Chapter 5: Section 4(f) De Minimis Impacts

5.1 INTRODUCTION

This chapter documents the Section 4(f) evaluation for the proposed project. It assesses the proposed use of parks, recreational areas, wildlife refuges, and historic properties protected under Section 4(f) of the Department of Transportation Act of 1966. It also discusses coordination with the public and agencies having jurisdiction over Section 4(f) resources and efforts to avoid and minimize harm to these resources.

5.2 SECTION 4(F)

Section 4(f) of the Department of Transportation Act of 1966 establishes: "that special efforts should be made to preserve the natural beauty of the countryside and public parks and recreation lands, wildlife and waterfowl refuges, and historic sites. Section 4(f) restricts the use of land from significant publicly-owned parks, recreation areas, wildlife and waterfowl refuges, and historic sites from being incorporated in transportation projects.

Public parks, recreation areas, and wildlife refuges are presumed to be significant and subject to Section 4(f) protection unless the official with jurisdiction over the resource determines that the property as a whole is not significant and FHWA determines that the finding of non-significance is reasonable (23 CFR 774.11(c)).

Historic sites are defined under Section 4(f) regulations as any prehistoric or historic district, site, building, structure, or object included on, or eligible for the National Register of Historic Places (23 CFR 774.17). Eligibility for the National Register of Historic Places is determined using the criteria established under the regulations implementing Section 106 of the National Historic Preservation Act (36 CFR 800).

Section 4(f) specifies that the FHWA may only approve a transportation project that uses Section 4(f) property if:

1) There is no feasible and prudent alternative to the use of land from the property, and

2) The action includes all possible planning to minimize harm to the property resulting from the transportation use, or

3) The FHWA determines that use of the property, including any measures to minimize harm, will have a *de minimis* impact on the property.

Section 4(f) further requires that FHWA consult with the officials having jurisdiction over the Section 4(f) property when developing a transportation project that uses protected property.

5.2.1 Section 4(f) Use

23 CFR 774.17 defines a "use" of a Section 4(f) resource as any of the following:

1) When land from a Section 4(f) property is permanently incorporated into a transportation facility,

2) When there is temporary occupancy of land from a Section 4(f) property in a way that adversely affects the property's purpose, or

3) When land is not incorporated into a transportation project but the projects proximity impacts are so severe that the protected activities, features, or attributes that qualify a property for protection under Section 4(f) are substantially impaired.

5.2.2 De Minimis Impact

Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA-LU) provides for a simplified approval of projects that have a *de minimis* impact on Section 4(f) resources. FHWA has issued guidance for making findings of *de minimis* impacts and amended its Section 4(f) regulations to provide for these findings (24 CFR 774.3(b), 774.5(b), 774.17).

An impact to a park, recreation area, or wildlife and waterfowl refuge may be determined to be *de minimis* if:

- The transportation use of the Section 4(f) property, together with any impact avoidance, minimization, and mitigation or enhancement measures incorporated into the project does not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f);
- The official with jurisdiction over the Section 4(f) property is informed of the FHWA's intent to make a *de minimis* finding based on their written concurrence that the project will not adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f); and
- The public has been afforded an opportunity to review and comment on the effects of the project on the protected activities, features, and attributes of the Section 4(f) resource.

An impact to a historic property may be determined to be *de minimis* if:

- The Section 106 analysis and review process results in a determination of "no adverse effect" or "no historic properties affected" with the concurrence of the SHPO or Tribal Historic Preservation Officer (THPO), and the Advisory Council on Historic Preservation (ACHP) if participating in the Section 106 consultation;
- The SHPO/THPO and ACHP (if participating) is informed of the FHWA's intent to make a *de minimis* impact finding based on their written concurrence in the Section 106 determination, and
- The FHWA has considered the views of any consulting parties participating in the Section 106 consultation.

FHWA Guidance for Determining De Minimis Impacts to Section 4(f) Resources (FHWA 2005) states that once the agency determines that a transportation use of Section 4(f) property results in a *de minimis* impact, analysis of avoidance alternatives is not required and the Section 4(f) evaluation is complete.

5.3 AFFECTED SECTION 4(F) RESOURCES AND USES

The FHWA has determined that there are three Section 4(f) resources that would be affected by the action alternatives (B, C, and D). These properties were identified in coordination with the officials with jurisdiction over each property.

5.3.1 Park and Recreation Resources

5.3.1.1 The San Juan Island National Historical Park

The park consists of two distinct units, American Camp and English Camp, totaling 1,752 acres (NPS 2008). The American Camp unit of the park is located in the east portion of the Cattle Point peninsula and encompasses the entire width of the peninsula from Fourth of July Beach eastward to the peak of Mt. Finlayson. The American Camp unit totals 1,223 acres and includes the historical area, lagoons, Mt. Finlayson, and shoreline. The park became part of the National Park System in 1966 and is managed by the National Park Service (NPS).

The proposed project is located in the east end of the American Camp unit to the south of the Mt. Finlayson ridge. The topography in the project area is dominated by two undulating glacial benches and the flat ridgeline of Mt. Finlayson. Prairie grassland, a rare vegetative type in the Pacific Northwest, is the dominant vegetative cover in the project area. The Mt. Finlayson Trail is located on the north edge of the project area along the Mt. Finlayson ridgeline. There are no other NPS facilities in the project area.

Approximately 90 percent of the proposed project is located on park property. The action alternatives would realign a portion of the Cattle Point Road onto an undeveloped glacial bench about 300 to 500 feet north and upslope from its existing location. This would convert an undeveloped portion of grassland prairie into a transportation use. A segment of the existing Cattle Point Road would be bypassed by the new alignment and would no longer be needed for transportation purposes. Following construction, the abandoned road segment would be obliterated and restored to natural conditions, converting an existing transportation use back to park uses.

The San Juan Island National Historical Park is a publically-owned park of significance; therefore, it is considered to be a Section 4(f) resource. The park is also considered a Section 4(f) historic resource. Historic resources are discussed further in section 5.3.2.

Under most circumstances, park roads are exempt from Section 4 (f) requirements under 49 USC 303(c). A park road is defined as a public road that is located within, or provides access to, an area in the National Park System with title and maintenance responsibilities vested in the United States (23 USC 101(a)(19)). Since San Juan County retains ROW for a portion of the Cattle Point Road within the park (from Pickett's Lane eastward to the DNR boundary) and since the county may be granted ROW and take responsibility for maintenance if a new alignment is constructed, the park road exemption cannot be applied at this time.

<u>Potential Impacts to the Park</u>:

Alternative B would disturb about 15 acres of park property along about 4,455 feet of new road alignment. Of the 15 acres of disturbance, about 12 acres would be revegetated. Alternative B would result in construction of new road cuts and fills and new roadway pavement through relatively undisturbed grassland prairie south of the Mt. Finlayson ridge. The paved area would total about 3.6 acres. However, this alternative would also remove about 2.7 acres of existing

pavement and restore natural topographic and habitat conditions along about 3,780 feet of abandoned roadway. Overall, alternative B would involve a net increase of about 0.9 acres of road pavement in the park.

Alternative C would disturb about 9 acres of park property along about 2,550 feet of new road alignment. Of the 9 acres of disturbance, about 8 acres would be revegetated. Alternative C would result in construction of new road cuts and fills, new roadway pavement, and a new bored or excavated tunnel through relatively undisturbed grassland prairie just below the Mt. Finlayson ridge. The above-ground paved area would total about 0.9 acres. However, this alternative would also remove about 1.8 acres of existing pavement and restore natural topographic and habitat conditions along about 2,340 feet of abandoned roadway. Overall, alternative C would involve a net reduction of about 0.9 acres of above-ground road pavement in the park.

Alternative D would disturb about 18 acres of park property along about 4, 230 feet of new road alignment. Of the 18 acres of disturbance, about 15 acres would be revegetated. Alternative D would result in construction of new road cuts and fills, new road pavement, and a new "cut and cover" tunnel through relatively undisturbed grassland prairie just below the Mt. Finlayson ridge. The above-ground paved area would total about 2.7 acres. However, it would also remove about 2.7 acres of existing pavement and restore natural topographic and habitat conditions along about 3,900 feet of abandoned roadway. Overall, alternative D would involve 0 net increase/reduction of above-ground road pavement in the park.

5.3.1.2 Mt. Finlayson Trail

Publically-owned trails are considered a recreation resource under Section 4(f). The Mt. Finlayson system trail is about 1.5 miles in length. It begins at the Jakle's Lagoon parking area and traverses the prairie grassland on the south slopes of the Mt. Finlayson ridge with sweeping views of Mt. Baker to the east, Mt. Rainier to the southeast, the Olympic Mountains to the south, and Vancouver Island to the west. Near the summit of Mt. Finlayson, the Lagoon Trail takes off to the north, looping through the forest and past Third Lagoon and Jakle's Lagoon before ending at the Jakle's Lagoon parking area. The Mt. Finlayson Trail proceeds east along the ridgeline before descending and connecting to the Cattle Point Road near the east end of the project area at about MP 8.3. About 1.3 miles of the Mt. Finlayson Trail is located on NPS property and 0.2 miles is located on Washington Department of Natural Resources (DNR) property. The DNR is the agency responsible for the portion of the Mt. Finlayson "connector" trail that would be directly impacted by the proposed project alternatives.

The Mt. Finlayson Trail is located on public property; it is part of the park trail system and is maintained by the NPS. Therefore, it is considered to be a Section 4(f) resource.

<u>Potential Impacts to the Trail</u>

The proposed alternatives would move the road upslope100 to 140 feet closer to the Mt. Finlayson ridgeline trail. Traffic noise from the new road alignment would be more noticeable to trail users in east end of the park and on DNR property. The "connector" trail, which connects the Mt. Finlayson ridgeline trail with Cattle Point Road, is located on DNR property. A portion of the east end of the "connector" trail would be obliterated by construction of the new road realignment. Alternative B would obliterate about 200 to 300 feet of trail, alternative C would obliterate about 100 to 150 feet of trail, and alternative D would obliterate about 500 to 600 feet of trail. The length of the trail impacted by the project alternatives is a small portion of

the 1.5-mile Mt. Finlayson Trail system. A new trail would be constructed at the toe of the road fill slope adjacent to the new roadway to replace the obliterated portion of the "connector" trail.

During construction, hiking on the east end of the "connector" trail would be restricted from the summit of Mt. Finlayson through the connection to the Cattle Point Road. This portion of the trail would be reopened following completion of road and trail construction. The portion of the Mt. Finlayson system trail located along the Mt. Finlayson ridge would remain open for use during road construction. However, access to some trailheads may be restricted temporarily by staging and construction activities.

5.3.2 Historic Resources

5.3.2.1 National Historic Landmark

The San Juan Island National Historical Park is listed on the National Register of Historic Places (NRHP) as a National Historic Landmark. The American Camp unit of the park is a cultural landscape incorporating natural features, vegetation, views and vistas, buildings and structures, and archaeological sites that provide a background for interpreting the story of the Pig War and the subsequent joint British-American military occupation (NPS 2004). American Camp contains important historic resources including two of the original military buildings, the reconstructed military fence and flagpole, and numerous archaeological sites (NPS 2008). The cultural landscape is a primary contributing element to the eligibility of the National Historic Landmark (Schurke 2009).

The park is listed on the National Register of Historic Places as a National Historic Landmark, and as such, is considered to be a Section 4(f) resource as an historic site.

<u>Potential Impacts to the Historic Site</u>

The American Camp cultural landscape boundary is outside of the project footprint area of potential effects (APE); therefore, none of the contributing cultural landscape characteristic features would be impacted by the alternatives.

In addition, none of the contributing cultural landscape views and vistas are located within the project view-shed APE; however, portions of the alternative alignments would be remotely visible from within the geographic boundaries of the designated cultural landscape to the east of the American Camp cantonment and portions of South Beach. The existing Cattle Point Road alignment is also remotely visible from portions of these areas.

In May 2009, the FHWA consulted with the State Historic Preservation Office (SHPO) regarding potential impacts of the proposed project on historic properties and the National Historic Landmark. FHWA concluded that there would be minor viewshed impacts and no ground disturbing impacts to the cultural landscape within the National Historic Landmark. Therefore, FHWA recommended that the proposed project would have *no adverse effect* on historic properties for purposes of section 106. The FHWA also informed the SHPO that it intended to make a *de minimis* Section 4(f) impact determination based on SHPO concurrence with the FHWA recommendation of *no adverse effect*. The SHPO concurred with the FHWA recommendation of *no adverse effect* in a letter dated June 23, 2009.

5.3.3 Measures to Minimize Harm

Measures to minimize and mitigate impacts to Section 4(f) resources have been incorporated into the project alternatives through the project development process shared with the FHWA and NPS as lead agencies, and DNR as a cooperating agency.

Since the park encompasses the entire width of the Cattle Point peninsula, there are no possible alternatives that would avoid the use of park and historic site property.

The east end of the road realignment has been designed to minimize direct and proximity impacts to the Mt. Finlayson ridgeline trail and "connector" trail to the extent possible while still meeting the purpose and need of the project to relocate the road far enough from the coastal bluff erosion site to protect it for the foreseeable future. Given the multiple resource considerations of the site, the operational needs of the road, and the topographic constraints of the project area, there was no alternative to avoid proximity impacts to the Mt. Finlayson Trail and the use of a small portion of the "connector" trail.

5.4 DEIS PRELIMINARY DE MINIMIS DETERMINATION

Based on the analysis in the DEIS, the FHWA made preliminary *de minimis* determinations with respect to uses of Section 4(f) park, trail, and historic resources by the action alternatives.

The FHWA discussed Section 4(f) requirements and potential impacts with the NPS and DNR during telephone conversations and meetings throughout the development of the DEIS. The agencies were informed by email of the intent of FHWA to make a *de minimis* finding for potential impacts to the park, trail, and historic resources on October 7, 2009. The NPS agreed that the project alternatives would likely have a *de minimis* impact on Section 4(f) park and historic resources in a letter dated December 7, 2009. The DNR concurred with the preliminary *de minimis* determination on impacts to the Section 4(f) trail resource in a letter received by FHWA on October 27, 2009.

In May 2009, FHWA informed the SHPO that it intended to make a *de minimis* Section 4(f) determination based on SHPO concurrence with the FHWA recommendation of *no adverse effect* on historic resources. The SHPO concurred with the FHWA recommendation in a letter dated June 23, 2009.

5.5 SECTION 4(F) COORDINATION

The coordination requirement for *de minimis* impact determination includes public notice and an opportunity for public review and comment concerning the effects on the protected activities, features, and attributes of the resource. This requirement can be satisfied in conjunction with other public involvement procedures such as the comment period provided for a NEPA document (FHWA 2005).

In addition, FHWA is required to inform the officials with jurisdiction over the property of its intent to make a *de minimis* impact finding. Coordination with NPS and DNR has been ongoing throughout the project planning process as part of their role as co-lead and cooperating agency for the project. The SHPO has been consulted through the section 106 process.

The NPS has consulted with tribes that may have religious or cultural concerns and the tribes have been informed of the intent of the FHWA to make a *de minimis* 4(f) finding.

As part of the NEPA public involvement process, interested public, agencies, and tribes were given the opportunity to review and comment on the proposed project and alternatives, including the use of resources protected under Section 4(f). Project scoping meetings were held in July and August 2001, and February 2004. A project scoping document was released for public review in June 2004. The DEIS was published in the Federal Register and released for a 60-day public review and comment period in September 2010. A public open house for DEIS comment was held in October 2010.

5.5.1 Public Comment on Section 4(f) Uses

During the DEIS comment period no public comments were received regarding potential impacts on the activities, features, and attributes of the park or the historic site.

Regarding potential trail impacts, five members of the public brought up concerns on the close proximity of the realigned roadway to the Mt. Finlayson system trail and potential effects to the views from the trail. Commenters requested that the new road alignment be located down-slope as much as possible to minimize the intrusiveness of the road. No comments were received on impacts to the "connector" trail.

The location of the road realignment was designed with multiple considerations to best fit the physical setting as well as preserve the scenic, historic, and environmental resources of the park and DNR. A major consideration taken into account in the realignment location was the actual purpose and need for the project, which was to relocate the road far enough above the coastal bluff erosion site to protect it for the foreseeable future. Due to the multiple project considerations as well as the operational needs of the road and the topographic constraints of the site, the final road alignment can only be adjusted within narrow limits.

The new road alignment would be closer to the formal Mt. Finlayson system trail than the current road. However, the only portion of the new roadway that would be visible from the formal system trail would be the far-west and far-east ends of the realignment. Most of the middle portion of the new road alignment closest to the trail (looking south), would not be visible from the Mt. Finlayson Trail because the road would be located at the base of a long-steep road cut. The direct impact of the new road alignment on a small portion of the "connector" trail, which travels from the Mt. Finlayson ridge to the Cattle Point Road, is unavoidable. All three action alternatives would impact the "connector" trail to a varying extent. The preferred alternative (alternative B) would directly impact about 200 to 300 feet of trail. A new trail would be constructed at the toe of the road fill slope adjacent to the new roadway to replace the obliterated trail.

5.6 SECTION 4(F) DE MINIMIS IMPACT FINDING

5.6.1 The San Juan Island National Historical Park

While the proposed alternatives would realign the road into an area of the park that is currently undeveloped, it would also restore a nearly equal area from an existing transportation use back to natural conditions by obliterating and restoring the abandoned Cattle Point Road alignment. Both the proposed alternative alignments and the restored alignment provide equal quality wildlife habitat, rare plant and prairie habitat, and scenic qualities. The area of park incorporated into a transportation use would be minimal. Overall, alternative B would involve a net increase of about 0.9 acres of road pavement, alternative C would involve a net reduction of

about 0.9 acres of road pavement (above ground), and alternative D would involve 0 net increase/reduction of road pavement (above ground) in the park.

Implementation of any of the action alternatives would provide for continued vehicular and bicycle access for visitors to enjoy the scenic resources at the east end of American Camp. The action alternatives would have no direct impact on visitor's facilities, trailheads, or trails within the park. To the extent practicable, measures to minimize and mitigate impacts to Section 4(f) resources have been incorporated into the project alternatives. The NPS has concurred in writing with the FHWA intent to make a *de minimis* finding on potential impacts to the park.

The FHWA has determined that the proposed action and alternatives will not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f). Accordingly, FHWA finds that the transportation use will have a *de minimis* impact on the park resource.

5.6.2 Mt. Finlayson Trail

While the proposed alternative realignments would directly impact a portion of the far-eastern end of the Mt. Finlayson "connector" trail, it would also reconstruct the trail adjacent to the new road alignment. The new trail would be about 100 to 500 feet from its current location. The impacted portion of the existing trail and the reconstructed trail would have the same vistas and would provide a similar recreational experience. The length of trail incorporated into a transportation use would be minimal and the trail would be replaced in kind. The proximity of the roadway and traffic under the action alternatives would introduce a new element to the auditory and visual environment in the vicinity of the Mt. Finlayson Trail located along the Mt. Finlayson ridge. However, the location of the action alternatives would not be in such proximity that they would obstruct or eliminate views from the Mt. Finlayson system trail or substantially detract from the attributes and features of the resource. To the extent practicable, measures to minimize and mitigate impacts to the Section 4(f) resource has been incorporated into the project alternatives. The DNR has concurred in writing with the FHWA intent to make a *de minimis* finding on potential impacts to the trail resource.

The FHWA has determined that the proposed action and alternatives will not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f). Accordingly, FHWA finds that the transportation use will have a *de minimis* impact on the trail resource.

5.6.3 National Historic Landmark

The American Camp cultural landscape boundary is outside of the project footprint area of potential effects (APE); therefore, none of the contributing cultural landscape characteristic features would be impacted by the alternatives. None of the contributing cultural landscape views and vistas are located within the project view-shed APE.

The Section 106 analysis and review process determined that the proposed project would have *no adverse effect* on historic properties, including the historic site. The SHPO concurred with the FHWA determination of effects and acknowledged its intended *de minimis* finding. The NPS has concurred in writing with the FHWA intent to make a *de minimis* finding on potential impacts to the National Historic Landmark.

The FHWA has determined that the proposed action and alternatives will not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f).

Accordingly, FHWA finds that the transportation use will have a *de minimis* impact on the historic resource.