

## **6.0 SECTION 4F**

### **6.1 Introduction**

Section 4(f) of the Department of Transportation Act (codified at 49 USC 303 and 23 USC 138)) states that the Federal Highway Administration (FHWA) may not approve the use of land from a significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that there is no feasible and prudent alternative to use of land from the property, and the action includes all possible planning to minimize harm to the property resulting from such use. Use is defined as permanently incorporating land into a transportation facility or having proximity impacts that are so severe that the protected activities, features, or attributes that qualify a resource for Section 4(f) protection are substantially impaired. The latter is termed “constructive use” and only occurs when the protected activities, features, or attributes are substantially diminished.

In order to comply with this regulation DOT&PF and FHWA inventoried potentially protected sites in the project vicinity and determined Section 4(f) applicability. This section of the SDEIS details the step-by-step process followed and the applicability determinations made.

### **6.2 Parks and Recreation Areas**

#### **6.2.1 Parks**

Section 3.1.1.6 provides general information on the parks and recreation areas in the project area. Municipal parks in the project area include Mollie Walsh Park, and Pullen Creek Shoreline Park, all in Skagway (Figure 3-5). State parks in the vicinity include Point Bridget State Park, Sullivan Island State Marine Park; Chilkat Islands State Marine Park, Chilkat State Park, Portage Cove State Recreation Site, and Chilkoot Lake State Recreation Site (Figures 3-1 and 3-2). The only federal park in the project area is the Skagway unit of the Klondike Gold Rush National Historical Park (KLG0) in downtown Skagway (Figure 3-5).

No park land would be required for any of the alternatives under consideration, nor would proximity impacts create a constructive use. The only parks close to potential new highway construction are those in the City of Skagway. Alternatives 2, 2A, and 2C would be over 1,000 feet from Pullen Creek Shoreline and Mollie Walsh parks and approximately 500 feet from the closest corner of the KLG0.

#### **6.2.2 Recreation Areas**

Several alternatives would require land from municipal, state and/or federal land not specifically designated as parks or recreation areas, but administered under land management plans. These management plans were evaluated to determine if any of the land units were significant public recreation areas.

##### **6.2.2.1 Municipal Land**

Alternatives 2, 2A, and 2C would pass through City of Skagway land known as the Dewey Lake Parcel (Figure 3-1). This land is zoned Residential Conservation and is designated as Recreation/Open Space in the City of Skagway Comprehensive Plan (1999). Based on the information in the Comprehensive Plan, FHWA determined that this land is managed for uses in addition to recreation and therefore Section 4(f) does not apply to the entire parcel (Haugh, 2003). FHWA regulations (23 CFR 771.135) state that where public land is managed for multiple uses, Section 4(f) applies only to those portions of the land which function for, or are

designated in the management plans as being for significant park, recreation, or wildlife and waterfowl purposes. FHWA guidance, based in part on case law, further states that land designated or used for dispersed recreational activities is not protected by Section 4(f) [Section 4(f) Policy Paper, Question 2, FHWA, 1989].

DOT&PF consulted with City of Skagway officials to determine what recreational facilities in the parcel function for significant recreation purposes. The City of Skagway has indicated that the Lower Dewey Lake Trail and the Harbor Overlook Trail are significant recreation facilities (Yost, 2004), therefore FHWA has determined they are subject to Section 4(f) regulations. One other trail shown on the Skagway way trail system would be crossed by some project alternatives. This trail, the Icy Lake/Upper Reid Falls Trail, uses a power company access road for part of its length, including the segment that would be crossed. FHWA has determined that where this trail is on the power company access road, it is not a significant recreation facility, because its major purpose is not recreation.

Alternatives 2, 2A and 2C would avoid use of land from the two Section 4(f) protected trails by passing over or under the trails, maintaining trail continuity. Only air or subsurface rights would be acquired at the crossing locations. The trails would continue to function as recreational hiking facilities. FHWA has determined that no constructive use would occur. The trail experience would be altered in the vicinity of the crossings, but these proximity impacts would not be so severe as to substantially diminish the qualifying activities, features, or attributes of the trails. DOT&PF has also committed to trail enhancements and mitigation for non-4(f) impacts (see Chapter 5, Proposed Mitigation and Commitments).

On March 4, 2002 the Skagway City Council passed Resolution 04-04R recommending the Dewey Lakes Trail System be designated a Special Management Area and considered for establishment as a park. One of the reasons cited for this action was the development pressure that could be created by road access to this area. In response DOT&PF proposed a Joint Planning Agreement designating a road corridor through the area that could be incorporated into the City's Special Management Area plan (Paxton, 2004). On October 7, 2004 the Skagway City Council adopted an ordinance creating the Dewey Lake Recreation Area Management Plan. The City has yet to act on a Joint Planning Agreement.

The FHWA has reviewed the ordinance creating the Dewey Lake Recreation Area Management Plan and has determined that nothing in the ordinance changes the original determination that the parcel is managed for multiple use. The only Section 4(f) protected facilities are the two trails mentioned above.

FHWA has determined that Alternative 2, 2A and 2C would pass through City of Skagway land but would not require the use of any City of Skagway land protected by Section 4(f).

#### **6.2.2.2 State Land**

Alternatives 2, 2A, and 2C would pass through State of Alaska land, Parcel S-23, south of the Dewey Lake parcel (Figure 3-1). The Alaska Department of Natural Resources administers this land under the Northern Southeast Area Plan (ADNR, 2002a). This parcel is designated General Use, and the management plan allows for potential development while maintaining habitat, scenic and recreation values. The land designation, management guidelines and intent all indicate this land is managed and functions for multiple use. The only portion of the parcel designated and/or functioning for recreation (excluding dispersed activities) is the Sturgill's Landing Trail (Figure 3-4). Alternatives 2, 2A, and 2C would avoid use of land from this trail by bridging over the trail, maintaining trail continuity. The trail would still provide access to the USFS Sturgill's Landing Day Use Area. Although the trail experience would be altered in the

vicinity of the crossing, no constructive use would occur. The qualifying activities, features and attributes would not be substantially diminished. Roadside parking and a connection to the trail would be provided as a trail enhancement.

Alternative 3 would also pass through three parcels in the Northern Southeast Area Plan, LT02, H28, and HT11. Parcel LT02 is a large tract of intertidal and submerged land in William Henry Bay, designated as land for Shoreline Use and Habitat. HT11 is the intertidal area around Pyramid Island in Chilkat Inlet, designated as land for Transportation and Habitat use. H28 is a parcel of uplands north of William Henry Bay (Figure 3-2), designated for General use. None of these lands are designated for or function for recreation other than dispersed activities.

Alternative 3 would pass through a land management unit of the Haines State Forest, Unit 6. Unit 6 of the Haines State Forest is classified as Public Recreation Land. The Haines State Forest Plan (ADNR, 2002b) states that this land “will primarily be managed ...for public recreational uses”. However, the Plan also states that “the Haines State Forest will be managed for multiple use, consistent with the establishment of the State Forest (AS41.15.300)”. The statute recognizes the importance of continuing traditional uses. The Plan specifically allows personal timber harvest in sub-unit 6a and salvage timber harvest in both sub-units a and b. Mineral extraction is allowed under certain circumstances. Based on the review of the Plan and the points noted above, FHWA has determined that this land is multiple use. Currently the unit is used for dispersed recreation; the only specific significant recreation facility is a trail, under construction, from the shore to the Davidson Glacier Lake. Alternative 3 would avoid use of land from this trail by bridging over the trail. No constructive use would occur. The trail would still provide access to the Davidson Glacier Lake, and although the trail experience would be altered, no substantial diminishment of its qualifying activities, features, or attributes would occur. A parking area and trail connection would be provided as an enhancement.

The Alaska Department of Natural Resources has concurred that the only specific recreational facilities on land that would be crossed by Juneau Access Improvements alternatives are the Sturgill’s Landing and the Davidson Glacier Lake trails (Irwin, 2004).

FHWA has determined that Alternatives 2, 2A, 2C and 3 would pass through State of Alaska land but would not require the use of any State of Alaska land protected by Section 4(f).

### **6.2.2.3 Federal Land**

All build alternatives with highway segments would pass through federal land under management of the United States Forest Service (USFS). As explained in Section 3.1.1.1, the 1997 Tongass Land and Resource Management Plan (TLMP) assigned Land Use Designations (LUDs) to land to identify management goals and policies (Figure 3-3). Alternatives 4B and 4D would primarily pass through land designated as Semi-Remote Recreation and also pass through small parcels designated Scenic Viewshed. Alternative 3 would pass through multiple land use designations, including Semi-Remote Recreation, Scenic Viewshed, and Modified Landscape. Alternatives 2, 2B, and 2C would pass through the following LUDs: Scenic Viewshed, Semi-Remote Recreation, Old Growth-Habitat, Modified Landscape, and LUD II. Alternative 2A would pass through all of the preceding LUDs except for LUD II. Alternative 2A would not entail highway construction from Sawmill Cove to Slate Cove, bypassing the Berners Bay LUD II.

A review of the management policies for these LUDs indicates that all of them meet the definition of multiple use areas and the recreation activities that occur and are envisioned are dispersed. Two other aspects of the 1997 TLMP further support the determination that none of the LUDs crossed are in themselves protected under Section 4(f). The first is that TLMP

includes a LUD entitled Special Interest Areas that specifically includes designated recreation areas. In instances where the USFS has determined an area larger than a specific facility should be reserved for recreation or refuge purposes, the Special Interest Area LUD is used. No land in the project vicinity is designated as a Special Interest Area. The second point of note is that TLMP identifies a Proposed State Road Corridor on both the east and west sides of Lynn Canal; this is a Transportation and Utility Systems LUD overlying the other LUDs described. TLMP indicates that the land should be managed under the underlying LUD until a highway alternative is constructed.

As with municipal and state land, after determining that the broad land designations are multiple use areas, further investigation and consultation with the land manager occurred to determine which portions or specific facilities, if any, function or are designated for significant recreation. TLMP contains a Recreation Places Inventory which delineates “areas of small to moderate size which have one to several features that are particularly attractive to people engaging in recreation activities and receive recurring use.” (Although described as “small to moderate size” in some cases the inventory identifies areas that include multiple LUDs, for instance the area identified around Berners Bay covers approximately 150 square miles.) The inventory further identifies some of these areas as important for commercial recreation and tourism. Within Recreation Places there are often specific sites such as cabins, shelters, picnic sites, trails and campgrounds. The USFS has confirmed that Recreation Places as identified by the Inventory are areas of dispersed recreation, including hunting (Ken Vaughan, 2004a). There are no specific recreational sites or facilities on USFS land on the west side of Lynn Canal. The only specific recreational sites or facilities on USFS land in the project study area on the east side of Lynn Canal are the Berners Bay cabin, the trail to Sturgill’s Landing, and the Sturgill’s Landing Day Use Area. The USFS has identified all three of these features as significant for recreation purposes (Ouder Kirk, 2004a).

None of the alternatives would cross the Sturgill’s Landing trail on USFS land. (Alternatives 2, 2A, and 2C would cross this trail on state land; see Section 5.2.2.) Alternatives 2, 2A, and 2C would pass approximately 680 feet east of the day use area. Alternatives 2, 2B, and 2C would pass approximately 400 feet east of the Berners Bay cabin. No established property boundary exists for either facility. The USFS often considers a 1/8 mile (660 feet) “zone of influence” around cabins and similar facilities and has indicated that this should be applied to the day use area (Ouder Kirk, 2004b).

The USFS has indicated that the Berners Bay cabin is a water-oriented cabin and therefore the zone of influence applies to the shoreline rather than the hillside behind the cabin (Ouder Kirk, 2004c). The USFS has also indicated that the recreation facility is the cabin itself, not the land it occupies, as the cabin could be relocated (Vaughan, 2004b), and in fact was placed with the knowledge that it may be moved in the future. The USFS has determined that a handicap accessible cabin on the Juneau road system would be a desirable development and has requested that DOT&PF design the alignment of applicable alternatives such that a handicap accessible trail could be constructed from the highway to the cabin. DOT&PF has mapped the discernible use areas (e.g. trails, outbuildings, cleared areas) at the cabin and would avoid any disturbance within 100 feet of these areas. The nearest point of disturbance (toe of slope) would be approximately 100 from this boundary, resulting in approximately 200 feet between the highway and closest use area other than the access trail itself.

FHWA has determined that the construction of a highway in the vicinity of the cabin, with a handicap accessible trail to the cabin, would not be a constructive use. The experience at the cabin would change, but this change would not be so severe as to create a substantial impairment of the protected activities, attributes, or features of the facility. Rather than being a remote access cabin (visitors currently usually access the site by small boat or float plane), the

cabin would be accessible by both road and water. Rather than hearing only boat, plane or helicopter noise, visitors would also hear vehicle traffic noise. Use of the cabin would shift somewhat from those seeking a remote, water access experience to those seeking a road accessible water view cabin. The fact that the USFS sees the creation of a road accessible cabin as desirable is an indication that substantial impairment would not occur.

The USFS has concurred that the Berners Bay cabin, Sturgill's Landing trail and Sturgill's Landing Day Use Area are the only specific recreational sites on USFS land in the project study area (Griffin, 2004). The USFS also concurred that no alternatives would take land from a recreation site (Griffin, 2004).

FHWA has determined that alternatives 2-2C, 3, 4B and 4D would pass through USFS land but would not require use of land protected by Section 4(f).

### **6.3 Refuges**

There are no designated or functioning significant wildlife or waterfowl refuges in the project vicinity. As described in Section 5.2, state and federal land management plans applicable to the project area include designations such as Shoreline Use and Habitat (ADNR), Transportation and Habitat (ADNR), and Old Growth Habitat (USFS). Review of these designations indicates these are multiple use designations. No specific areas function as wildlife or waterfowl refuges. Both ADNR and USFS have concurred that no refuges exist in the project vicinity (Irwin, 2004, Griffin, 2004).

### **6.4 Significant Historic Sites**

Section 4(f) applies to significant historic sites. This includes all properties on or eligible for the National Register of Historic Places.

#### **6.4.1 Berners Bay Historic Mining Districts**

Alternatives 2, 2A, 2B, and 2C would pass through the Berners Bay Historic Mining District (BBHMD). These alternatives would also pass through two smaller historic mining districts located within the BBHMD: the Jualin and the Comet/Bear/Kensington. The BBHMD also includes a third historic mining district, the Ivanhoe/Horrible, as well as some contributing properties not part of any of the three smaller districts (Figure 3-6). No land would be required from any contributing property within these historic districts. Alternatives 2, 2B, and 2C would bridge over the Jualin Mine Tram. Alternatives 2, 2A, 2B, and 2C would bridge the Comet/Bear/Kensington Railroad. At these two locations the land easement from the landowner, the USFS, would only be for air rights. With the exception of the crossings of the tram and railroad, the only lands impacted within the districts are undeveloped natural areas.

In order to decide if land within a historic district is protected by Section 4(f), FHWA must first determine if the land is individually historic, an integral part of the historic district, or contributes to the factors which make the district historic [Section 4(f) Policy Paper, Question 3, FHWA, 1989]. FHWA has determined the undeveloped natural land areas that would be crossed are not individually historic, are not an integral part of the historic district, and do not contribute to the factors which make the district historic.

FHWA has determined that construction of a highway over the Jualin Mine Tram and Comet/Bear/Kensington Railroad would not result in a constructive use. Although a highway and bridges would have an effect on both properties, the effect would not be so severe as to

substantially impair their qualifying activities, features or attributes. Neither of these historic properties derives a substantial part of its significance from its setting.

#### **6.4.2 Skagway Hydroelectric Complex District and Lower Dewey Lake Trail**

Alternatives 2, 2A, and 2C would pass through one area of the Skagway Hydroelectric Complex District and over the Lower Dewey Lake Trail (Figure 3-5). These alternatives would bridge over this historic trail; the same bridge would cross the hydroelectric complex pipelines and tramway. No land from an identified contributing property would be required from the trail or district. All of these alternatives would bridge over the contributing elements affected. The land easement from the City of Skagway would be limited to air rights where the highway crosses over the trail. Only air rights would be acquired from the power utility for the bridge crossing the pipelines and tramway. Other than the crossings of the trail, railroad and hydroelectric elements, the only lands impacted in the hydroelectric complex district are previously disturbed (logged) undeveloped areas. These lands are not individually historic, are not an integral part of the historic district, and do not contribute to the factors which make the district historic.

FHWA has determined that construction of a highway within and near these Skagway historic sites would not result in a constructive use. Although the highway for Alternatives 2, 2A, and 2C would have an effect on the trail and hydroelectric district, it would not be so severe as to substantially impair their qualifying activities, features or attributes.

#### **6.4.3 Skagway and White Pass District National Historic Landmark**

Alternatives 2, 2A, and 2C would pass through a portion of the Skagway and White Pass District National Historic Landmark (NHL) (Figure 3-5). The highway would traverse the hillside above the north end of Skagway and cross over the White Pass & Yukon Route tracks before connecting to 23<sup>rd</sup> Avenue. The only contributing resources listed in the 1999 NHL nomination that would be directly impacted by these alternatives are the railroad tracks. The remaining land affected is a previously logged undeveloped area. (Parts of the Lower Dewey Trail and the Hydroelectric Complex are within the NHL but are not listed as contributing resources.) The bridge over the railroad tracks would only require the purchase of air rights.

As discussed in Section 4.3.4, the boundaries of the NHL include natural areas to provide an understanding of Skagway's historic setting. Consultation with the National Park Service (NPS), the federal agency responsible for NHLs, regarding potential impacts to the landmark is ongoing (see August 11, 2004 letter in Section 7). During consultation regarding NPS concerns with potential visual and auditory impacts of these alternatives, the issue of the historic significance of the natural land areas that would be crossed by these alternatives and its relevance to Section 4(f) was discussed. As explained above, applicability of Section 4(f) to land within a historic district is based on whether or not the land is individually historic, an integral part of the historic district, or contributes to the factors which make the district historic. Consultation with the NPS has been expanded to include this issue (see October 21, 2004 and December 3, 2004 letters in Section 7). A determination of the applicability of Section 4(f) to the natural land that would be crossed by these alternatives will be made at the conclusion of consultation with the NPS and the State Historic Preservation Officer.

#### **6.4.4 Dalton Trail**

Alternative 3 would cross the Dalton Trail on Green Point north of Pyramid Harbor (Figure 3-1). A bridge would be constructed over the trail (continuing across Chilkat Inlet); neither the bridge abutment to the west or the first pier would require land from the trail. Only air rights would be acquired for the bridge above the trail.

FHWA has determined that construction of a highway associated with Alternatives 3 would not result in a constructive use of the Dalton Trail. Although a highway would have an effect on the trail, it would not be so severe as to substantially impair its activities, features or attributes. This historic property does not derive a substantial part of its significance from its setting.