

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 09
Series of 2019

TITLE: A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT WITH THE FEDERAL HIGHWAY ADMINISTRATION, THE COLORADO STATE HISTORIC PRESERVATION OFFICER, THE COLORADO DEPARTMENT OF TRANSPORTATION FOR THE WADSWORTH BOULEVARD WIDENING PROJECT FOR ENVIRONMENTAL ASSESSMENT

WHEREAS, the City Council wishes to provide for the widening of the Wadsworth Boulevard corridor from 35th Avenue to Interstate 70; and

WHEREAS, the City has been awarded a federal transportation grant by the Denver Regional Council of Government (DRCOG) to widen this segment; and

WHEREAS, the Colorado Department of Transportation (CDOT) and the State Historic Preservation Officer (SHPO) have determined that the Project may have an adverse effect on three historically significant properties; and

WHEREAS, the City has negotiated a Memorandum of Agreement (MOA) with the Federal Highway Administration (FHWA), SHPO, and CDOT, to minimize and mitigate the adverse impact of the Project on the historically significant properties; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheat Ridge, Colorado, as follows:

The MOA between FHWA, SHPO, CDOT, and the City for the Wadsworth Boulevard Widening project from 35th Avenue to I-70, is hereby approved and the Mayor and City Clerk are authorized and directed to execute the same.

DONE AND RESOLVED this 28th day of January 2019.



Bud Starker, Mayor

ATTEST:



Janelle Shaver, City Clerk

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE COLORADO STATE HISTORIC PRESERVATION OFFICER,
THE COLORADO DEPARTMENT OF TRANSPORTATION
AND THE CITY OF WHEAT RIDGE
REGARDING
ENVIRONMENTAL ASSESSMENT, PROJECT STU 1211-088
WADSWORTH WIDENING BOULEVARD PROJECT
CITY OF WHEAT RIDGE, JEFFERSON COUNTY, COLORADO**

WHEREAS, the Federal Highway Administration (FHWA) proposes to fund Project STU 1211-088 (Project), which involves the widening of Wadsworth Boulevard, also known as Colorado Highway 121, between 35th Avenue and Interstate 70 in the City of Wheat Ridge, Jefferson County, Colorado; and

WHEREAS, the Project (or Undertaking) consists of improvements included in an Environmental Assessment, including additional traffic lanes, improved intersections, enhanced pedestrian and bicycle facilities, and standardized access to adjacent properties; and

WHEREAS, FHWA is the lead federal agency for the Project, including compliance with Section 106 of the National Historic Preservation Act of 1966, and shall be responsible for ensuring all requirements of this Memorandum of Agreement (MOA) are fulfilled; and

WHEREAS, the Colorado Department of Transportation (CDOT) carries out activities for Federal-Aid transportation projects on behalf of FHWA, including consultation under Section 106 of the National Historic Preservation Act of 1966 and the Advisory Council on Historic Preservation's (ACHP) regulations, 36 CFR §800, and is a signatory to this MOA; and

WHEREAS, CDOT, in consultation with the Colorado State Historic Preservation Officer (SHPO) and in accordance with 36 CFR §800.4(a)(1), has established the Undertaking's Area of Potential Effects (APE) to include all of the Project's right-of-way, temporary and permanent easements, adjacent properties, and water quality and construction staging areas, as shown in Attachment A; and

WHEREAS, CDOT has determined that the Undertaking may have an adverse effect on the (1) Butters-Plumb House, 4301 Wadsworth Boulevard (5JF.1902), (2) C.M. Dunn, Inc. Building, 4643 Wadsworth Boulevard, (5JF.5356), and (3) William and Mary Lee Davis House, 4695 Wadsworth Boulevard (5JF.5361), properties which are eligible for listing in the National Register of Historic Places, and has consulted with the SHPO pursuant to 36 CFR §800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. §470f); and

WHEREAS, CDOT has consulted with the City of Wheat Ridge regarding the project and has invited the City to become a party to the MOA given that the City has responsibilities under the MOA; and

WHEREAS, the City of Wheat Ridge has agreed to participate in the MOA under the terms and conditions contained herein; and

WHEREAS, in accordance with 36 CFR Section 800.6(a)(1), FHWA has notified the ACHP of the adverse effect determination with the required specified documentation, and in a letter dated November 21, 2018, the ACHP has chosen not to participate in the consultation pursuant to 36 CFR §800.6(a)(1)(iii);

NOW, THEREFORE, FHWA, SHPO, CDOT and the City of Wheat Ridge agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effect of the Project on historic properties.

STIPULATIONS

The FHWA, in consultation with CDOT and the City of Wheat Ridge, shall ensure that the following stipulations are implemented:

I. CONSTRUCTION PLAN PROVISIONS

- A.** CDOT shall ensure that the final Project design minimizes adverse effects to 5JF.1902, 5JF.5356, and 5JF.5361, including but not limited to:
 1. Protection during construction of the following character-defining historic features:
 - a. Front (west) entry stairs of 5JF.1902, and
 - b. Free-standing sign in the front (west) landscape of 5JF.5356, including dismantling of sign at construction onset, temporary storage of sign in a secure location during construction, and re-installation of sign at location shown in Attachment B, and
 - c. West elevation, particularly the projecting rounded awning, awning supports, patio, and patio wall of 5JF.5361.
 2. Addition of specific notes and details in the Project plans and specifications prepared by the City of Wheat Ridge, supplemented by contractor shop drawings as needed, to ensure that the provisions in Stipulation I.A.1. are met, and that the protection and construction work related to these provisions meet the Secretary of the Interior's Standards for Rehabilitation as codified in 36 CFR 67 (<https://www.nps.gov/tps/standards/rehabilitation/rehab/stand.htm>).

3. Review and approval of the Project's construction plan provisions delineated in this stipulation by a historic preservation professional with CDOT who meets the Secretary of the Interior's Professional Qualification Standards codified in 36 CFR 61, Appendix A (https://www.nps.gov/history/local-law/arch_stnds_9.htm).

II. INTERPRETIVE MITIGATION

- A. The City of Wheat Ridge, in coordination with CDOT, shall develop and install four historical interpretative signs (signage) at four Regional Transportation District (RTD) bus stops on Wadsworth Boulevard at the proposed 38th and 44th Avenue bus shelter locations, as shown on Attachment C.
- B. The signage shall include text, maps and images, and address the following historical themes/topics associated with the City of Wheat Ridge:
 1. Early Agriculture/Growth, including commercial agricultural operations and truck farms, including the Apel and Bacher Family, Wardle Feed & Supply, and Wilmore nursery.
 2. Mid-Century Architecture, including residential, commercial and institutional development.
 3. Post-World War II Residential Growth of Wheat Ridge.
- C. CDOT, in coordination with the City of Wheat Ridge, shall transmit the proposed conceptual plans for the signage, including specific locations, design (size, materials and placement) and content (layout, text and images) to the SHPO, the Jefferson County Historical Commission and the Wheat Ridge Historical Society, requesting comments within thirty (30) days. The City of Wheat Ridge, in coordination with CDOT, will make a good faith effort to address comments received within the requested comment period.
- D. The City of Wheat Ridge and CDOT shall ensure that the final plans for the signage, including design, size, materials, installation details and content, are included in the final plans used for construction advertisement of the Project. CDOT shall transmit a final copy of the final signage plans to the SHPO, the Jefferson County Historical Commission and the Wheat Ridge Historical Society, including any changes made to the design as a result of comments received.
- E. The City of Wheat Ridge and CDOT shall ensure that the signage is developed and fabricated as part of the Project construction contract, and installed prior to Project completion.

III. POST-REVIEW DISCOVERIES

If properties are discovered that may be historically significant or unanticipated effects on historic properties found, CDOT and FHWA will address the discovery or unanticipated effects in accordance with Section XI. of the 2014 “Programmatic Agreement Among the FHWA, the ACHP, and CDOT Regarding Compliance with Section 106 of the National Historic Preservation Act as it Pertains to the Administration of the Federal-Aid Highway Program in Colorado” (Programmatic Agreement). This Programmatic Agreement can be accessed at <https://www.codot.gov/programs/environmental/archaeology-and-history/106-programmatic-agreement-1/view>.

IV. ADMINISTRATIVE PROVISIONS

A. Monitoring and Reporting

Reporting for this agreement shall be included in the Section 106 Annual Tracking Report as provided in Section XIII.B. of the 2014 Programmatic Agreement.

B. Confidentiality

The MOA parties acknowledge that the historic properties covered by this MOA are subject to the provisions of §304 of the NHPA, relating to the disclosure of information to the public about the location, character, or ownership of the historic resource. If the federal agency determines, after consultation with the Secretary of Interior, that the disclosure may risk harm to the historic resource, and, having so acknowledged, it will ensure that all actions and documentation prescribed by this MOA are consistent with said sections. The parties acknowledge that SHPO, CDOT and the City of Wheat Ridge are subject to the Colorado Open Records Act, CRS §24-72-201, et seq., and agree that they shall cooperate in responding to any requests for disclosure of documents made, maintained or held by those parties in the exercise of their obligations under this MOA.

C. Dispute Resolution

Should any signatory party to this agreement object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FHWA shall consult with the objecting party(ies) to resolve the objection. If FHWA determines, within thirty (30) days, that such objection(s) cannot be resolved:

1. FHWA will forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR §800.2(b)(2). Upon receipt of adequate documentation, the ACHP shall review and advise FHWA on the resolution of the objection within thirty (30) days. Any comment provided by the ACHP, and all comments from the parties to the MOA, will be taken into account by FHWA in reaching a final decision regarding the dispute.

2. If the ACHP does not provide comments regarding the dispute within thirty (30) days after receipt of adequate documentation, FHWA may render a decision regarding the dispute. In reaching its decision, FHWA will take into account all comments regarding the dispute from the parties to the MOA.
3. FHWA's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged. FHWA will notify all parties of its decision in writing before implementing that portion of the Project subject to dispute under this stipulation. FHWA's decision will be final.

D. Amendments

Any signatory party to this MOA may propose that this MOA be amended, whereupon all signatory parties shall consult for no more than 30 days to consider such amendment. If any signatory to this MOA determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 CFR §800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the original signatories is filed with the ACHP. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the agreement in accordance with Administrative Provision (Provision) IV.E., below.

E. Termination

1. If this MOA is not amended as provided for in Provision IV.D above, or if a signatory party proposes termination of this MOA for other reasons, the signatory party proposing termination shall, in writing, notify the other MOA parties, explain the reasons for proposing termination, and consult with the other parties for at least thirty (30) days to seek alternatives to termination.
2. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with the terms of that agreement.
3. Should such consultation fail, the signatory party proposing termination may terminate this MOA by promptly notifying the other MOA parties in writing. Termination hereunder shall render this MOA without further force or effect.
4. If this MOA is terminated hereunder, and if FHWA determines that the Project will nonetheless proceed, then FHWA shall comply with the requirements of 36 CFR §800.3-800.7. Prior to work continuing on the Undertaking, the FHWA must either (a) execute an MOA pursuant to 36 CFR §800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR §800.7. The FHWA shall notify the signatories as to the course of action it will pursue.

F. Duration

1. This agreement shall take effect when it is filed with the ACHP.
2. Unless terminated pursuant to Provision IV.E. above, or superseded by an amended MOA, this MOA will remain in effect until FHWA, in consultation with the other signatory parties, determines that all of its stipulations have been satisfactorily fulfilled.
3. The terms of this MOA shall be satisfactorily fulfilled within ten (10) years following the date of execution by the signatory parties. If FHWA determines that this requirement cannot be met, the MOA parties will consult to reconsider its terms. Reconsideration may include continuation of the MOA as originally executed, amendment of the MOA, or termination. In the event of termination, FHWA will comply with Provision IV.E.4. above if it determines that the Project will proceed notwithstanding termination of this MOA.
4. If the Project has not been implemented within ten (10) years following execution of this MOA, this MOA shall automatically terminate and have no further force or effect. This time frame can be expanded if agreed to in writing by the signatory parties prior to the expiration date. Prior to such time, FHWA may consult with the other signatories to reconsider the terms of the agreement and amend it in accordance with Provision IV.D above.

V. COORDINATION WITH THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

FHWA shall use this agreement as part of its responsibility to meet the requirements of the National Environmental Policy Act (NEPA).

VI. GENERAL PROVISIONS

A. Compliance with Colorado Constitution

Notwithstanding other provisions in this MOA to the contrary, the Colorado state parties understand and acknowledge they are subject to Article X, §20 of the Colorado Constitution ("TABOR").

- a. The parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement.
- b. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of

the Colorado state parties are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the parties' current fiscal period ending upon the next succeeding December 31.

- c. Financial obligations of the Colorado state parties payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with ordinances and resolutions of the responsible party and other applicable law.
- d. Failure of a party to make appropriation of amounts required in any fiscal year, if not promptly cured, shall result in termination of this MOA.

B. Governmental Immunity

CDOT, the City of Wheat Ridge and SHPO do not waive any of the immunities, defenses and limitations of liability afforded them under the Colorado Governmental Immunity Act, CRS 24-10-101, et. seq. or the common law.

EXECUTION of this MOA by FHWA, SHPO, CDOT and the City of Wheat Ridge, its filing with the ACHP pursuant to 36 CFR §800.6(b)(1)(iv) prior to FHWA's approval of this Project, and implementation of its terms shall evidence that the FHWA has taken into account the effects of this Project on historic properties and afforded the ACHP an opportunity to comment.

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AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE COLORADO STATE HISTORIC PRESERVATION OFFICER,
THE COLORADO DEPARTMENT OF TRANSPORTATION
AND THE CITY OF WHEAT RIDGE
REGARDING
ENVIRONMENTAL ASSESSMENT, PROJECT STU 1211-088
WADSWORTH WIDENING BOULEVARD PROJECT
CITY OF WHEAT RIDGE, JEFFERSON COUNTY, COLORADO**

SIGNATORIES:

Federal Highway Administration

By: _____ Date
John M. Cater, P.E., Division Administrator


Colorado State Historic Preservation Officer

By: _____ Date
Steve Turner, State Historic Preservation Officer

Colorado Department of Transportation

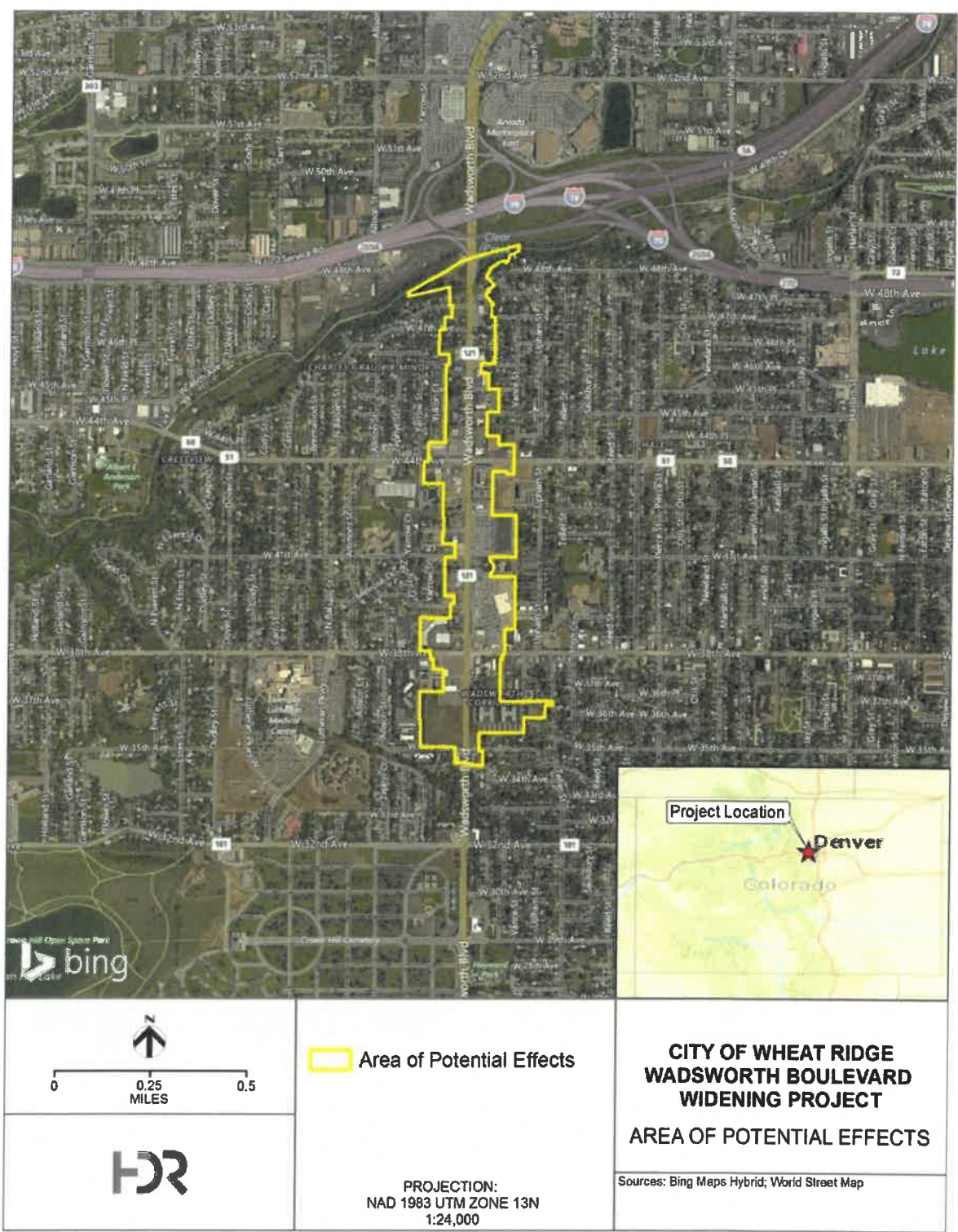
By: _____ Date
Paul Jesaitis, Region 1 Transportation Director

City of Wheat Ridge

By:  _____ Date
Bud Starker, Mayor

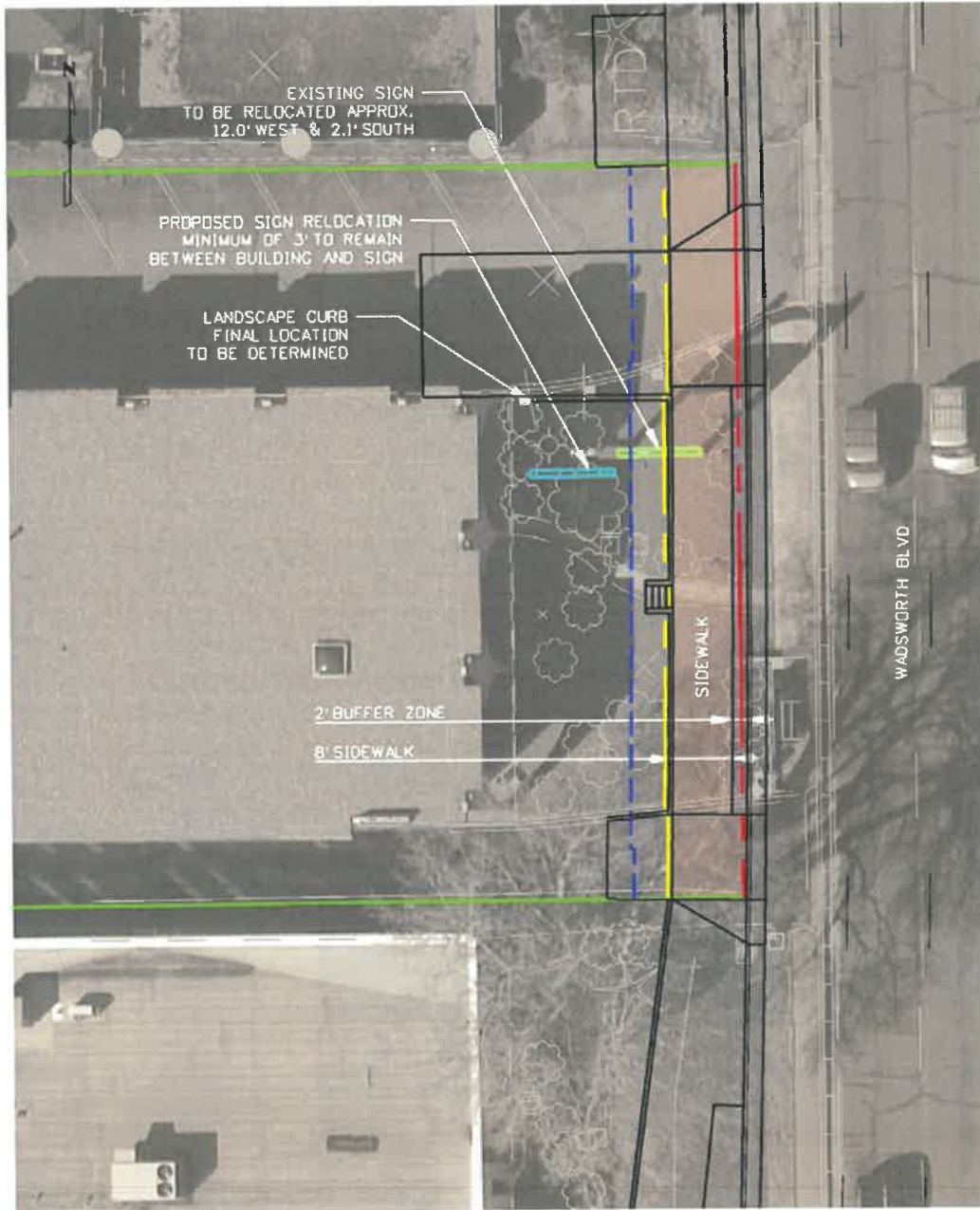
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Attachment A Area of Potential Effects



PATH: J:\2018\18-073 WADSWORTH (IGLMORE)\7.2 WORK IN PROGRESS\MAP DOCS\HISTORIC ARCHITECTURE SURVEY\WADSWORTH PROJECT APE AERIAL 85X65.MXD - USER: KLEMBERG - DATE: 8/24/2017

Attachment B
Relocation Plan for Sign at 4643 Wadsworth Boulevard (5JF.5336)



WADSWORTH BLVD
 ENVIRONMENTAL ASSESSMENT
 4643 WADSWORTH BLVD
 WHEAT RIDGE, CO 80033



INDEX MAP	LEGEND
	EXISTING ROW
	PROPOSED ROW
	PROPOSED CONSTRUCTION EASEMENT
	PARCEL BOUNDARY
	SIDEWALK
	AMENITY ZONE

Attachment C
Locations of Historical Interpretative Signage



