

# Non-Historic Section 4(f) Resources Technical Memorandum for the E. 88th Avenue (I-76 to Highway 2) Environmental Assessment

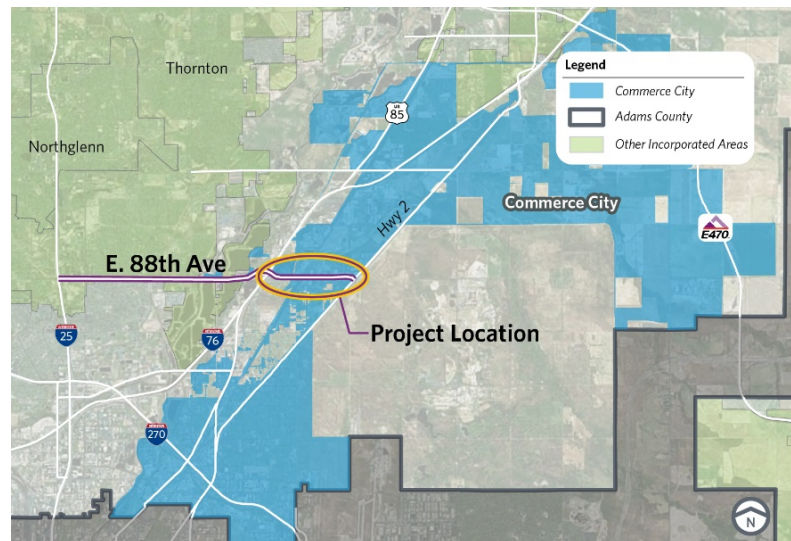
## 1.0 INTRODUCTION

The City of Commerce City, in consultation with the Federal Highway Administration (FHWA) and the Colorado Department of Transportation (CDOT), is proposing to improve approximately 1.6 miles of East (E). 88th Avenue between Interstate 76 (I-76) and Highway 2. In accordance with the National Environmental Policy Act of 1969 (NEPA) and its related regulations, an Environmental Assessment (EA) is being prepared for the E. 88th Avenue (I-76 to Highway 2) Project (project).

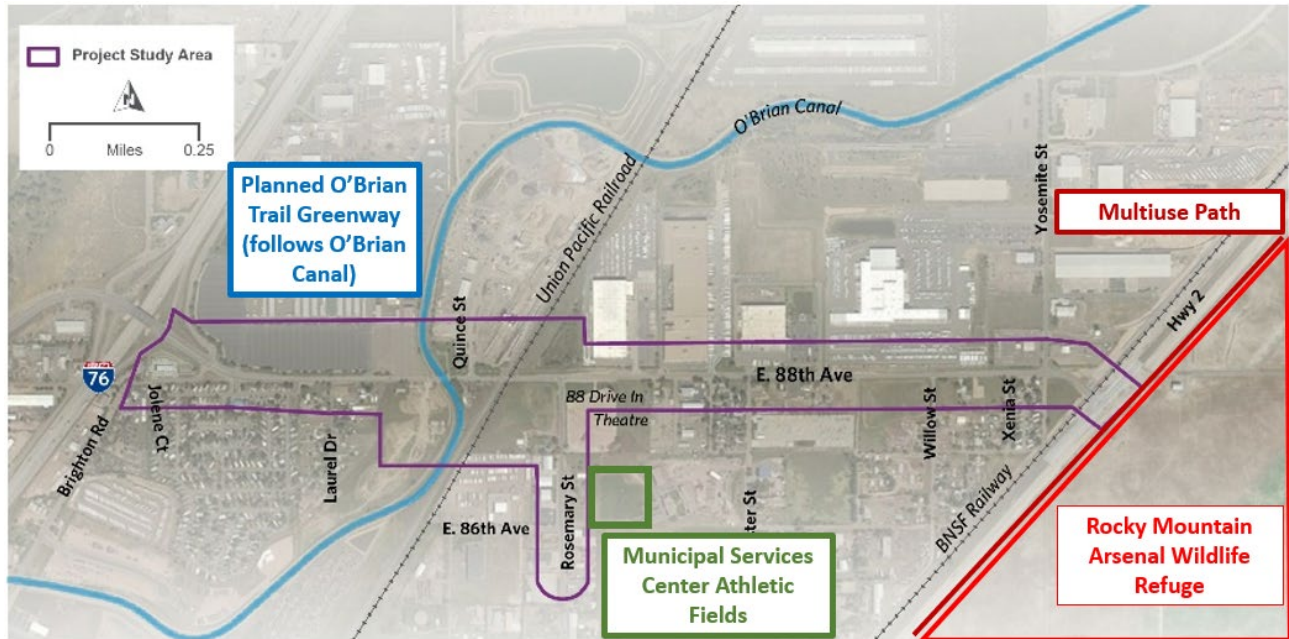
E. 88th Avenue is a continuous east-west roadway that runs through Adams County, Colorado, from Interstate 25 (I-25) to Highway 2 (Figure 1). The E. 88th Avenue corridor (the corridor) has one travel lane in each direction with signalized intersections at the northbound I-76 on- and off-ramps, Brighton Road, Rosemary Street, and Highway 2. E. 88th Avenue provides access to adjacent industrial, commercial, and residential land uses.

This document discusses the regulatory setting for Section 4(f) and describes the affected environment and the potential impacts of the Proposed Action on non-historic Section 4(f) properties in the project study area and whether or not each impact to a Section 4(f) property is determined to be a Section 4(f) use. The project study area and existing recreational facilities are shown in Figure 2.

**Figure 1. Project Location**



**Figure 2. Project Study Area and Existing Recreational Resources**



## 2.0 REGULATION

Section 4(f) was created when the United States Department of Transportation (USDOT) was formed in 1966. It is codified in Title 49 United States Code (U.S.C.) Section 303 [Section 4(f)] of the USDOT Act of 1966] and Title 23 U.S.C. Section 138, and in the implementing regulations 23 Code of Federal Regulations (CFR) 774. It states:

“The Secretary shall not approve any program or project (other than any project for a park road or parkway under Section 204 of this title) which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.”

A Section 4(f) "use" occurs when:

1. Land from a Section 4(f) property is permanently incorporated into a transportation facility; land will be considered permanently incorporated into a transportation project when it has been purchased as right-of-way or sufficient property interests have been otherwise acquired for the purpose of project implementation; or
2. There is a temporary occupancy of land that is adverse in terms of the Section 4(f) statute's preservation purpose. Under the FHWA regulations (23 CFR 774.13(d)), a temporary occupancy of property does not constitute a use of a Section 4(f) property when the following conditions are satisfied:

- Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;
  - Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) property are minimal;
  - There are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis;
  - The land being used must be fully restored, i.e., the property must be returned to a condition that is at least as good as that which existed prior to the project; and
  - There must be documented agreement of the official(s) with jurisdiction over the Section 4(f) resource regarding the above conditions.
3. There is no permanent incorporation of land from a Section 4(f) property, but the project's proximity impacts are so severe that the protected activities, features or attributes that qualify the property for protection are substantially impaired. This is called a constructive use of the property.

The USDOT is responsible for applicability determinations, evaluations, findings, and overall compliance.

### 3.0 SECTION 4(F) RESOURCES

Section 4(f) resources were identified through a desktop survey of aerial imagery and review of local and regional land use plans, open space and park plans, and transportation plans. Local and regional plans reviewed for the project are listed in the Community Understanding Report (Section 2.1.1 – Related Plans and Policies and Section 3.3 – Bicycle, Pedestrian, and Transit Facilities) located in Appendix A of the E. 88th Avenue (I-76 NB Ramps to Highway 2) EA.

There are no existing parks in the project study area. A ditch service road currently parallels the O'Brian Canal, and there are plans to develop it into a local recreational trail (Commerce City, 2000). The planned O'Brian Canal Greenway would provide new pedestrian and bicycle connections to the regional network of pathways (Figure 2). Funding has not been programmed for this trail, and the property is not publicly owned. The planned O'Brian Canal Greenway is not eligible for protection under Section 4(f); therefore, is not mentioned further in this memorandum.

There are three Section 4(f) resources considered eligible for Section 4(f) protection within or immediately adjacent to the project study area. The eligible resources are the Municipal Services Center Athletic fields, a multiuse path on the east side of Highway 2, and the Rocky Mountain Arsenal Wildlife Refuge (including the Perimeter Trail). The following bullets describe the resources, and Figure 2 shows the location of each:

- The Municipal Services Center Athletic Fields are located in the northeast quadrant of Rosemary Street and E. 86th Avenue. The facility is immediately adjacent to the project study area with access provided by Rosemary Street within the project study area. The facility is owned by Commerce City. Two fields support football and soccer activities and are open from 5 a.m. to 10 p.m. Sunday through Thursday, and 5 a.m. to 11 p.m. Friday and Saturday. The fields can be rented for priority use and are otherwise open to the public. This Municipal Services Center Athletic Fields resource is shown on *the Commerce City Park, Trail, Open Space and Recreation Map and Guide* (Commerce City, 2021) as a "Neighborhood Park."

- The multiuse path runs parallel on the east side of Highway 2 from Quebec Street at its south end to E. 112th Avenue at its north end. The multiuse path was constructed in 2018. In the vicinity of the intersection of E. 88th Avenue and Highway 2, it is approximately 10 feet wide, and is located within the roadway right-of-way. This multiuse path is shown on the *Commerce City Park, Trail, Open Space and Recreation Map and Guide* (Commerce City, 2021) as a “Multiuse Path”, not a trail designation, and is therefore referred to as such in this memorandum. The *Prairieways Action Plan* (Commerce City, 2000) describes a planned “Highway 2 Trail” on the west side of Highway 2 along roadway and railroad right-of-way from Vasquez Boulevard to 114th Street in Commerce City. The existing multiuse path on the east side of Highway 2 is part of the phased implementation of the Highway 2 Trail identified in the *Prairieways Action Plan*, with an adjustment made when right-of-way became available on the east side of Highway 2.
- The Rocky Mountain Arsenal National Wildlife Refuge is immediately adjacent to the project study area eastern boundary. The Rocky Mountain Arsenal National Wildlife Refuge is a 15,000-acre expanse of prairie, wetland and woodland habitat. Although there is no direct access to the refuge from E. 88th Avenue, the 22-mile Perimeter Trail for hiking and bicycling encircles the refuge and can be accessed near the E. 88th Avenue/Highway 2 intersection.

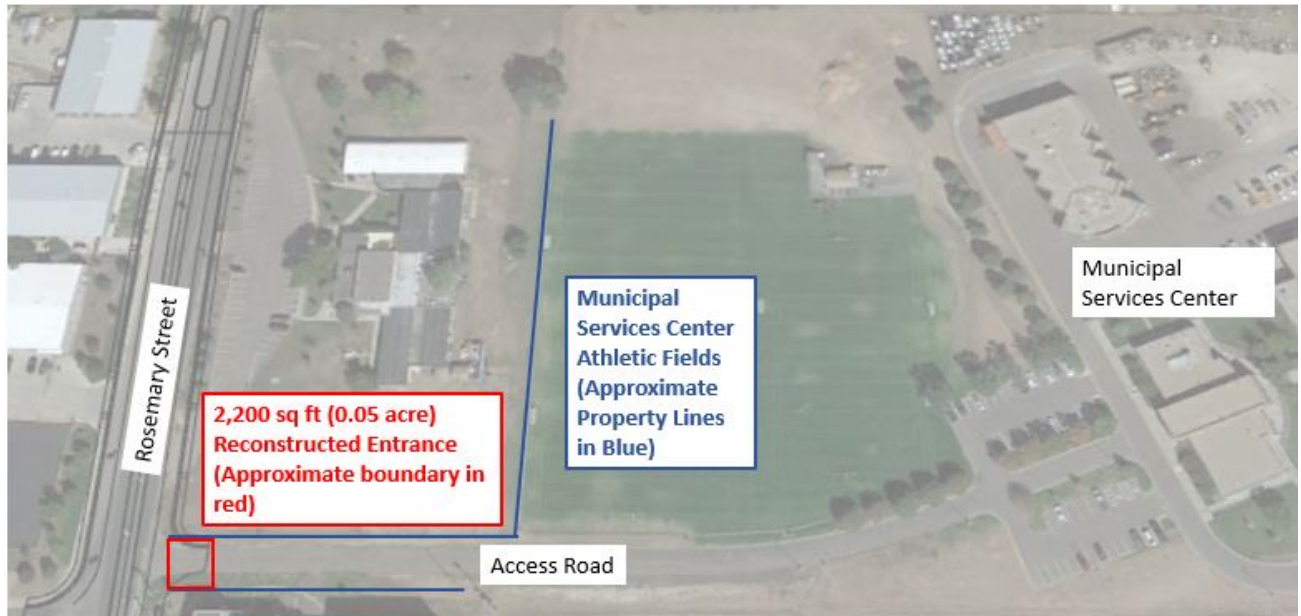
## 4.0 DETERMINATION OF USE

### 4.1.1 Municipal Services Center Athletic Fields

**Temporary Occupancy.** The intersection of Rosemary Street and E. 86th Avenue would be reconstructed with improvements and the eastern approach to that intersection provides access to the Municipal Services Center Athletic Fields. The minor improvements at the eastern approach to the Rosemary Street and E. 86th Avenue intersection are located on the same property as the Municipal Services Center Athletic Fields. Figure 3 shows the approximately 2,200 square feet (0.05 acre) of improvements at the intersection of Rosemary Street and E. 86th Avenue. The improvements are necessary to properly tie Rosemary Street improvements into the local access point. No part of the Municipal Services Center Athletic Fields property will be incorporated into Rosemary Street right-of-way. No temporary easements are required because Commerce City owns the property. No permanent impacts to the Municipal Services Center Athletic Fields would occur. Access to the Municipal Services Center Athletic Fields from Rosemary Street will be maintained during construction. All other conditions for Temporary Occupancy stated in 23 CFR 774.13(d) will be met. Commerce City concurred with this determination February 10, 2021, and the concurrence letter is included in this memorandum as Attachment A.

Once constructed, the improvements would have a positive effect on access to this facility, as increased roadway capacity and travel time reliability would ease access via automobile, and the multiuse path and sidewalks would provide new bicycle and pedestrian facilities and connections to existing facilities.

Figure 3. Municipal Services Center Athletic Fields (Temporary Occupancy)

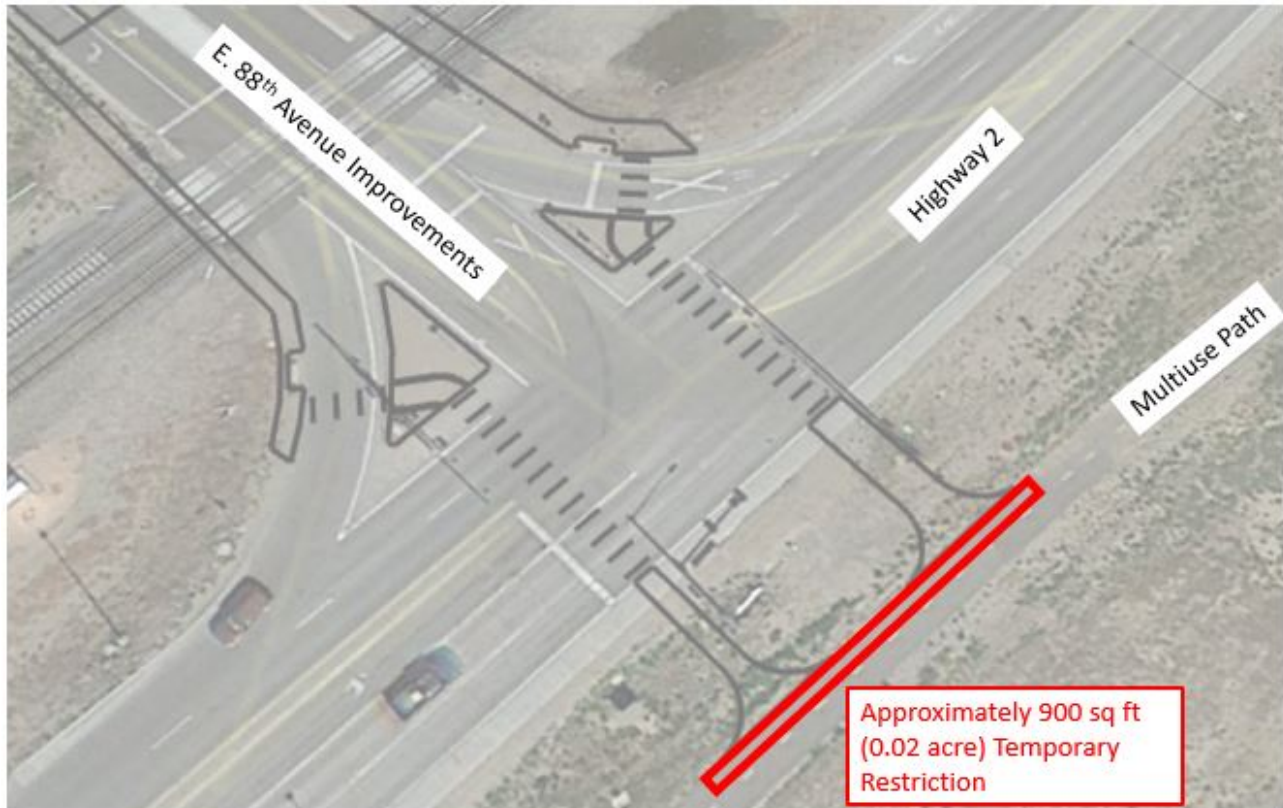


#### 4.1.2 Highway 2 Multiuse Path

**Exception.** No permanent impacts to the multiuse path would occur. No temporary easement would be required because the Commerce City owns the right-of-way. The Proposed Action would connect new bicycle and pedestrian facilities from E. 88th Avenue to the multiuse path (Figure 4). Construction of the new connection may require temporary access restrictions for approximately 900 square feet (0.02 acre) of the multiuse path to allow space for construction activities. No more than half of the total width of the path would be restricted at any time. These restrictions would not require closure of the multiuse path and continuity would be maintained. The multiuse path and use meet the criteria set forth under 23 CFR 774.13 (f)(3), which allows for “certain trails, paths, bikeways, and sidewalks” to be excepted from Section 4(f) requirements if “trails, path, bikeways, and sidewalks that occupy a transportation facility right-of-way without limitation to any specific location within that right-of-way, so long as the continuity of the trail, path, bikeway, or sidewalk is maintained.”

Once constructed, the improvements would have a positive effect on access to this facility, as the multiuse path and sidewalks along E. 88th Avenue would provide a new bicycle and connection to the multiuse path.

Figure 4. Highway 2 Multiuse Path (Temporary Occupancy)



### 4.1.3 Rocky Mountain Arsenal National Wildlife Refuge

**No Use.** No permanent impacts to the Rocky Mountain Arsenal National Wildlife Refuge or Perimeter Trail within it would occur. Once constructed, the improvements would have a positive effect on access to this facility, as increased roadway capacity and travel time reliability would ease access via automobile, and the multiuse path and sidewalks built as part of the E. 88th Avenue improvements, would provide new connections to existing facilities.

The Rocky Mountain Arsenal National Wildlife Refuge Perimeter Trail would be accessible via Highway 2 throughout construction.

## 5.0 MITIGATION

Mitigation measures for Non-Historic Section 4(f) resources in the project study area are presented in Table 1.

Table 1. Summary of Impacts and Mitigation

Mitigation Category	Impact	Mitigation Commitment from Source Document	Responsible Branch	Timing/Phase that Mitigation will be Implemented
Non-Historic Section 4(f)	Construction disruptions affecting access at the Municipal Services Center Athletic Fields and temporary capacity restriction of the Highway 2 Multiuse Path.	<p>A Traffic Management Plan will include a construction-related traffic control plan, work zone management strategies, and contingency plans.</p> <p>Access from Rosemary Street to the Municipal Services Center Athletic Fields will be maintained during construction.</p> <p>Pedestrian and bicyclist access and connectivity along the Highway 2 Multiuse Path will be maintained during construction. No more than half of the total width of the path will be restricted at any time.</p> <p>Following construction, the Highway 2 Multiuse Path will be fully restored, cleaned of debris from construction and replanted with grass in accordance with its previous condition and left as good as or better than it was before construction began.</p>	City of Commerce City, Contractor	Pre-Construction, During Construction

## 1 6.0 REFERENCES

- 2 City of Commerce City (Commerce City). 2000. Commerce City Prairieways Action Plan.
- 3 <https://www.c3gov.com/home/showdocument?id=940>.
- 4 City of Commerce City (Commerce City). 2021. Park, Trail, Open Space & Recreation Map and Guide.
- 5 Accessed January 2021. <https://recreation.c3gov.com/home/showpublisheddocument?id=11319>.



# Attachment A. Temporary Occupancy Concurrence Letter



**COLORADO**  
**Department of Transportation**  
Region 1

2829 West Howard Place  
Denver, CO 80204

February 3, 2021

Carolyn Keith  
Director of Parks and Recreation  
City of Commerce City  
7887 E. 60<sup>th</sup> Avenue  
Commerce City, CO 80022

RE: E. 88<sup>th</sup> Avenue (Northbound I-76 Ramps to Highway 2) Environmental Assessment  
Request for Concurrence for Section 4(f) Temporary Occupancy of Municipal Services Athletic Fields

Dear Ms. Keith:

The City of Commerce City (Commerce City), in consultation with the Federal Highway Administration (FHWA) and the Colorado Department of Transportation (CDOT), is proposing to improve approximately 1.6 miles of E. 88<sup>th</sup> Avenue between Interstate 76 (I-76) and Highway 2. This letter constitutes a request to you for review and concurrence for a Section 4(f) Temporary Occupancy Exception for improvements to E. 88<sup>th</sup> Avenue and Rosemary Street, as construction of those improvements affects the Municipal Services Center Athletic Fields.

The undertaking would include widening along E. 88<sup>th</sup> Avenue between the I-76 northbound ramps and Highway 2, and widening along Rosemary Street between E. 88<sup>th</sup> Avenue and E. 86<sup>th</sup> Street. The design elements that comprise the Proposed Action are numbered from west to east in Figure 1 (attached to this letter) and generally described as follows:

- 1) Two lanes each direction, with raised median and a multiuse path on the north and sidewalk on the south, west of Rosemary Street.
- 2) Access changes between Brighton Road and the O'Brian Canal:
  - a) Improved Jolene Court approach to Brighton Road.
  - b) Protected U-turn at E. 88<sup>th</sup> Avenue and Brighton Road.
  - c) Improved access at the Mile High Flea Market with a signalized intersection, dedicated left-turn and U-turn movements, and dynamic lane (left-turn lane during events and travel lane during normal roadway operations).
- 3) New single-span bridge over the O'Brian Canal and improved at-grade crossing of UPRR to accommodate wider roadway and bicycle and pedestrian facilities.
- 4) Widened Rosemary Street with sidewalks on both sides and reconfigured intersection with E. 88<sup>th</sup> Avenue.
- 5) One lane in each direction, with a two-way left-turn lane and a buffer-separated multiuse path on the north and sidewalk on the south, east of Rosemary Street.
- 6) Multiuse path and sidewalk extended across the BNSF railroad tracks and Highway 2.



### Section 4(f)

Section 4(f) was created when the United States Department of Transportation (USDOT) was formed in 1966. It is codified in Title 49 United States Code (U.S.C.) Section 303 [Section 4(f) of the USDOT Action of 1966] and Title 23 U.S.C. Section 138, and in the implementing regulations 23 Code of Federal Regulations (CFR) 774. Section 4(f) affords special protection to parks and recreational resources when these resources are impacted by federally funded transportation projects. The Municipal Service Center Athletic Fields facility is a recreational resource for which Section 4(f) applies.

There are various exceptions to the Section 4(f) requirements including temporary occupancies (23 CFR 774.13(d)). This exception can be applied when the following criteria are met:

1. Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;
2. Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) property are minimal;
3. There are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis;
4. The land being used must be fully restored, i.e., the property must be returned to a condition that is at least as good as that which existed prior to the project; and
5. There must be documented agreement of the official(s) with jurisdiction over the Section 4(f) resource regarding the above conditions.

Below is a description of the Municipal Services Center Athletic Fields, impacts to it, and an explanation of how, with concurrence from your agency as the Official with Jurisdiction, the improvements meet the criteria set forth under 23 CFR 774.13(d).

### Municipal Services Center Athletic Fields

The Municipal Services Center Athletic Fields are located in the northeast quadrant of Rosemary Street and E. 86<sup>th</sup> Avenue (Figure 2). The facility is immediately adjacent to the project study area with access provided by Rosemary Street within the project study area. The facility is owned by Commerce City. Two fields support football and soccer activities. They are open from 5 a.m. to 10 p.m. Sunday through Thursday, and 5 a.m. to 11 p.m. Friday and Saturday. The fields can be rented for priority use and are otherwise open to the public. This Municipal Services Center Athletic Fields resource is shown on the Commerce City Park, Trail, Open Space and Recreation Map and Guide as a “Neighborhood Park”

The Proposed Action would reconstruct and improve the intersection of Rosemary Street and E. 86<sup>th</sup> Avenue. The eastern approach to that intersection provides access to the Municipal Services Center Athletic Fields. The minor improvements at the eastern approach to the Rosemary Street and E. 86<sup>th</sup> Avenue intersection are located on the same property as the Municipal Services Center Athletic Fields. Figure 3 shows the approximately 2,200 square feet (0.05 acre) of improvements at the intersection of Rosemary Street and E. 86<sup>th</sup> Avenue. The improvements are necessary to properly tie Rosemary Street improvements into the local access point. No part of the Municipal



Services Center Athletic Fields property will be incorporated into Rosemary Street right-of-way. No temporary easements are required because Commerce City owns the property. No permanent impacts to the Municipal Services Center Athletic Fields would occur. Access to the Municipal Services Center Athletic Fields from Rosemary Street will be maintained during construction. All other conditions for Temporary Occupancy stated in 23 CFR 774.13(d) will be met.

**Concurrence**

To acknowledge receipt of this letter and your concurrence with the determination, please provide your signature below.

If you have any questions, please contact me at (303) 757-9926 or [Veronica.mccall@state.co.us](mailto:Veronica.mccall@state.co.us).

Sincerely,



Veronica McCall  
Region 1 Section 4(f) Specialist

I concur:



Carolyn Keith  
Director of Parks and Recreation  
City of Commerce City

2-10-2021

Date



Figure 1. Project Study Area and Proposed Action Design Elements

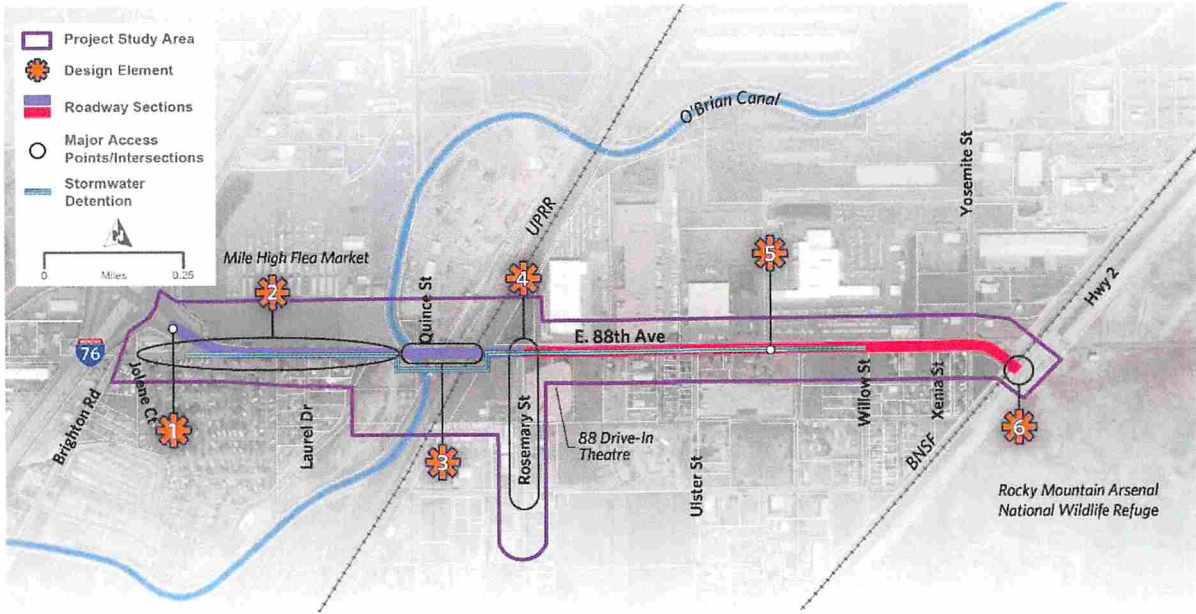


Figure 2. Existing Recreational Resources

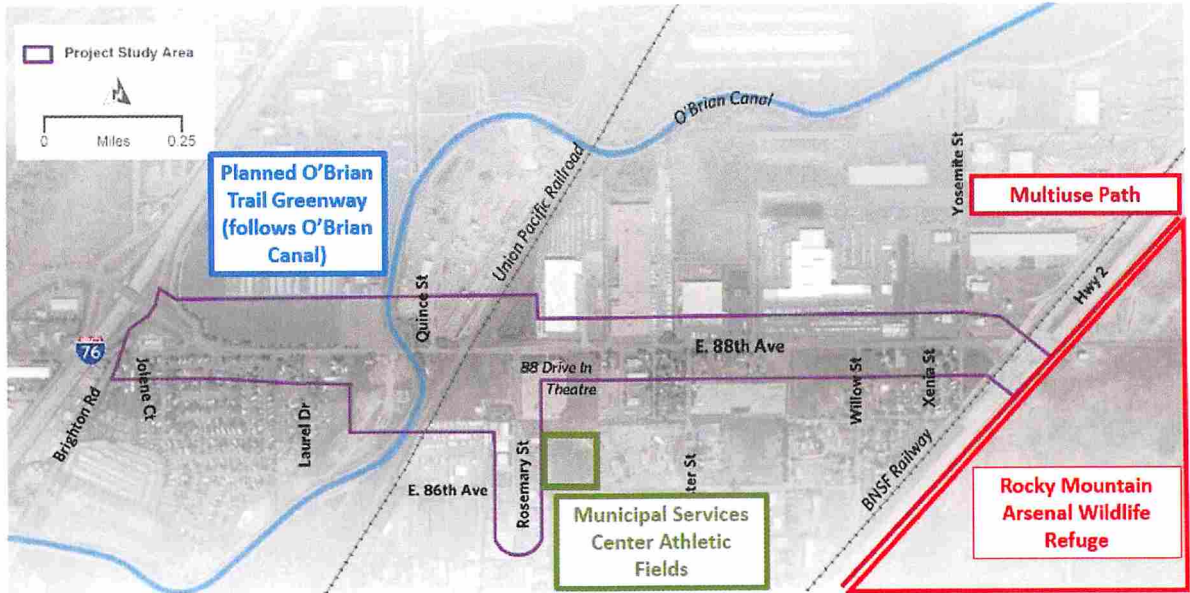


Figure 3. Municipal Services Center Athletic Fields (Temporary Occupancy)

