

CHAPTER 6 – SECTION 4(f) *DE MINIMIS* IMPACT DOCUMENTATION

6.1 OVERVIEW

Since 1966, a legal provision that applies only to Federal transportation actions has afforded strong protection to publicly owned land in public parks, recreation areas, and wildlife and waterfowl refuges. It also protects historic sites on publicly or privately owned land. Because this provision was contained in Section 4(f) of the U.S. Department of Transportation Act of 1966, the regulations that implement this provision are often referred to as Section 4(f) requirements. In brief, Section 4(f) prohibits Federal transportation agencies from using land with the protected resources listed above unless there is no feasible and prudent alternative to the use, and the action includes all possible planning to minimize harm to the property resulting from the use.

The Powers Boulevard Proposed Action is expected to affect three Section 4(f) resources:

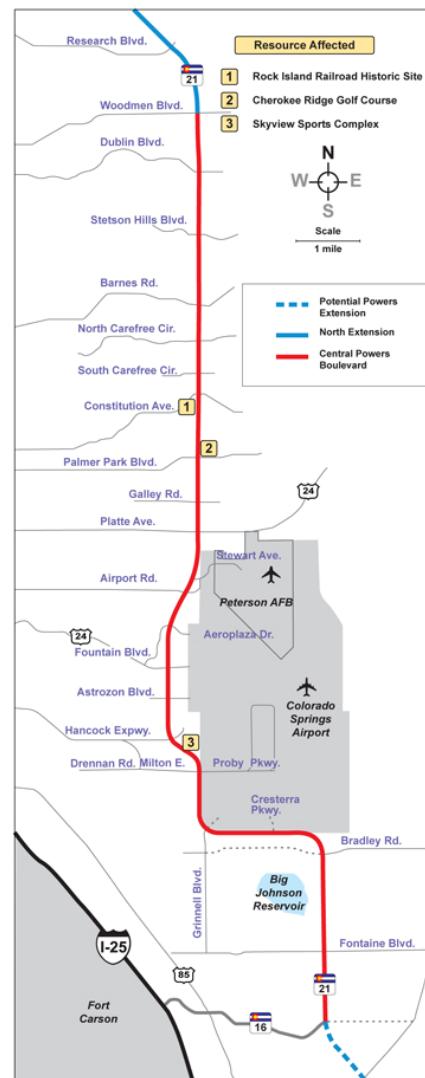
- An historic site, the railroad grade of the former Chicago, Rock Island and Pacific Railroad
- The Cherokee Hills Golf Course property, a public facility owned and operated by the Cherokee Metropolitan District
- The Skyview Sports Complex, operated by the Parks, Recreation and Cultural Services Department of the City of Colorado Springs.

The locations of these resources are shown in **Exhibit 6-1**.

Recognizing that these were Section 4(f) resources, CDOT made extensive efforts to avoid and minimize impacts to them when developing a conceptual design in the alternatives development process. However, it was concluded that the need to acquire small parcels of land from the railroad grade, golf course and the sports complex for highway right-of-way would be unavoidable.

When the likelihood of impacts was identified, CDOT consulted with the agencies having jurisdiction to determine how the resources would be affected by the Proposed Action. Through these efforts, it has been determined that the use of the land needed for highway right-of-way will have no adverse effect on

Exhibit 6-1. Location of Section 4(f) Resources Affected by the Proposed Action





the historic resource and will not impair the recreational use of the golf course or the sports complex.

De Minimis Impacts

A 2005 change to the Section 4(f) requirements allows transportation uses of protected land if the resulting impact to the resource would be negligible, or “*de minimis*.” When this is the case, FHWA can make a *de minimis* impact determination, which does not require an analysis of avoidance alternatives or a least harm analysis (23 CFR 774.17[5]).

The *de minimis* criteria and associated determination are different for historic sites than for parks, recreation areas, and wildlife and waterfowl refuges. The primary differences are:

- For historic sites, *de minimis* impacts are based on the determination that no historic property is affected by the project or that the project will have no adverse effect on the historic property in accordance with Section 106 of the National Historic Preservation Act. The finding must be developed after consultation with the parties involved in the Section 106 determination, and the State Historic Preservation Officer (SHPO) must concur in the effect determination.
- For publicly owned parks, recreation areas, and wildlife and waterfowl refuges, *de minimis* impacts are defined as those that do not “adversely affect the activities, features and attributes” of the Section 4(f) resource. The public must be afforded an opportunity to review and comment on the findings.

6.2 FINDINGS OF DE MINIMIS IMPACTS

FHWA has made *de minimis* findings for each of the three Section 4(f) resources that would be affected by the Proposed Action. FHWA findings regarding the railroad were documented in a letter dated January 7, 2009. FHWA findings regarding the golf course and the sports complex were documented in a letter dated October 21, 2009. These letters and all relevant correspondence with consulting parties are included in Appendix A, Agency Correspondence. The consultation is summarized briefly below.

Chicago, Rock Island and Pacific Railroad (5EP1815/5EP1815.9) - As stated in FHWA’s Guidance for Determining *De Minimis* Impacts to Section 4(f) Resources (FHWA 2005), the State Historic Preservation Officer (SHPO) must concur in writing with the Section 106 “no adverse effect” determination and must be informed that FHWA intends to make a *de minimis* finding based on the Section 106 effect determination. Consulting parties under Section 106 must also be informed of the *de minimis* finding. On October 31, 2008, CDOT submitted a letter to SHPO requesting a letter of eligibility and effects determination, and indicated FHWA’s intent to make a *de minimis* finding. SHPO concurred with the “no adverse effect” finding on November 11, 2008, provided that no new information from consulting parties would result in a reconsideration of this finding (see letter in Appendix A, Agency Correspondence). As the certified local government with jurisdiction for this site, the City of Colorado Springs was informed of the *de minimis* finding on November 10, 2008. The City, in consultation with the Historic Preservation Board, concurred on November 26, 2008 in the “no adverse effect” determination and had no objection to a *de minimis* finding. On January 7, 2009, FHWA made a *de minimis* finding for this resource.



Cherokee Ridge Golf Course - On March 13, 2009, CDOT met with officials of the District and the Cherokee Ridge Golf Course to review the anticipated impacts of the Proposed Action and to confirm that this land is not used for recreation. Subsequently, the Board of Directors of the Cherokee Metropolitan District at their April 14, 2009 public meeting authorized the District's Manager to send CDOT a letter concurring with the proposed *de minimis* finding for this resource. The letter, included in Appendix A, Agency Correspondence, indicates that in the view of the owner of this property, the Powers Boulevard Proposed Action would not "adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f)." On October 21, 2009, FHWA made a *de minimis* finding for this resource.

Skyview Sports Complex - On December 10, 2008 and March 6, 2009, CDOT met with staff of the City of Colorado Springs Department of Parks, Recreation and Cultural Services to discuss effects of the Powers Boulevard Proposed Action on the Skyview Sports Complex. City staff agreed with CDOT that the Proposed Action would not adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f). Since the City is in the process of paying for this facility over time, a separate entity called the City of Colorado Springs Public Facility Authority has responsibility for matters relating to the ownership of the property. At their meeting on August 7, 2009, the authority's Board of Directors directed its president to transmit a letter to CDOT concurring with a *de minimis* finding. That letter is included in Appendix A, Agency Correspondence. Concurrence was also provided by the Colorado Springs Parks and Recreation Advisory Board at their regularly monthly meeting on October 8, 2009. This open public meeting afforded an opportunity for citizens to comment regarding the effects of the Proposed Action on the operation and recreational use of the facility. However, no public comments were received. Subsequently, on October 21, 2009 FHWA made a *de minimis* finding for this resource.

