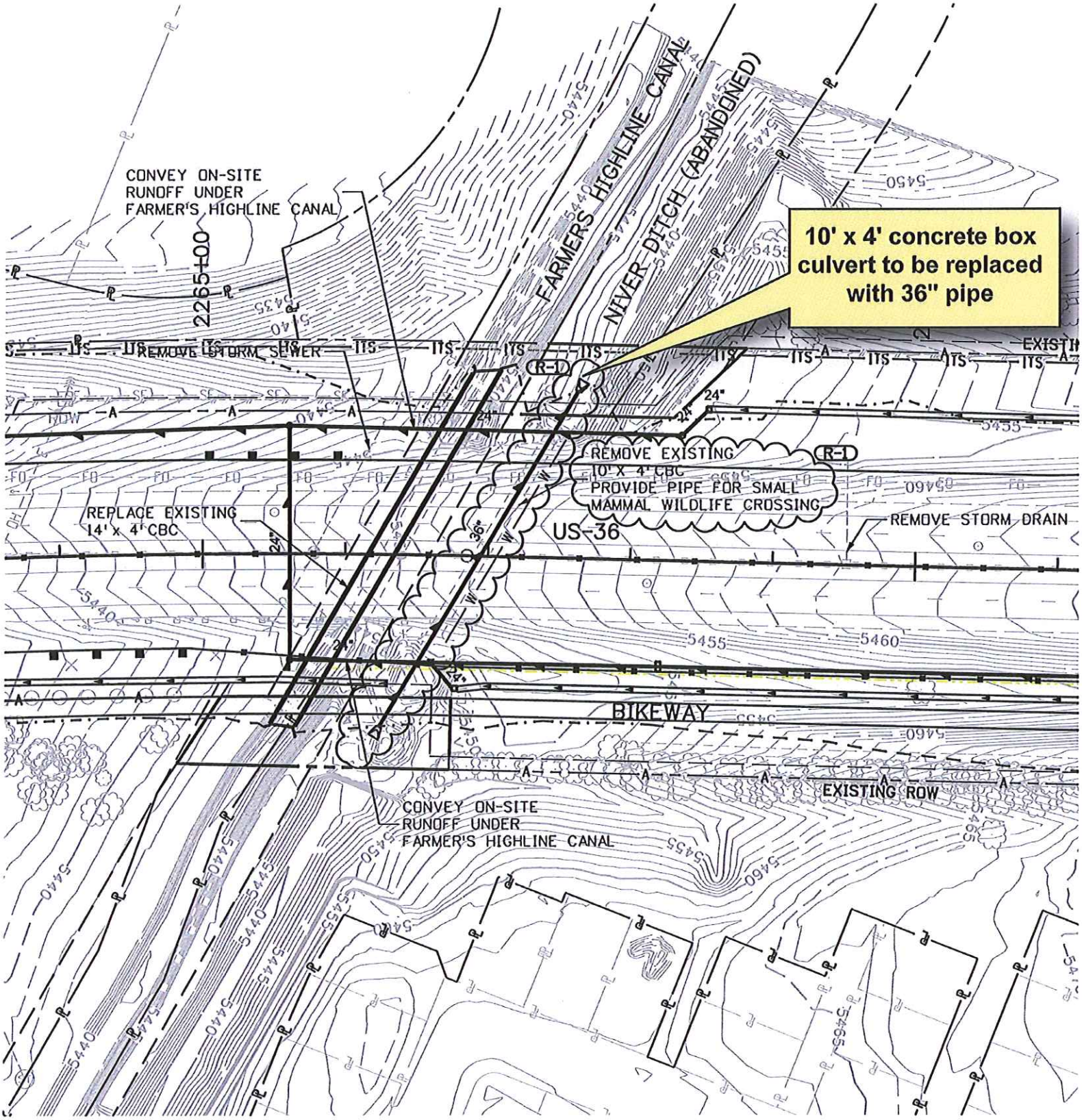
Attachments: Old conceptual design for Niver Canal
New plansheet for Niver Canal

OLD



US-36 Design Build
Former's Highline Canal
& Niver Canal
Smithsonian Site Number: 5JF250.4
0.50 Miles West of Sheridan

NEW


10' x 4' concrete box culvert to be replaced with 36" pipe
CONVEY ON-SITE RUNOFF UNDER FARMER'S HIGHLINE CANAL
2265+00
REMOVE STORM SEWER
FARMERS HIGHLINE CANAL
NIVER DITCH (ABANDONED)
REMOVE EXISTING 10' X 4' CBC PROVIDE PIPE FOR SMALL MAMMAL WILDLIFE CROSSING
REPLACE EXISTING 14' x 4' CBC
US-36
REMOVE STORM DRAIN
BIKEWAY
EXISTING ROW
CONVEY ON-SITE RUNOFF UNDER FARMER'S HIGHLINE CANAL
R-1
24"
36"
5440
5445
5450
5455
5460
5465

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION

Region 6, Planning and Environmental
2000 South Holly Street
Denver, CO 80222
(303) 757-9929
(303) 757-9036 FAX

December 27, 2011

Mr. Patrick Caldwell
City of Westminster
Historic Landmark Board
4800 W. 92nd Ave.
Westminster, CO 80031

RE: US36 Highway Corridor Managed Lane Project Revised Section 106 Determination of Effect for the US36 Corridor Final Environmental Impact Statement and Record of Decision (CHS Project #41960)

Dear Mr. Caldwell:

On August 18, 2011, we provided an assessment of the impacts to several properties for the US36 transportation improvement project. We have since learned the design has changed and the impacts to the Niver Canal (5JF.3787.2) have changed, and have determined that this resource is within the City of Westminster. The purpose of this letter is to describe the revised effects and request your concurrence as a Section 106 consulting party with our determination of effect. Even though the Niver Canal parallels the Farmer's Highline Canal (5JF250), there are no changes in impacts to this resource and the original determination of effect (No Adverse Effect) from our initial correspondence.

In our August 2011 assessment, we indicated that the Niver Canal had been abandoned. The original EIS for the US 36 project showed that the existing 120 ft. concrete box culvert under the canal would be extended 190 ft. and it was determined that there would be *No Adverse Effect*. Since the canal has now been abandoned, the August 2011 plan was to leave the existing culvert in place. CDOT and FHWA determined that there will be no impact to the canal, and the Section 106 determination of effect was *No Historic Properties Affected.*

The design has once more been modified and approximately 250 linear feet of the existing 10' X 4' concrete box culvert will be removed and replaced with a 36" inch pipe that will also function as a small mammal wildlife crossing. We have attached both the old figure of impacts to the Niver Canal and the new plansheet that shows the revised impacts. The abandoned ditch in a concrete box culvert does not convey significance and integrity has been compromised in terms of materials, feel and association. The concrete box culvert was not an original feature of the ditch and the structure is no longer used to convey irrigation water.

According to the US36 FEIS (page 4.7-24 in the Historic and Archaeological Preservation chapter), additional research was necessary to determine whether the Niver Canal meets the National Register of Historic Places criteria. CDOT has not prepared a revised eligibility determination for the canal and will continue to assume that this segment supports the eligibility of the overall resource. Because the proposed work will take place in an area that was previously disturbed, it will not change or modify the characteristics that make the canal a potentially eligible resource. For these reasons, CDOT and FHWA have determined that the Section 106 determination of effect to 5JF3787 will be *No Adverse Effect.*

The FHWA and CDOT request comments, questions, or concerns from the City of Westminster Historic Landmark Board via the address on this letterhead or by email or phone to CDOT senior historian Dianna Litvak at (303) 757-9461 or Dianna.litvak@dot.state.co.us.

Sincerely,

Elizabeth Kemp Herrera

Elizabeth Kemp-Herrera
Region 6 Planning and Environmental Manager

cc: Dianna Litvak
David Singer

Attachments: Old conceptual design for Niver Canal
New plansheet for Niver Canal

HISTORY Colorado

January 17, 2012

Elizabeth Kemp-Herera
Region 6 Planning and Environmental Manager
Colorado Department of Transportation, Region 6
2000 South Holly Street
Denver, CO 80222

Re: US 36 Highway Corridor Managed Lane Project (CHS #41960)

Dear Ms. Kemp-Herrera:

Thank you for your additional correspondence dated December 27, 2011 and received by our office on January 3, 2012 regarding the consultation of the above-mentioned project under Section 106 of the National Historic Preservation Act (Section 106).

After review of the provided additional information, we concur with the finding of National Register eligibility for the resource 5JF.3787, including segment 5JF.3787.2. After review of the new scope of work and assessment of adverse effect, we concur with the recommended finding of *no adverse effect* [36 CFR 800.5(b)] under Section 106. We acknowledge that FHWA intends to make a *de minimis* determination in respect to the requirements of Section 4(f).

If unidentified archaeological resources are discovered during construction, work must be interrupted until the resources have been evaluated in terms of the National Register criteria, 36 CRF 60.4, in consultation with this office.

We request being involved in the consultation process with the local government, which as stipulated in 36 CFR 800.3 is required to be notified of the undertaking, and with other consulting parties. Additional information provided by the local government or consulting parties might cause our office to re-evaluate our eligibility and potential effect findings.

Please note that our compliance letter does not end the 30-day review period provided to other consulting parties. If we may be of further assistance, please contact Amy Pallante, our Section 106 Compliance Manager, at (303) 866-4678.

Sincerely,

Edward C. Nichols
State Historic Preservation Officer

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION

Region 6
2000 South Holly Street
Denver, CO 80222
(303) 757-9459
(303) 757-9073 FAX

August 3, 2011

Mr. Greg Mastriona
General Manager
Hyland Hills Parks and Recreation District
1800 W. 89th Ave
Federal Heights, Co. 80260

RE: US-36 Noise Wall Replacement at Rotary Park – Section 4(f) Temporary Occupancy Concurrence

The Colorado Department of Transportation (CDOT) Region 6 is proposing to widen US 36 to accommodate the addition of managed lanes. The Final Environmental Impact Statement (EIS) for this project identified Rotary Park as a Section 4(f) resource. After further research, it appears that the most appropriate designation for this park is as a multi-use resource, since it is also a regional stormwater detention facility.

As it relates to Rotary Park, the US-36 Managed Lanes project proposes to replace the existing wooden noise walls along the highway with masonry or concrete panel noise walls. At Rotary Park, the existing noise wall alignment departs from the US-36 Right-of-Way line from 10'-50' into the Park property to accommodate the outfall structures associated with the detention facility.

The EIS and Record of Decision reflected constructing the new noise walls along the proposed edge of the US-36 pavement through this area, but did not address the disposition of the existing noise walls. Since the existing noise walls serve a function as a barrier between the park/detention area and the drainage outfall, the US-36 project is proposing to remove the existing noise walls and construct the new noise walls in the same location. Impacts to the park would be temporary and minor, and no additional land would be required beyond what is already occupied by the existing wall. It is assumed that CDOT would replace and maintain the new noise wall under a similar agreement that exists today. The property will be returned to a condition that is at least as good as that which existed prior to the project.

Please indicate below your concurrence with the re-designation of Rotary Park as a multi-use resource and also your concurrence that the temporary impact to this resource does not present permanent adverse impacts to Rotary Park, its functions and the activities that occur on the multi-use property.

Sincerely,

David Singer
CDOT US-36 Project Environmental Manager

I concur: Greg Mastriona Date: 8-8-11

Title: EXECUTIVE DIRECTOR