



6.0 SECTION 4(f) AND SECTION 6(f) EVALUATION

Section 4(f) of the **Department of Transportation Act of 1966**, codified at 49 United States Code (USC) Section 303, declares that “[i]t is the policy of the United States government that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.”

Section 4(f) specifies that:

[t]he Secretary [of Transportation] may approve a transportation program or project . . . requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance or land of an historic site of national, state, or local significance (as determined by the federal, state, or local officials having jurisdiction over the park, area, refuge or site) only if –

there is no prudent and feasible alternative to using that land; and

the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

Section 4(f) further requires consultation with the Department of Interior and, as appropriate, the involved offices of the Department of Agriculture and the Department of Housing and Urban Development, as well as relevant state and local officials, in developing transportation projects and programs that use lands protected by Section 4(f).

The proposed project is a transportation facility that would receive federal funding through the Federal Transit Administration (FTA); therefore, documentation of compliance with Section 4(f) is required.

This Section 4(f) evaluation has been prepared in accordance with the FTA regulations for Section 4(f) compliance codified at 23 Code of Federal Regulations (CFR) Section 771.135 and the Section 4(f) policy papers issued (in 1989 and early 2005) by the U.S. Department of Transportation through the Federal Highway Administration (FHWA).

6.1 APPLICATION OF SECTION 4(f)

As defined in 23 CFR Section 771.135(p), the “use” of a protected Section 4(f) resource occurs when any of the following conditions are met.

- (1) Land is permanently incorporated into a transportation facility through partial or full acquisition (i.e., “direct use”).
- (2) There is a temporary occupancy of land that is adverse in terms of preservationist purposes of Section 4(f) (i.e., “temporary use”).
- (3) There is no permanent incorporation of land, but the proximity of a transportation facility results in impacts so severe that the protected activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired (i.e., “constructive use”).

Direct Use

A direct use of a Section 4(f) resource takes place when property is permanently incorporated into a proposed transportation project (23 CFR Section 771.135[p][1]). This may occur as a result of



partial or full acquisition of a fee simple interest, permanent easements, or temporary easements that exceed regulatory limits noted below (23 CFR Section 771.135[p][7]).

Temporary Use

A temporary use of a Section 4(f) resource occurs when there is a temporary occupancy of property that is considered adverse in terms of the preservationist purposes of the Section 4(f) statute. Under the FTA/FHWA regulations (23 CFR Section 771.135[p][7]), a temporary occupancy of property does not constitute a use of a Section 4(f) resource when the following conditions are satisfied.

- The occupancy must be of temporary duration (i.e., shorter than the period of construction) and not involve a change in ownership of the property.
- The scope of work must be minor, with only minimal changes to the protected resource.
- There must be no permanent adverse physical effects on the protected resource and no temporary or permanent interference with activities or purposes of the resource.
- The property being used must be fully restored to a condition that is at least as good as that that existed prior to the proposed project.
- There must be documented agreement from the appropriate officials having jurisdiction over the resource regarding the foregoing requirements.

Constructive Use

A constructive use of a Section 4(f) resource happens when a transportation project does not permanently incorporate land from the resource, but the proximity of the project results in impacts (i.e., noise, vibration, visual, access, and/or ecological impacts) so severe that the protected activities, features, or attributes that qualify the resource for protection under Section 4(f) are substantially impaired (23 CFR Section 771.135[p][2]). Substantial impairment occurs only if the protected activities, features, or attributes of the resource are substantially diminished. This determination is made through the following practices.

- Identification of the current activities, features, or attributes of the resource that may be sensitive to proximity impacts.
- Analysis of the potential proximity impacts on the resource.
- Consultation with the appropriate officials having jurisdiction over the resource (23 CFR Section 771.135[p][6]).

6.2 PUBLIC PARKS AND RECREATIONAL AREAS

A total of three publicly owned parks and recreational areas protected by Section 4(f) are located in the vicinity of the proposed project. The public parks and recreational area identified in the vicinity of the propose project are shown in **Figure 6-1**. **Table 6-1** provides a list of the public parks and recreational areas identified in the vicinity of the proposed project and descriptive characteristics. The application of Section 4(f) to these resources is described below.