



STATE OF
COLORADO

Morrissey - DNR, Thomas <thomas.morrissey@state.co.us>

Request for Concurrence - Conversion request Project #08-0748 Springhill Park

2 messages

Morrissey - DNR, Thomas <thomas.morrissey@state.co.us>

Wed, Jul 6, 2016 at 10:51 AM

To: Kelly Pearce <Kelly_Pearce@nps.gov>

Kelly,

Not sure if Mel sent this request for concurrence to you. I am fine with the proposed mitigation parcel for the converted park land.

Let me know,

Thanks,

Tom Morrissey

--

Thomas M. Morrissey, PE
State Trails Program Manager
State Liaison Officer for the Land and Water Conservation Program



COLORADO

Parks and Wildlife

Department of Natural Resources

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2016-dApr_27 CPW 6f Conditional Clearance Letter.pdf

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Pearce, Kelly <kelly_pearce@nps.gov>

Fri, Jul 8, 2016 at 11:51 AM

To: "Morrissey - DNR, Thomas" <thomas.morrissey@state.co.us>

Tom,

I had not received this previously.

This appears to be an appropriate conversion with replacement land. I direct your attention the the attached document which is Chapter 8 of the LWCF Manual for guidance as to what will need to be forwarded to our office for approval.

As far as Temporary Non-Conforming Use, this is addressed on page 8-13 of the attached. NPS' current policy on Non-Conforming Use states that the non-conforming use can not last more than 6 months otherwise the property will need to be converted.

Thank you for your early coordination of this.

Kelly Pearce
Program Officer
State & Local Assistance Programs
National Park Service

Midwest Region
601 Riverfront Drive
Omaha, NE 68102
Phone: [402-661-1552](tel:402-661-1552)
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How far you go in life depends on your being tender with the young, compassionate with the aged, sympathetic with the striving, and tolerant of the weak and strong. Because someday in your life you will have been all of these. – George Washington Carver

[Quoted text hidden]

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CHAPTER 8 - POST-COMPLETION AND STEWARDSHIP

A. Purpose

Pursuant to Section 6(f)(3) of the LWCF Act and 36 CFR 59.3, this chapter contains the requirements for maintaining LWCF assisted sites and facilities in public outdoor recreation use following project completion and to assure that LWCF-assisted areas remain accessible to the general public including non-residents of assisted jurisdictions. These post-completion responsibilities apply to each area or facility for which LWCF assistance is obtained, regardless of the extent of participation of the program in the assisted area or facility and consistent with the contractual agreement between NPS and the State. Responsibility for compliance and enforcement of these requirements rests with the State for both state and locally sponsored projects. The responsibilities cited herein are applicable to the area depicted or otherwise described on the 6(f)(3) boundary map and/or as described in other project documentation approved by the NPS.

B. Operation and Maintenance

Property acquired or developed with LWCF assistance shall be operated and maintained as follows:

1. The property shall be maintained so as to appear attractive and inviting to the public.
2. Sanitation and sanitary facilities shall be maintained in accordance with applicable health standards.
3. Properties shall be kept reasonably open, accessible, and safe for public use. Fire prevention, lifeguard, and similar activities shall be maintained for proper public safety.
4. Buildings, roads, trails, and other structures and improvements shall be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration and to encourage public use.
5. The facility shall be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.
6. A posted LWCF acknowledgement sign shall remain displayed at the project site pursuant to Chapter 7.

C. Availability to Users

1. Discrimination on the basis of race, color, national origin, religion, or sex. Under Title VI of the 1964 Civil Rights Act property acquired or developed with LWCF assistance shall be open to entry and use by all persons regardless of race, color, or national origin, who are

otherwise eligible. Title 43, Part 17 (43 CFR 17), effectuates the provisions of Title VI. The prohibitions imposed by Title VI apply to park or recreation areas benefiting from federal assistance and to any other recreation areas administered by the state agency or local agency receiving the assistance. Discrimination is also prohibited on the basis of religion or sex.

2. Discrimination on the basis of residence. Section 6(f)(8) of the LWCF Act provides, with respect to property acquired and/or developed with LWCF assistance, discrimination on the basis of residence, including preferential reservation, membership or annual permit systems is prohibited except to the extent reasonable differences in admission and other fees may be maintained on the basis of residence.

Fees charged to nonresidents cannot exceed twice the amount charged to residents. Where there is no charge for residents, but a fee is charged to nonresidents, nonresident fees cannot exceed fees charged for residents at comparable state or local public facilities. Reservation, membership or annual permit systems available to residents must also be available to nonresidents and the period of availability must be the same for both residents and nonresidents.

These provisions apply only to the recreation areas described in the project agreement. Nonresident fishing and hunting license fees are excluded from these requirements.

3. Discrimination on the basis of disability. Section 504 of the Rehabilitation Act of 1973 requires no qualified person shall, on the basis of disability, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance. The Americans with Disabilities Act of 1990 (P.L. 100-336) simply references and reinforces these requirements for federally-assisted programs.
4. Reasonable use limitations. Project sponsors may impose reasonable limits on the type and extent of use of areas and facilities acquired and/or developed with Fund assistance when such a limitation is necessary for maintenance or preservation. Thus, limitations may be imposed on the numbers of person using an area or facility or the type of users, such as "hunters only" or "hikers only." All limitations shall be in accord with the applicable grant agreement and amendments.

D. Leasing and Concession Operations Within a Section 6(f)(3) Area

A project sponsor may provide for the operation of a Section 6(f)(3) area by leasing the area/facility to a private organization or individual or by entering into a concession agreement with an operator to provide a public outdoor recreation opportunity at the Fund-assisted site.

As the principal grantee, the State is ultimately accountable for assuring compliance with the applicable federal requirements, and, therefore, the delegation or transfer of certain responsibilities to subgrantees or lessees does not relieve the State of its compliance burden. As the grant recipient, the State has agreed to provide suitable replacement property should the

public use of the leased or concessioned area/facility be restricted or the outdoor recreation resource be compromised.

All lease documents and concession agreements for the operation of LWCF-assisted sites by private organizations or individuals must address the following:

1. In order to protect the public interest, the project sponsor must have a clear ability to periodically review the performance of the lessee/concessioner and terminate the lease/agreement if its terms and the provisions of the grant agreement, including standards of maintenance, public use, and accessibility, are not met.
2. The lease/agreement document should clearly indicate that the leased/concessioned area is to be operated by the lessee/concessioner for public outdoor recreation purposes in compliance with provisions of the Land and Water Conservation Fund Act and implementing guidelines (36 CFR 59). As such, the document should require the area be identified as publicly owned and operated as a public outdoor recreation facility in all signs, literature and advertising, and is operated by a lessee/concessioner as identified in the public information to eliminate the perception the area is private.
3. The lease/agreement document should require all fees charged by the lessee/concessioner to the public must be competitive with similar private facilities.
4. The lease/agreement document should make clear compliance with all Civil Rights and accessibility legislation (e.g., Title VI of Civil Rights Act, Section 504 of Rehabilitation Act, and Americans with Disabilities Act) is required, and compliance will be indicated by signs posted in visible public areas, statements in public information brochures, etc.

E. Conversions of Use

Property acquired or developed with LWCF assistance shall be retained and used for public outdoor recreation. Any property so acquired and/or developed shall not be wholly or partly converted to other than public outdoor recreation uses without the approval of NPS pursuant to Section 6(f)(3) of the LWCF Act and these regulations. The conversion provisions of Section 6(f)(3), 36 CFR Part 59, and these guidelines apply to each area or facility for which LWCF assistance is obtained, regardless of the extent of participation of the program in the assisted area or facility and consistent with the contractual agreement between NPS and the State.

Responsibility for compliance and enforcement of these provisions rests with the State for both state and locally sponsored projects. The responsibilities cited herein are applicable to the area depicted or otherwise described on the 6(f)(3) boundary map and/or as described in other project documentation approved by the Department of the Interior. This mutually agreed to area normally exceeds that actually receiving LWCF assistance so as to assure the protection of a viable recreation entity.

Local sponsors must consult early with the State LWCF manager when a conversion is under consideration or has been discovered. States must consult with their NPS-LWCF manager as early as possible in the conversion process for guidance and to sort out and discuss details of the conversion proposal to avoid mid-course corrections and unnecessary delays. **A critical first step is for the State and NPS to agree on the size of the Section 6(f) park land impacted by any non-recreation, non-public use, especially prior to any appraisal activity.** Any previous LWCF project agreements and actions must be identified and understood to determine the actual Section 6(f) boundary.

If the NPS is alerted or otherwise becomes aware of an ongoing conversion activity that has not been approved, NPS shall request the State Liaison Officer (SLO) to advise the project sponsor of the necessary prerequisites for approval of a conversion and to discontinue the unauthorized conversion activities. If the conversion activity continues, NPS shall formally notify the State it must take appropriate action to preclude the project sponsor from proceeding further with the conversion, use, and occupancy of the area pending NPS independent review and decision of a formal conversion proposal (see Section 10 below).

The NPS Regional Director has the authority to disapprove conversion requests and/or to reject proposed property substitutions. This approval is a discretionary action and should not be considered a right of the project sponsor.

1. Situations that trigger a conversion include:
 - a. Property interests are conveyed for private use or non-public outdoor recreation uses.
 - b. Non-outdoor recreation uses (public or private) are made of the project area, or a portion thereof, including those occurring on pre-existing rights-of-way and easements, or by a lessor.
 - c. Unallowable indoor facilities are developed within the project area without NPS approval, such as unauthorized public facilities and sheltering of an outdoor facility.
 - d. Public outdoor recreation use of property acquired or developed with LWCF assistance is terminated.
2. Situations that may not trigger a conversion if NPS determines that certain criteria are met include:
 - a. Underground utility easements that do not impact the recreational use of the park and is restored to its original surface condition (see Section F below).
 - b. Proposals to construct public facilities, such as recreation centers and indoor pool buildings, within a Section 6(f)(3) protected area where it can be shown there is a gain or increased benefit to the public outdoor recreational opportunity. These proposals must be reviewed by the NPS as a “public facility request” (see Section H below). The

State should consult with the NPS early in the formative stages of developing proposals to construct indoor facilities on Section 6(f)(3) protected land (see Section H below).

- c. Proposals for "temporary non-conforming uses," that is temporary non-recreation activities of less than a six-month duration within a Section 6(f)(3) protected area, must be reviewed by the NPS (see Section I below).
 - d. Proposals to build sheltered facilities or to shelter existing facilities within a Section 6(f)(3) protected area provided they do not change the overall public outdoor recreation characteristics and otherwise meet the sheltering criteria in Chapter 3. The NPS review and approval of such proposals will not trigger a conversion (see Section J below).
 - e. Proposals for changing the overall outdoor recreation use of a Section 6(f)(3) area from that intended in the original LWCF project agreement. These proposals must be reviewed by the NPS (see Section L below).
3. Prerequisites to the NPS consideration of conversions. Formal requests from the project sponsor for permission to convert LWCF assisted properties in whole or in part to other than public outdoor recreation uses must be submitted by the State Liaison Officer to NPS in writing and conform to the prerequisites set forth in 36 CFR 59.

States shall consult with NPS when conversions are proposed or discovered and prior to making the formal request to NPS. States shall use the Proposal Description and Environmental Screening Form (PD/ESF) to prepare its conversion proposal (see Chapter 4). The PD/ESF guides the development of the conversion proposal, including the incorporation of the following prerequisites that must be met before NPS will consider the formal conversion request:

- a. All practical alternatives to the conversion have been evaluated and rejected on a sound basis.
- b. The fair market value of the property to be converted has been established and the property proposed for substitution is of at least equal fair market value as established by a state approved appraisal (see Chapter 4 for appraisal guidance) excluding the value of structures or facilities that will not directly enhance its outdoor recreation utility.
- c. The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. Depending on the situation, and at the discretion of the NPS, the replacement property need not provide identical recreation experiences or be located at the same site, provided it is in a reasonably equivalent location. Generally, the replacement property should be administered by the same political jurisdiction as the converted property. NPS will consider state requests to change the project sponsor for any replacement property when it is determined a different political jurisdiction can meet the criteria for replacement properties. Equivalent usefulness and location will be determined based on the following criteria:

- (1) Property to be converted must be evaluated in order to determine what recreation needs are being fulfilled by the facilities which exist and the types of outdoor recreation resources and opportunities available. The property being proposed for substitution must then be evaluated in a similar manner to determine if it will meet recreation needs that are at least like in magnitude and impact to the user community as the converted site. This criterion is applicable in the consideration of all conversion requests with the exception of those where wetlands are proposed as replacement property.

Wetland areas and interests therein shall be considered to be of reasonably equivalent usefulness as compared to the recreational usefulness of the property proposed for conversion if they have been identified in the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan (SCORP) in accordance with Section 6(f)(3) of the LWCF Act as amended (36 CFR 59.3) by Section 303 of the Emergency Wetlands Resources Act of 1986.

- (2) Replacement property need not necessarily be directly adjacent to or close by the converted site. This policy provides the administrative flexibility to determine location recognizing that the property should meet existing public outdoor recreation needs. While generally this will involve the selection of a site serving the same community(ies) or area as the converted site, there may be exceptions. For example, if property being converted is in an area undergoing major demographic change and the area has no existing or anticipated future need for outdoor recreation, then the project sponsor should seek to locate the substitute area at another location within the jurisdiction.
 - (3) Should a local project sponsor be unable to replace converted property, the State would be responsible, as the primary recipient of federal assistance, for assuring compliance with these requirements and for the substitution of replacement property.
 - (4) The acquisition of one parcel of land may be used in satisfaction of several approved conversions (see Section 6 below) and vice versa.
- d. The property proposed for replacement meets the eligibility requirements for LWCF assisted acquisition (see Chapter 3). The replacement property must constitute or be part of a viable recreation area. Viability and recreational usefulness is dependent upon the proposed outdoor recreation development plan and timetable for the development of the replacement parks. If full development of the replacement site(s) will be delayed beyond three years from the date of conversion approval, the conversion proposal shall explain why this is necessary (see Chapter 3.B.7).

For proposed replacement property with a history of contamination, proposals must address the nature of the contamination, how the contaminated area has been or will be

remediated, how the area will be developed into a safe, public outdoor recreation area, and how provisions will be put in place to monitor the new replacement parkland to ensure public health and safety in perpetuity. Certain contaminated areas may not meet the equal or greater recreational usefulness prerequisite for replacement land. Early coordination with NPS for conversion proposals involving contaminated replacement land, even if remediated, is required (see 3.4 below).

Unless each of the following additional conditions (also see Chapter 3) is met, land currently owned by another public agency may not be used as replacement land for land acquired as part of an LWCF project:

- (1) The replacement land was not originally acquired by the sponsor or selling agency for recreation.
- (2) The replacement land has not been previously dedicated or managed for recreational purposes while in public ownership.
- (3) No federal assistance was provided in the replacement land's original acquisition unless the assistance was provided under a program expressly authorized to match or supplement LWCF assistance.
- (4) Where the project sponsor acquires replacement land from another public agency, the selling agency must be required by law to receive payment for the land so acquired (see Chapter 3.A.9).

An exception may be made to this condition only in the case of development projects for which the project sponsor's match was not derived from the cost of the purchase or value of a donation of the land to be converted, but from the value of the development itself. In this case, public land that has not been previously dedicated or managed for recreation/conservation use may be used as replacement land even if this land is currently owned by the project sponsor or is transferred from one public agency to another without cost.

- e. In the case of Section 6(f)(3) protected areas that are partially rather than wholly converted, the impact of the converted portion on the remaining area shall be considered. If such a conversion is approved, the unconverted area must remain recreationally viable or be replaced as well.
- f. All necessary coordination with other federal agencies has been satisfactorily accomplished including, for example, compliance with Section 4(f) of the Department of Transportation Act of 1966.
- g. The guidelines for environmental review under NEPA have been satisfactorily completed and considered by NPS during its review of the proposed Section 6(f)(3) action. In cases where the proposed conversion arises from another federal action, NPS

final review of the State's proposal shall not occur until the NPS is assured all environmental review requirements for the other federal action have been met, e.g., Army Corps of Engineer permits.

The environmental review process must analyze not only the Section 6(f)(3) area proposed for conversion, but also the development of the replacement parkland. The purpose and scope of the environmental review must focus on the impacts on the “human environment” resulting from the loss of the Section 6(f)(3) parkland, impacts on any remaining Section 6(f)(3) parkland for partial conversions, and the development of new Section 6(f)(3) replacement park(s). The scope of the environmental review should not include impacts of the action precipitating the conversion on resources beyond the Section 6(f)(3) boundary, such as impacts of a new housing development or a school on a neighborhood.

The environmental analysis must be conducted in a neutral and factual manner and result in statements that reflect this same neutrality so the interested and affected public can focus on and understand the details of the proposed federal action of converting parkland including the replacement of new parkland according to 36 CFR 59. The environmental analysis documents should not include statements that promote or justify the action precipitating the conversion, such as proclaiming that the subject parkland is the best location for a new fire station.

For detailed guidance on NEPA and how to conduct environmental reviews for LWCF conversions, consult Chapter 4 of this manual, and the NPS.

- h. Adherence to state intergovernmental review procedures as appropriate (see Chapter 4).
 - i. The proposed conversion and substitution are in accord with the SCORP.
4. State preparation of conversion proposal for NPS review: To avoid any unnecessary delays, duplication of effort, and mid-course corrections, the States shall consult with NPS early when conversions are proposed or discovered to ensure:
- a. the extent of impact from the conversion activity on Section 6(f)(3) protected area is mutually agreed upon; and
 - b. the acceptability of proposed replacement parkland has been explored prior to State/local sponsor expenditure of resources on appraisals and the required environmental review process to be undertaken in accordance with NEPA.

The State shall coordinate the development of the conversion proposal including ensuring the project sponsor complies with applicable federal, state and local laws, regulations and permit requirements. As the proposal is developed, the State may enlist the assistance of NPS to provide technical guidance as needed, especially for complex and controversial conversions. A State’s submission of a formal conversion request to NPS is a State’s

endorsement of the conversion. If a State does not concur or endorse the conversion, then the proposal should not be forwarded to NPS for formal review and decision.

5. NPS review of the State conversion proposal. NPS will conduct an independent review of the proposal using the conversion prerequisites and any other critical factors that may have arisen during proposal development. If the State has adequately addressed the prerequisites, and NPS finds no other reason to deny the request, the NPS administrative record will be documented as such and an amendment will be signed approving the conversion.
6. Banking excess fair market value of replacement land for future conversions. The acquisition of one parcel of replacement land may be used in satisfaction of several approved conversions.

Excess fair market value (FMV) of a replacement property can be “banked” for a period not to exceed five years from the date of the initial conversion amendment. During this time period, the same project sponsor may use the remaining value to make up the FMV difference in cases where the subsequent proposed replacement property satisfies the equal usefulness criterion but its appraised FMV falls short of the equal fair market value requirement.

The initial replacement property with the excess fair market value may not be used to satisfy the equal usefulness criterion for subsequent conversions unless additional conversions are anticipated by the sponsor at the time of the original conversion request and the accompanying documentation clearly addresses how the replacement property would satisfy the equal usefulness criteria for the original conversion as well as those that are anticipated.

7. Conversions on leased land. Should a conversion occur on leased land during the term of the lease, the State must comply with the conversion requirements of Section 6(f)(3) including the provision of replacement land. In this instance, the conversion of the original lease can be replaced with a leasehold interest for a period of time that is not less than the time remaining on the original lease, and, which fulfills the recreation commitment agreed to in the original lease agreement.

For existing projects that involve leases, the responsibility for retaining the property in recreation terminates at the end of the lease period unless the grant agreement calls for some other arrangement. Lease agreements containing a renewal clause that can be exercised by the lessee must be reviewed to ensure that Section 6(f)(3) compliance will continue throughout the duration of the next lease period.

8. Conversion proposal documentation. A conversion requires an amendment to the original project agreement. Therefore, the amendment should be submitted concurrently with the formal conversion request or at such time as all details of the conversion have been worked out with NPS.

The formal conversion proposal submission to NPS must include the following items:

- a. A transmittal letter briefly describing the conversion proposal and requesting NPS review and approval
- b. Standard Form 424 for amendments (see Chapter 7)
- c. PD/ESF including Step 4, the environmental screening form, and an environmental assessment document analyzing the entire conversion proposal (the converted parkland and the replacement parkland in one document).
- d. LWCF project amendment form identifying changes to the original Section 6(f)(3) boundary caused by the conversion and to establish a new 6(f) boundary around the replacement site(s)
- e. Signed and dated Section 6(f)(3) boundary map for any remaining parkland resulting from a partial conversion, and for the replacement site(s)
- f. Description and Notification Form (DNF)

Once the conversion has been approved by NPS, replacement property should be immediately acquired and developed according to the replacement proposal timetable. If development will be delayed beyond three years from the date of NPS conversion approval, then a request for delayed development beyond three years with a justification for the delay must be made to NPS (See Chapter 3.B.7.c).

9. Small conversions. Small conversions are composed of small portions of Section 6(f)(3) protected areas that amount to no more than 10 percent of the 6(f) protected area or five acres, whichever is less. States should consult with NPS prior to developing the small conversion proposal.

Because small conversion proposals are less complex, NPS review and decision can be facilitated when:

- a. Minor or no environmental impacts would occur on resources being removed from Section 6(f)(3) protection, on the remaining Section 6(f)(3) area, and on the contiguous new replacement parkland by placing it under Section 6(f)(3) protection per the environmental screening form. This includes consideration of impacts to historic resources per the Section 106 process of the National Historic Preservation Act. The entire conversion proposal is categorically excluded from further environmental review under NEPA (see Chapter 4).
- b. The proposed conversion is not controversial.
- c. The replacement property is contiguous to the original Section 6(f)(3) area.

The State's proposal must include:

- d. Transmittal letter describing the entire small conversion proposal.
 - e. Standard Form 424
 - f. PD/ESF with the portion for conversions completed indicating that a categorical exclusion is justified.
 - g. LWCF project amendment form.
 - h. Description and Notification Form (DNF)
 - i. Revised 6(f) boundary map indicating the deletion of the small converted area and the addition of the replacement property.
10. Discovering unauthorized conversions. When it is discovered that a Section 6(f)(3) area has been converted without NPS approval, a conversion proposal must be submitted and reviewed by NPS for retroactive action. The NPS shall notify the State it is in violation of the grant contract, program regulations, and law, and an immediate resolution of the unapproved conversion must be expedited.

If it is discovered that an unauthorized conversion is in progress, the State must notify the project sponsor to cease immediately until the conversion process pursuant to 36 CFR 59.3 has been satisfactorily completed.

Resolution of the conversion will require State and NPS review of the conversion proposal as previously set forth in Section E.4 above including the provision of suitable replacement property.

If the sponsor has already provided replacement property without NPS approval, the eligibility of the replacement land must meet the same Section 6(f)(3) requirements as if it had not yet been acquired. It is incumbent upon the State to make the case that the replacement land fully meets these requirements.

Failure by the State to take steps to follow this procedure shall be considered cause for NPS to apply penalty options described in Section N below.

11. Conversions with delayed parkland replacement. Exceptions to the immediate replacement requirement (see Section 8 above) will be allowed only when it is not possible for replacement property to be identified prior to the State's request for the conversion. An express commitment must be received from the State to satisfy Section 6(f)(3) substitution requirements within a specified period normally not to exceed one year following conversion approval.

Such proposals are not routine and must include sufficient evidence to justify why such a delay is necessary.

F. Underground Utility Easements and Rights-of-Way

The State may allow underground utility easements within a Section 6(f)(3) area as long as the easement site is restored to its pre-existing condition to ensure the continuation of public outdoor recreational use of the easement area within 12 months after the ground within the easement area is disturbed. If restoration exceeds the 12 month period, or the easement activities result in permanent above-ground changes, NPS shall be consulted to determine if the changes will trigger a conversion. If present or future outdoor recreation opportunities will be impacted in the easement area or in the remainder of the Section 6(f)(3) area, a conversion will be triggered.

G. Commercial Signage in Section 6(f)(3) Areas

Commercial signs are only allowable within Section 6(f)(3) boundaries when the advertising is attached to allowable park structures such as benches, fencing, walls, and buildings and are not inconsistent with the park setting and/or the built environment in which it is located (e.g., athletic fields). Signs may face either outside or inside the park. Commercial advertising in the form of a stand-alone structure such as a billboard that creates a footprint in the park, or commercial signage permanently affixed to a natural feature within the 6(f) area, is a conversion regardless of which direction it faces.

H. Proposals to Construct Public Facilities

Public facility requests will only be approved if the public facility clearly results in a net gain in outdoor recreation benefits or enhances the outdoor recreation use of the entire park, and the facility is compatible with and significantly supportive of the outdoor recreation resources and opportunities of the Section 6(f)(3) protected area. The State shall use the PD/ESF to document its public facility proposal using the following criteria and submit it along with a project amendment and a recommendation for federal approval for NPS review and decision.

The NPS will consider requests to construct sponsor-funded public facilities when the following criteria have been met:

1. Uses of the facility will be compatible with and significantly supportive of outdoor recreation resources and uses at the rest of the site and recreation use remains the overall primary function of the site. The proposed public facility will include a recreation component and will encourage outdoor recreation use of the remaining Section 6(f) area.
2. All design and location alternatives have been adequately considered, documented and rejected on a sound basis.
3. The proposed structure is compatible and significantly supportive of the outdoor recreation resources of the site, whether existing or planned. The park's outdoor recreation use must

continue to be greater than that expected for any indoor uses, unless the site is a single use facility, such as a swimming pool building, which virtually occupies the entire site.

Examples of uses which would not ordinarily be approved include, but are not limited to, a community recreation center which takes up all or most of a small park site, clinics, police stations, restaurants catering primarily to the general public, fire stations, professional sports facilities or commercial resort or other facilities which: (1) are not accessible to the general public; or, (2) require memberships; or, (3) which, because of high user fees, have the effect of excluding elements of the public; or, (4) which include office, residential or elaborate lodging facilities.

Restaurant-type establishments with indoor dining/seating that cater primarily to the outdoor recreating public must be reviewed under this public facility policy. Other park food service operations such as snack bars, carry-out food service, and concession stands with outdoor dining including pavilions and protected patios are allowable without further NPS if the primary purpose is to serve the outdoor recreating public.

4. Potential and future benefits to the total park's outdoor recreation utility must be identified in the proposal. Any costs or detriments should be documented and a net recreation benefit must result.
5. The proposed facility must be under the control and tenure of the public agency that sponsors and administers the original park area.
6. The proposal has been analyzed pursuant to NEPA, including providing the public an opportunity to review and comment on the proposal if required as part of the NEPA review.
7. All applicable federal requirements for approval are met.
8. The proposal has been adequately reviewed at the state level and has been recommended by the SLO.

I. Requests for Temporary Non-Conforming Uses Within Section 6(f)(3) Areas

All requests for temporary uses for purposes that do not conform to the public outdoor recreation requirement must be submitted to and reviewed by the State. The State, in turn, will submit a formal request to NPS describing the temporary non-conforming use proposal.

Continued use beyond six-months will not be considered temporary, but will result in a conversion of use and will require the State/project sponsor to provide replacement property pursuant to Section 6(f)(3) of the LWCF Act.

1. Criteria. NPS will use the following criteria to evaluate each request:
 - a. The size of the parkland area affected by any temporary non-recreation use shall not result in a significant impact on public outdoor recreation use. This means that the site of the temporary activity should be sufficiently small to restrict its impacts on other areas of a Fund-assisted park.
 - b. A temporary use shall not result in permanent damage to the park site, and appropriate mitigating measures will be taken to ensure no residual impacts on the site once the temporary use is concluded.
 - c. No practical alternatives to the proposed temporary use exist.
 - d. All applicable federal requirements for approval are met.
 - e. The proposal has been adequately reviewed at the state level and has been recommended by the SLO.
2. Required proposal documentation. The State's formal proposal to NPS shall include:
 - a. SLO recommendation;
 - b. PD/ESF providing a complete description of the proposed temporary use, including:
 - (1) start and completion dates;
 - (2) identification of the portion of the site affected, including a map showing the relationship of the temporary use site to the full area protected under 6(f)(3) and a justification of why the area needed is the minimum necessary for the proposed use;
 - (3) an analysis of the alternatives to the proposed use that were considered;
 - (4) a description of both immediate impacts on the site as a result of the temporary use and any residual or long-term impacts on the site's environment or on recreation use;
 - (5) a description of any appropriate mitigation actions that may be necessary and a schedule for their implementation; and,
 - c. An acknowledgement by the SLO a full conversion will result if the temporary use has not ceased after the maximum six-month period allotted.

J. Sheltering Facilities within Section 6(f)(3) Areas

NPS approval is required to shelter an existing facility located within a Section 6(f)(3) protected area. See Section 3.C.7 for further guidance.

K. Obsolete Facilities

Project sponsors are not required to continue operation of a particular recreation area or facility beyond its useful life. However, Section 6(f)(3) of the LWCF Act requires project sponsors maintain the entire area within the Section 6(f)(3) boundary in some form of public outdoor recreation use.

Notwithstanding neglect or inadequate maintenance on the part of the project sponsor, a recreation area or facility may be determined to be obsolete if:

1. reasonable maintenance and repairs are not sufficient to keep the recreation area or facility operating;
2. changing recreation needs dictate a change in the type of facilities provided;
3. park operating practices dictate a change in the type of facilities required; or,
4. the recreation area or facility is destroyed by fire, natural disaster, or vandalism.

States may determine a facility is obsolete and permit its use to be discontinued or allow a particular type of recreation use of the LWCF assisted area to be changed provided that the project record maintained by the State is documented by the sponsor with a justification statement for determining obsolescence and the State concurs in the change. However, NPS approval must be obtained prior to any change from one LWCF allowable use to another when the proposed use would significantly contravene the original plans for the area. See Section L below for further guidance.

If, in the judgment of the State, the facility is needed and was lost through neglect or inadequate maintenance, then replacement facilities must be provided at the current value of the original investment.

LWCF assistance may be provided to renovate outdoor recreation facilities that have previously received LWCF assistance if the State determines the renovation is not required as a result of neglect or inadequate maintenance and the State documents the project record to that effect.

L. Significant Change of Use

Section 6(f)(3) of the LWCF Act requires project sponsors maintain the entire area defined in the project agreement in some form of public outdoor recreation use. NPS approval must be obtained prior to any change from one eligible use to another when the proposed use would significantly contravene the original plans or intent for the area as described in the original LWCF project(s).

NPS approval is not required, however, for each and every facility use change. Uses within a Section 6(f)(3) protected area should be viewed in the context of overall use and should be

monitored in this context. A change from a swimming pool with substantial recreational development to a less intense area of limited development such as a passive park, or vice versa, would, for example, require NPS approval.

States shall notify NPS in writing of proposals to significantly change the use of Section 6(f)(3) areas in advance of their occurrence. NPS will expedite a determination of whether a formal review and approval process will be required. A primary NPS consideration in the review will be the consistency of the proposal with the Statewide Comprehensive Outdoor Recreation Plan.

If the change in use proposal requires a formal review and decision by NPS, the State shall complete the Proposal Description and Environmental Screening Form (PD/ESF) found in Chapter 4.

Changes to other than public outdoor recreation use constitute a conversion and will require NPS approval and the substitution of replacement land in accordance with Section 6(f)(3) of the LWCF Act

M. Post-Completion Inspections

1. Purpose. In order to determine whether properties acquired or developed with LWCF assistance are being retained and used for outdoor recreation purposes in accordance with the project agreement and other applicable program requirements, a state post-completion inspection is to be made within five years after final billing and at least once every five years thereafter.

The following points should be taken into consideration during the inspection of properties that have been developed for public use:

- a. Retention and use. Is the Section 6(f)(3) boundary in tact and the property being used for outdoor recreation purposes including those intended through the projects funded with LWCF assistance?
- b. Appearance. Is the property attractive and inviting to the public?
- c. Maintenance. Is upkeep and repair of structures and improvements adequate? Is there evidence of poor workmanship or use of inferior quality materials or construction? Is vandalism a problem? Is the area being maintained?
- d. Management. Does staffing and servicing of facilities appear adequate?
- e. Availability. Is there evidence of discrimination? Is the property readily accessible and open to the public during reasonable hours and times of the year?
- f. Signing. Is the area properly signed to allow for user information and safety, and proper acknowledgement of the federal Land and Water Conservation Fund?

- g. Interim use. Where lands have been acquired but not yet developed, the inspection should determine whether the interim uses of the property are in accordance with agreements with the NPS.
2. Reporting. Within 90 days of completion of an on-site inspection, States shall submit to NPS a post-completion inspection report for only those projects which have compliance problems. The report should include the date of inspection, description of the finding, and a summary report of corrective actions taken or to be taken.

For all other sites inspected with no compliance problems, the State shall only report to NPS the project number and date of inspection, and shall retain the actual inspection report with the State LWCF project file. States shall submit a report of all LWCF project sites inspected at least annually and by September 30.

Post-completion inspection reports shall also be completed for those projects in which the facilities have been deemed obsolete. The report should include certification by the State Liaison Officer that the facility is obsolete and that such obsolescence is not a result of neglect or inadequate maintenance on the part of the project sponsor.

3. Applicability. The provisions of this section apply to the Section 6(f)(3) area encompassing the area or facility assisted by the LWCF, regardless of the extent of LWCF assistance in that area or facility. That is, in cases where assistance is provided only for an acquisition, the entire park or recreational area involved, including developments on the lands so acquired, are subject to the provisions of this section. Where development assistance is given, the lands of the park or recreation area identified on the Section 6(f)(3) boundary map are subject to this section.
4. State responsibility. Responsibility for enforcement of the provisions of this chapter rests with the State. The NPS will inspect LWCF assisted areas and facilities from time to time, but it shall conduct such visits in concert or through consultation with the State agency or State Liaison Officer.
5. Costs. The costs of making post-completion inspections by the State are allowable overhead charges for LWCF assistance and are allowable costs covered by the indirect cost rate.
6. NPS inspections. Properties acquired or developed with LWCF assistance shall be available for inspection by the NPS Director or other NPS representatives.

N. Penalties for Failure to Comply with Federal Laws and Regulations

Pursuant to 43 CFR Part 12.83, when the NPS determines a State has violated or failed to comply with applicable federal law, or the regulations governing this program with respect to a project, NPS may withhold payment of federal funds to the State on account of such project, withhold funds for other projects of the State, withhold approval of further projects of the State,

and take such other action deemed appropriate under the circumstances, including debarment and suspension pursuant to Executive Order 12549 at 43 CFR 12.100-.510, until compliance or remedial action has been accomplished by the State to the satisfaction of NPS.

Tribal Historic Preservation Office

Northern Cheyenne Tribe
19 W. Chief ST.
P.O. Box 128
Lame Deer, Montana 59043
Phone: (406) 477-4839/4838 Fax: (406) 477-6388
www.cheyennenation.com

Native American Consultation Request Form

Site name/Project: *6th Avenue Parkway Extension EA and Technical Appendices*

Agency: *Felsburg Holt& Ullevig*

Contact Person: *Jessica Myklebust, FHU*

Phone: *303-721-1440*

Email Address: jessica.myklebust@fhueng.com Fax:

Request Additional Info: **That a cultural surveyor be present during this undertaking.**

Adverse Effect: _____

No Effect: **As mentioned in previous consultation, suggest creating buffer zone around isolated findings to ensure possible sub-surface will not be disturbed.**

Comment: **Friendly reminder, be aware that due to seasonal vegetation change certain types of cultural resources may not be visible during pedestrian surveys but may be visible during ground disturbing activities, for this project. Thank you for contacting our office.**

Interest: _____

Defer To: _____

Exceptions: If archaeological materials or human remains are encountered during construction, the State Historic Preservation Office and applicable Native American Tribes should be notified.

Teanna Limpy

Signature

Teanna Limpy, T.H.P.O. Director
Printed Name (Signing Official)
teanna.limpy@cheyennenation.com

8/6/16

Date



LITTLE WOLF AND MORNING STAR – Out of defeat and exile they led us back to Montana and won our Cheyenne homeland that we will keep forever.

Date Received: 7/5/16

Response Deadline: 8/5/16

Colorado Department of Transportation

Non-Historic Section 4(f) De Minimis Use Clearance Form

CDOT Request for *De Minimis* Finding

Based upon the information provided and this analysis below, CDOT believes that the Section 4(f) use of this property is considered *de minimis* as defined in 23 CFR 774.17.



Carol Coates, Non-historic Section 4(f) Specialist
CDOT Region 1

9/6/16

Date

FHWA *De Minimis* Finding



for John M. Gater, PE
Division Administrator
FHWA Colorado Division

9/12/16

Date

Project Information

Date: August 31, 2016	Region: 1
Project Title: 6th Avenue Extension Environmental Assessment	Project Location: City of Aurora, Arapahoe County
Project Number: N/A	Project Route: SH-30
Lead Agency: City of Aurora	NEPA Class: EA
Project Description: A new roadway alignment from SH-30/6th Ave to the E-470 Intechange at East 6th Parkway. This would close the gap in the existing major arterial street system, reduce out of direction travel, and improve the efficiency and reliability of the transportation system. The proposed project would be a six lane arterial roadway with a raised median and sidewalks.	

Resource Information

Section 4(f) Resource: Environmental Day Camp	Type of 4(f) Resource: Public Park
Official with Jurisdiction: Tom Barrett, Director of PROS, City of Aurora	

De Minimis Documentation:

- 1. Describe the Section 4(f) property and the attributes and features that qualify it for Section 4(f) protection;**

The Environmental Day Camp Park is a City of Aurora open space area with dispersed recreation, however, the parcel has received Section 6(f) Land and Water Conservation funds and is required to be managed for recreation purposes in perpetuity.

- 2. Describe the impacts to the Section 4(f) property, and why they are considered *de minimis* as defined by 23 CFR 774.17. Include all avoidance, minimization and mitigation or enhancement measures.**

The Environmental Day Camp would be permanently and temporarily impacted by grading associated with the proposed roadway and bridge. Permanent impacts would include 0.2 acre of the parcel and temporary impacts would include an additional 0.6 acre (see attachment). The new roadway must transition to existing SH 30 on the east side of the project and is constrained by Buckley AFB south of existing 6th Avenue; therefore, minor grading impacts occur north of existing 6th Avenue on the Environmental Day Camp at the SH 30 tie in. There are additional grading impacts on the west side of the Environmental Day Camp that are tied to the bridge over Sand Creek. The 6th Avenue Parkway roadway elevation must be raised significantly from existing elevation to meet minimum vertical clearances for the bridge over the Sand Creek and the Triple Creek Trail, causing the 4:1 slopes to spill into the Environmental Day Camp leading up to the structure.

- 3. For parks, recreational facilities, and wildlife and waterfowl refuges:**

- a. Describe the Public Outreach that has been or is being conducted; and**

On July 14th, 2016, during a public meeting for the Environmental Assessment, a poster board with information about the proposed impacts to the Environmental Day Camp (see attachment) was displayed. A form was used at the public meeting to gather comments on the proposed project and specifically asked for comments on the proposed impacts to the Environmental Day Camp. Additionally, as part of the Environmental Assessment 30-day public comment period, comments were accepted from June 30, 2016 to July 30, 2016. The following comments were received: 1. Children in an Environmental Park with a highway running right over it. The noise along will be an environmental menace. 2. No comments except that the plan seems to take into consideration existing wildlife and maintenance of green space. 3. Looks acceptable to me. 4. Happy with proposal as is.

- b. Include written concurrence from the official with jurisdiction over the 4(f) resource with the *de minimis* determination.**

The OWJ letter, which is attached to this form, was signed by Tom Barrett, City of Aurora, Director of Parks, Recreation and Open Space on 8/26/16.

Form prepared by: Carol Coates

Attach all required documentation as described above.

For Non-Historic Section (f), please enter information into the SharePoint tracking database: [Section 4\(f\) Tracking](#)



COLORADO

Department of Transportation

Region 1

Planning & Environmental
2000 South Holly Street,
Denver, CO 80222-4818

August 22, 2016

Mr. Tom Barrett, Director of Parks, Recreation, & Open Space
City of Aurora
15151 East Alameda Parkway, 3200
Aurora, CO 80012

RE: The Environmental Day Camp Section 4(f) *De Minimis* Concurrence Request for the 6th Avenue Parkway Extension

Dear Mr. Barrett,

This letter and enclosure constitute a request for review and concurrence on a finding of Section 4(f) *de minimis* impact to the Environmental Day Camp as a result of the 6th Avenue Parkway Extension project. Below is a description of the proposed project, an explanation of Section 4(f), a description of the Section 4(f) use of the Environmental Day Camp, and the public involvement process.

Proposed Project

The Colorado Department of Transportation (CDOT) is proposing to extend the 6th Avenue Parkway for approximately 2 miles along a new alignment, connecting existing 6th Avenue/SH 30 with the existing 6th Avenue Parkway at E-470 to the east. The project vicinity is shown on Attachment 1. This would close the gap in the existing major arterial street system, reduce out of direction travel, and improve the efficiency and reliability of the transportation system. The proposed project would be a six lane arterial roadway with a raised median and sidewalks.

Section 4(f)

Section 4(f) of the U.S. Department of Transportation Act affords special protection to publicly owned parks, recreational lands, wildlife and waterfowl refuges, and public or privately owned historic sites. Use of a Section 4(f) property occurs when: 1) land is permanently incorporated into the transportation facility; 2) there is a temporary occupancy of land that is adverse in the terms of the statute's preservation purpose; or 3) there is a constructive use (the project's impacts are so severe that the protected activities, features, or attributes of an adjacent property are substantially impaired).

A *de minimis* impact is one that, after taking into account all measures to minimize harm (such as avoidance, minimization, mitigation, or enhancement measures) results in a determination that the project will not adversely affect the activities, features, or attributes of the property.



Section 4(f) Use of the Environmental Day Camp

The Environmental Day Camp would be permanently and temporarily impacted by grading associated with the proposed roadway and bridge. Permanent impacts would include 0.2 acre of the parcel and temporary impacts would include an additional 0.6 acre (see attachment 2). The new roadway must transition to existing SH 30 on the east side of the project and is constrained by Buckley AFB south of existing 6th Avenue; therefore, minor grading impacts occur north of existing 6th Avenue on the Environmental Day Camp at the SH 30 tie in. There are additional grading impacts on the west side of the Environmental Day Camp that are tied to the bridge over Sand Creek. The 6th Avenue Parkway roadway elevation must be raised significantly from existing elevation to meet minimum vertical clearances for the bridge over the Sand Creek and the Triple Creek Trail, causing the 4:1 slopes to spill into the Environmental Day Camp leading up to the structure. The 4:1 slope will result in permanent impacts. Construction staging and activities will result in temporary impacts that will be revegetated.

Minimization Measures

Avoidance and minimization of impacts to the Environmental Day Camp were considered during the alternatives screening process and the Proposed Action best minimized impacts to the Environmental Day Camp as compared to the other alternatives because it required the least amount of temporary and permanent impact as compared to other alternative design options. An avoidance alternative of building a wall was considered instead of grading the impacted area. However, due to a major water line being located in the immediate vicinity, a wall would have been placed on the water line. It is generally preferred to not have structures on top of utilities because in the need for repairs the walls would have to be removed and reconstructed. As such, grading of the area was selected. Additional minimization measures include:

- The impacts would not affect existing recreational use of the park.
- Access to the Environmental Day will be maintained throughout construction.
- Areas temporarily impacted during construction will be revegetated and restored to pre-construction conditions.

Public Notice

On July 14th, 2016, during a public meeting for the Environmental Assessment, a poster board with information about the proposed impacts to the Environmental Day Camp (see attachment 3) was displayed. A form was used at the public meeting to gather comments on the proposed project and specifically asked for comments on the proposed impacts to the Environmental Day Camp (see attachment 4). Additionally, as part of the Environmental Assessment 30-day public comment period comments were accepted from June 30, 2016 to July 30, 2016. The following comments were received:

1. Children in an Environmental Park with a highway running right over it. The noise along will be an environmental menace.
2. No comments except that the plan seems to take into consideration existing wildlife and maintenance of green space.
3. Looks acceptable to me.



4. Happy with proposal as is.

Each individual comment will be responded to in the Finding of No Significant Impact.

City of Aurora Consultation

To acknowledge receipt of this letter and your concurrence with the impacts listed above and the *de minimis* Finding, please provide your signature below.

Based on the information presented above and on the attached documentation, the effects of the proposed project to the Environmental Day Camp are considered a *de minimis* impact and the requirements of 23 USC 138(b), 49 USC 303(d), and 23 CFR 774 have been satisfied. This finding is considered valid unless new information is obtained or the proposed effects change to the extent that consultation must be reinitiated.

If you have questions, please contact me at 303-757-9445 or at my email address: carol.coates@state.co.us.

Sincerely,



Carol Coates
Environmental Project Manager

I concur:



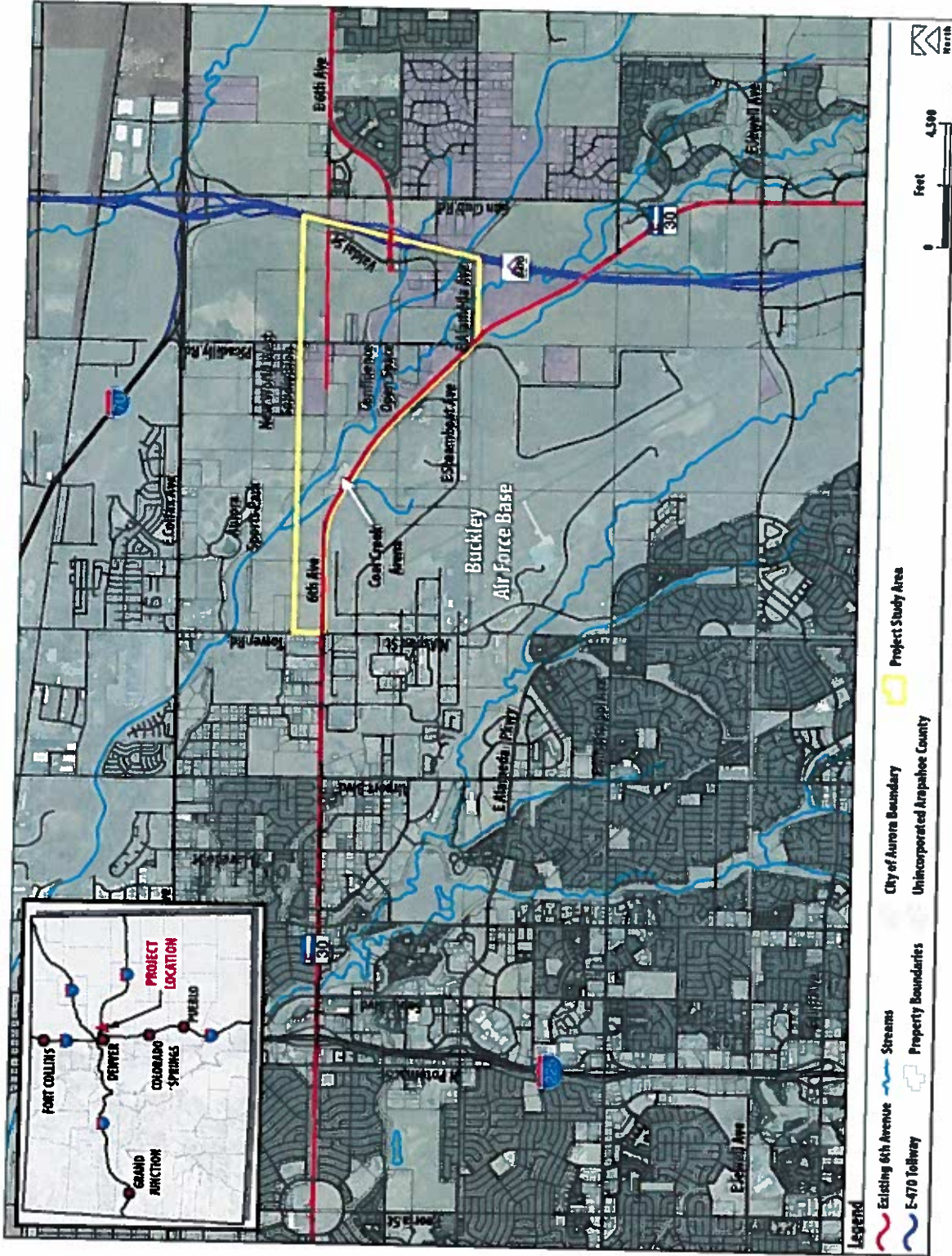
Tom Barrett
Director of Parks, Recreation & Open Space
City of Aurora

8/26/16

Date



Attachment 1. Project Area



WHY IS THERE A PROPOSED *DE MINIMIS* FINDING ON THE ENVIRONMENTAL DAY CAMP?

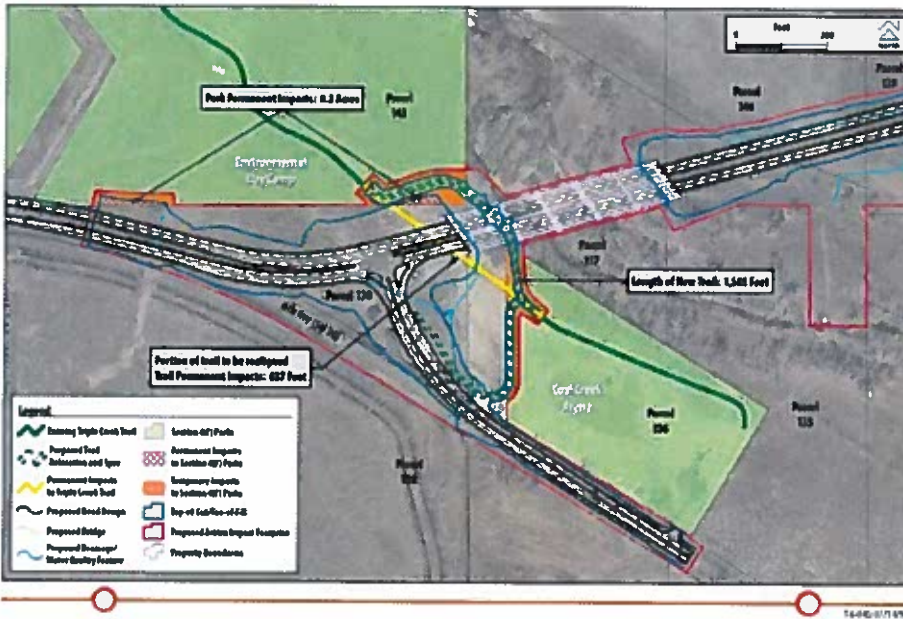
The Environmental Day Camp will be impacted by grading associated with the Proposed Action roadway and bridge. Impacted vegetation will be reseeded with native seed once construction activities are completed to blend in with the surrounding open space.

What is a *de minimis* finding?

The use of a transportation project on a park, recreational area, or wildlife and waterfowl refuge that qualifies for Section 4(f) protection may be determined to be *de minimis* if it does not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f) in 23 CFR 774.5(b)(2).

This project does not adversely affect the activities, features, and attributes that qualify the resource for protection under 4(f), therefore, FHWA and CDOT propose *de minimis* finding for this resource.

CDOT and FHWA are soliciting public input on this proposed *de minimis* finding to advance this determination.



Attachment 4: Environmental Assessment Comment Form

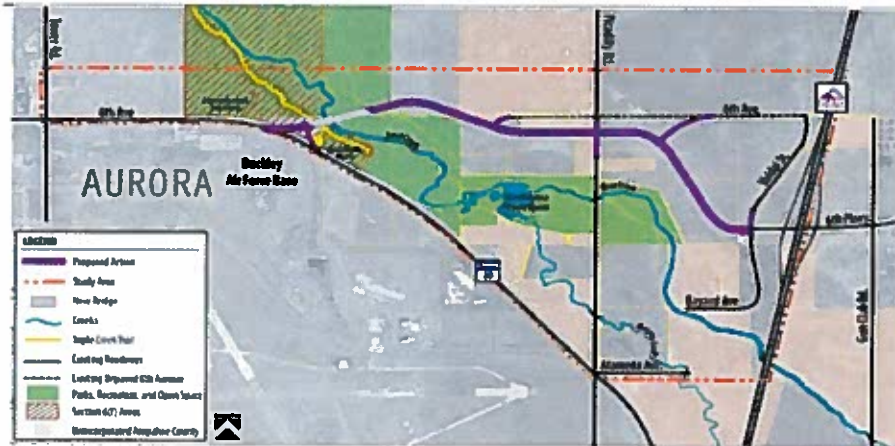
6TH AVENUE PARKWAY ENVIRONMENTAL ASSESSMENT

COMMENT FORM Page 1

We welcome your comments on the 6th Avenue Parkway Extension Environmental Assessment. The City of Aurora, in consultation with the Federal Highway Administration (FHWA) and the Colorado Department of Transportation (CDOT), is proposing the extension of 6th Avenue Parkway along a new roadway alignment between SH 30 and E-470. For further information and future project updates, please visit the project website at www.aurora.gov/6thaveparkway

Name _____
CONTACT INFORMATION _____
Address, City, Zip _____
Email Address _____
 Please check if you do not want your contact information published in the decision document.

Please provide any comments you have on the Proposed Action (see map below), No Action Alternative, environmental impacts, or any other project-related topics.



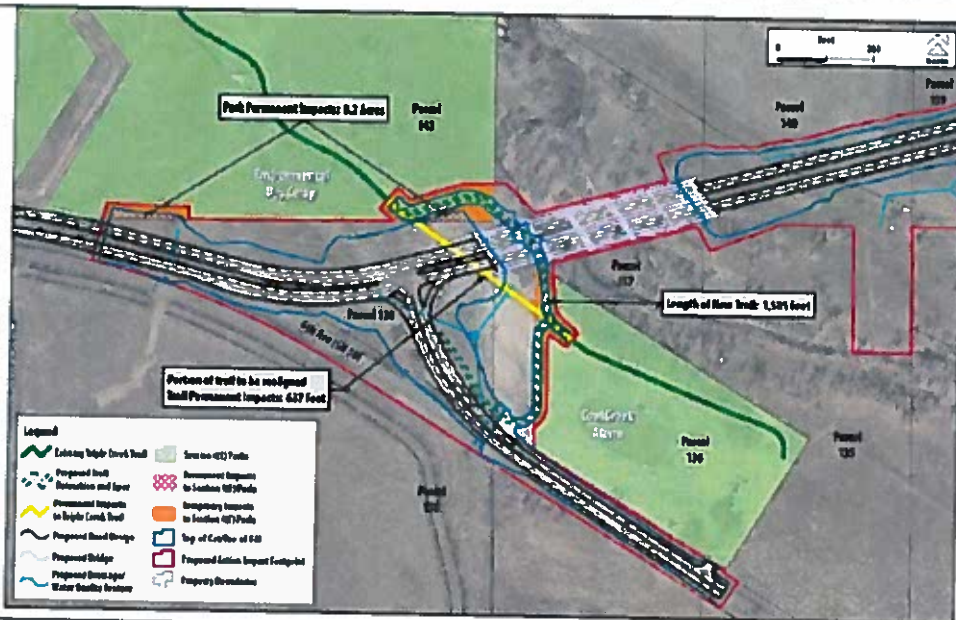
Comments must be received by **July 30, 2016**

Please turn over



Continue comments here

Please provide any comments you have about the *de minimis* finding that FHWA is considering making on the Environmental Day Camp parcel (see map below)? A *de minimis* finding is one that, after taking into account any measures to minimize harm results in a determination that the project would not adversely affect the activities, features, or attributes qualifying a park, recreation area, or refuge for protection under Section 4(f).



You may submit your completed comment form to a project representative at the Public Open House Meeting sign-in table, or at any time during the June 30 - July 30, 2016 public comment period in the following ways:

Email: 6thavepkwy@fhwa.com

Mail to: Felsburg Holt & Uttevig
 Attention: 6th Avenue Project Team
 6300 South Syracuse Way, Suite 800
 Centennial, CO 80111

Comments must be received by July 30, 2016

