



Preliminary Section 4(f) Evaluation Technical Report

September 2008

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1. Introduction to Purple Line Study

The Maryland Transit Administration (MTA) is preparing an Alternatives Analysis and Draft Environmental Impact Statement (AA/Draft EIS) to study a range of alternatives for addressing mobility and accessibility issues in the corridor between Bethesda and New Carrollton. The corridor is located in Montgomery and Prince George's Counties, just north of the Washington D.C. boundary. The Purple Line would provide a rapid transit connection along the 16-mile corridor that lies between the Metrorail Red Line (Bethesda and Silver Spring stations), Green Line (College Park station), and Orange Line (New Carrollton station). This Preliminary Section 4(f) Evaluation Technical Report presents the analysis of potential effects on publicly-owned public parklands and recreational areas, wildlife and/or waterfowl refuges, and significant historic or archeological sites that were summarized in the AA/DEIS. It describes the methodology used for the analysis and the results of that analysis.

This Technical Report presents the methodology and data used in the analyses documented in the Purple Line Alternatives Analysis/Draft Environmental Impact Statement. The results presented in this report may be updated as the AA/DEIS is finalized and in subsequent study activities.

1.1. Background and Project Location

Changing land uses in the Washington, D.C. area have resulted in more suburb-to-suburb travel, while the existing transit system is oriented toward radial travel in and out of downtown Washington, D.C. The only transit service available for east-west travel is bus service, which is slow and unreliable. A need exists for efficient, rapid, and high capacity transit for east-west travel. The Purple Line would serve transit patrons whose journey is solely east-west in the corridor, as well as those who want to access the existing north-south rapid transit services, particularly Metrorail and MARC commuter rail service.

The corridor has a sizeable population that already uses transit and contains some of the busiest transit routes and transfer areas in the Washington, D.C. metropolitan area. Many communities in the corridor have a high percentage of households without a vehicle, and most transit in these communities is bus service. Projections of substantial growth in population and employment in the corridor indicate a growing need for transit improvements. The increasingly congested roadway system does not have adequate capacity to accommodate the existing average daily travel demand, and congestion on these roadways is projected to worsen as traffic continues to grow through 2030.

A need exists for high quality transit service to key activity centers and to improve transit travel time in the corridor. Although north-south rapid transit serves parts of the corridor, transit users who are not within walking distance of these services must drive or use slow and unreliable buses to access them. Faster and more reliable connections along the east-west Purple Line corridor to the existing radial rail lines (Metrorail and MARC trains) would improve mobility and accessibility. This enhanced system connectivity would also help to improve transit



efficiencies. In addition, poor air quality in the region needs to be addressed, and changes to the existing transportation infrastructure would help in attaining federal air quality standards.

1.1.1. Corridor Setting

The Purple Line corridor, as shown in **Figure 1-1**, is north and northeast of Washington, D.C., with a majority of the alignment within one to three miles of the circumferential I-95/I-495 Capital Beltway.

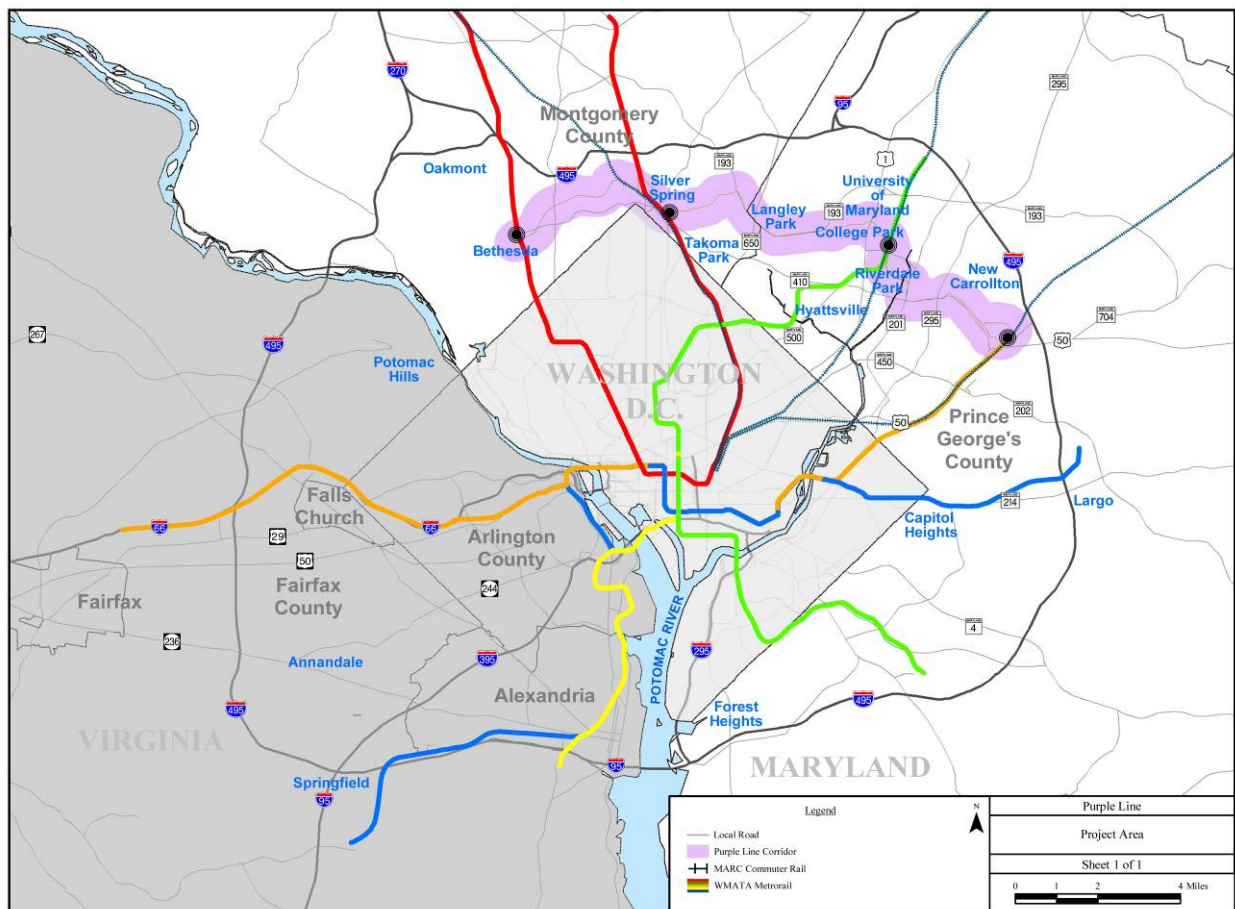


Figure 1-1: Project Area

1.2. Alternatives Retained for Detailed Study

The Purple Line study has identified eight alternatives for detailed study, shown on **Figure 1-2**. The alternatives include the No Build alternative, the Transportation System Management (TSM) Alternative, and six Build alternatives. The Build alternatives include three using bus rapid transit (BRT) technology and three using light rail transit (LRT) technology.



All alternatives extend the full length of the corridor between the Bethesda Metro Station in the west and the New Carrollton Metro Station in the east, with variations in alignment, type of running way (shared, dedicated, or exclusive), and amount of grade-separation options (e.g. tunnel segments or aerial). For purposes of evaluation, complete alignments need to be considered. These alternatives were used to examine the general benefits, costs, and impacts for serving major market areas within the corridor.

1.2.1. Alternative 1: No Build Alternative

The No Build alternative is used as the baseline against which the other alternatives are compared for purposes of environmental and community impacts. The No Build alternative consists of the transit service levels, highway networks, traffic volumes, and forecasted demographics for horizon year 2030 that are assumed in the local Constrained Long Range Plan of the local metropolitan planning organization (in this case, the Metropolitan Washington Council of Governments).

1.2.2. Alternative 2: TSM Alternative

The TSM Alternative provides an appropriate baseline against which all major investment alternatives are evaluated for the Federal Transit Administration's New Starts funding program. The New Starts rating and evaluation process begins when the project applies to enter preliminary engineering and continues through final design.

The TSM Alternative represents the best that can be done for mobility in the corridor without constructing a new transitway. Generally, the TSM Alternative emphasizes upgrades in transit service through operational and minor physical improvements, plus selected highway upgrades through intersection improvements, minor widening, and other focused traffic engineering actions. A TSM Alternative normally includes such features as bus route restructuring, shortened bus headways, expanded use of articulated buses, reserved bus lanes, express and limited-stop service, signalization improvements, and timed-transfer operations.

1.2.3. Build Alternatives

The six Build alternatives generally use the same alignments; only a few segments have locations where different roadways would be used. The differences between the alternatives are more often the incorporation of design features, such as grade separation to avoid congested roadways or intersections.

Alternative 3: Low Investment BRT

The Low Investment BRT Alternative would primarily use existing streets to avoid the cost of grade separation and extensive reconstruction of existing streets. It would incorporate signal, signage, and lane improvements in certain places. This alternative would operate mostly in mixed lanes with at-grade crossings of all intersections and queue jump lanes at some intersections. Southbound along Kenilworth Avenue and westbound along Annapolis Road, Low Investment BRT would operate in dedicated lanes. This is the only alternative that would



operate on Jones Bridge Road, directly serving the National Institutes of Health and the National Naval Medical Center near Wisconsin Avenue and Jones Bridge Road. It is also the only alternative that would use the bus portion of the new Silver Spring Transit Center (SSTC). A detailed description of the alternative follows.

From the western terminus in Bethesda, Low Investment BRT would originate at the Bethesda Metro Station bus terminal. The alignment would operate on Woodmont Avenue within the existing curb. At the Bethesda Station, the buses would enter the station via Edgemoor Road and exit onto Old Georgetown Road.

At Wisconsin Avenue, just south of Jones Bridge Road, the transitway would remain on the west side of the road in exclusive lanes. Low Investment BRT would turn onto Jones Bridge Road where the transit would operate in shared lanes with queue jump lanes westbound at the intersection with Wisconsin Avenue and westbound for the intersection at Connecticut Avenue. Some widening would be required at North Chevy Chase Elementary School.

The alignment would continue along Jones Bridge Road to Jones Mill Road where it would turn right (south) onto Jones Mill Road. Eastbound on Jones Bridge Road would be a queue jump lane at the intersection. From Jones Mill Road, the alignment would turn east onto the Georgetown Branch right-of-way, where a new exclusive roadway would be constructed, with an adjacent trail on the south side.

Low Investment BRT would continue on the Georgetown Branch right-of-way, crossing Rock Creek Park on a new bridge, replacing the existing pedestrian bridge. The trail would also be accommodated on the bridge or on an adjacent bridge. A trail connection to the Rock Creek Trail would be provided east of the bridge. The alignment would continue on the Georgetown Branch right-of-way until the CSX corridor at approximately Kansas Avenue.

At this point, the alignment would turn southeast to run parallel and immediately adjacent to the CSX tracks on a new exclusive right-of-way. The trail would parallel the transitway, crossing the transitway and the CSX right-of-way east of Talbot Avenue on a new structure and continuing on the north side of the CSX right-of-way. The transitway would continue on a new roadway between the CSX tracks and Rosemary Hills Elementary School and continue past the school. The transitway would cross 16th Street at -grade, where a station would be located. The transitway would continue parallel to the CSX tracks to Spring Street where it would connect to Spring Street and turn to cross over the CSX tracks on Spring Street. The alignment would continue on Spring Street to 2nd Avenue where it would turn east. Buses would operate in shared lanes on Spring Street and Second Avenue.

Low Investment BRT would cross Colesville Road at-grade and continue up Wayne Avenue to Ramsey Street, where the buses would turn right to enter the SSTC at the second level.

The buses would leave the SSTC and return to Wayne Avenue via Ramsey Street. Low Investment BRT would continue east on Wayne Avenue in shared lanes. After crossing Sligo Creek Parkway, the alignment would operate in shared lanes.



At Flower Avenue, the alignment would turn left (south) onto Arliss Street, operating in shared lanes to Piney Branch Road. At Piney Branch Road, the alignment would turn left to continue in shared lanes to University Boulevard.

Low Investment BRT would follow University Boulevard to Adelphi Road. The lanes on University Boulevard would be shared. At Adelphi Road, the alignment would enter the University of Maryland (UM) campus on Campus Drive. The alignment would follow the Union Drive extension, as shown in the University of Maryland Facilities Master Plan (2001-2020), through what are currently parking lots. The alignment would follow Union Drive and then Campus Drive through campus in mixed traffic and the main gate to US 1.

Low Investment BRT would operate on Paint Branch Parkway to the College Park Metro Station in shared lanes. The alignment would then follow River Road to Kenilworth Avenue in shared lanes. Along Kenilworth Avenue, the southbound alignment would be a dedicated lane, but northbound would be in mixed traffic.

The alignment turns east from Kenilworth Avenue on East West Highway (MD 410) and continues in shared lanes on Veterans Parkway. This alignment turns left on Annapolis Road and then right on Harkins Road to the New Carrollton Metro Station. The westbound alignment on Annapolis would be dedicated, but the eastbound lanes would be shared.

Alternative 4: Medium Investment BRT

Alternative 4, the Medium Investment BRT Alternative, is, by definition, an alternative that uses the various options that provide maximum benefit relative to cost. Most of the segments are selected from either the Low or High Investment BRT Alternatives.

This alternative follows a one-way counter-clockwise loop from the Georgetown Branch right-of-way onto Pearl Street, East West Highway, Old Georgetown Road, Edgemoor Lane, and Woodmont Avenue and from there onto the Georgetown Branch right-of-way under the Air Rights Building. The buses stop at both the existing Bethesda Metro Station on Edgemoor Lane and at the new southern entrance to the Metro station under the Air Rights Building.

The alignment continues on the Georgetown Branch right-of-way with an aerial crossing over Connecticut Avenue and a crossing under Jones Mill Road.

This alignment, and all others that use the Georgetown Branch right-of-way, includes construction of a hiker-biker trail between Bethesda and the SSTC.

The alignment would continue on the Georgetown Branch right-of-way until the CSX right-of-way. The alignment would cross Rock Creek Park on a new bridge, replacing the existing pedestrian bridge. The trail would also be accommodated on the bridge or on an adjacent bridge. The alignment would continue on the Georgetown Branch right-of-way until the CSX corridor at approximately Kansas Avenue. This segment of the alignment, from Jones Mill Road to the CSX corridor, would be the same for all the alternatives.



As with Low Investment BRT, this alternative would follow the CSX corridor on the south side of the right-of-way, but it would cross 16th Street and Spring Street below the grade of the streets, at approximately the same grade as the CSX tracks. The station at 16th Street would have elevators and escalators to provide access from 16th Street.

After passing under the Spring Street Bridge, Medium Investment BRT would rise above the level of the existing development south of the CSX right-of-way. East of the Falklands Chase apartments, Medium Investment BRT would cross over the CSX tracks on an aerial structure to enter the SSTC parallel to, but at a higher level than, the existing tracks.

After the SSTC, Medium Investment BRT would leave the CSX right-of-way and follow Bonifant Street at-grade, crossing Georgia Avenue, and just prior to Fenton Street turn north toward Wayne Avenue. The alignment would continue on Wayne Avenue in shared lanes with added left turn lanes to Flower Avenue and then Arliss Street. At Piney Branch Road, the alternative would turn left into dedicated lanes to University Boulevard.

Medium Investment BRT would be in dedicated lanes on University Boulevard with an at-grade crossing of the intersections. The alignment would continue through the University of Maryland campus in dedicated lanes on Campus Drive and then continue at grade in a new exclusive transitway through the parking lots adjacent to the Armory and turns on to Rossborough Lane south of the Visitor's Center.

Crossing US 1 at grade, Medium Investment BRT would pass through the East Campus development on Rossborough Lane to Paint Branch Parkway. The alignment would continue on Paint Branch Parkway and River Road in shared lanes, as with Low Investment BRT. At Kenilworth Avenue, both lanes would be dedicated.

Turning left on East West Highway, Medium Investment BRT would be in dedicated lanes. As with Low Investment BRT, this alternative would travel in shared lanes on Veterans Parkway.

Medium Investment BRT would continue on Veterans Parkway to Ellin Road, where it would turn left into dedicated lanes to the New Carrollton Metro Station.

Alternative 5: High Investment BRT via Master Plan Alignment

The High Investment BRT Alternative is intended to provide the most rapid travel time for a BRT alternative. It would make maximum use of vertical grade separation and horizontal traffic separation. Tunnels and aerial structures are proposed at key locations to improve travel time and reduce delay. When operating within or adjacent to existing roads, this alternative would operate primarily in dedicated lanes. Like Medium Investment BRT, this alternative would serve the Bethesda Station both at the existing Bethesda bus terminal at the Metro station and at the new south entrance to the Metro station beneath the Apex Building.

High Investment BRT would follow a one-way loop in Bethesda from the Master Plan alignment onto Pearl Street, then travel west on East West Highway and Old Georgetown Road into the Bethesda Metro Station bus terminal, exit onto Woodmont Avenue southbound, and then



continue left under the Air Rights Building to rejoin the Georgetown Branch right-of-way. Elevators would provide a direct connection to the south end of the Bethesda Metro Station in the tunnel under the Air Rights Building.

High Investment BRT would be the same as Medium Investment BRT until it reaches the CSX corridor. As with the Low and Medium Investment BRT Alternatives, this alternative would follow the CSX corridor on the south side of the right-of-way, but it would cross 16th Street and Spring Street below the grade of the streets, at approximately the same grade as the CSX tracks. The station at 16th Street would have elevators and escalators to provide access from 16th Street.

The crossing of the CSX right-of-way would be the same as for Medium Investment BRT. From the SSTC, High Investment BRT would continue along the CSX tracks until Silver Spring Avenue, where the alignment would turn east entering a tunnel, passing under Georgia Avenue, and turning north to Wayne Avenue. The alignment would return to the surface on Wayne Avenue near Cedar Street. It would continue on Wayne Avenue in dedicated lanes, crossing Sligo Creek Parkway, and entering a tunnel approximately half-way between Sligo Creek and Flower Avenue, then turning east to pass under Plymouth Street, crossing under Flower Avenue, and emerging from the tunnel on Arliss Street.

High Investment BRT would be the same on Piney Branch Road and University Boulevard except that the alignment would have grade-separated crossings over New Hampshire Avenue and Riggs Road.

Approaching the University of Maryland, the alignment would cross under Adelphi Road. After Adelphi Road, the alignment would follow Campus Drive and turn onto the proposed Union Drive extended. The alignment would enter a tunnel while on Union Drive, prior to Cole Field House, and pass through the campus under Campus Drive. After emerging from the tunnel east of Regents Drive, the alignment would be the same as Medium Investment BRT, until Paint Branch Parkway.

The alignment would continue east on Paint Branch Parkway in shared lanes to the College Park Metro Station. The alternative would then follow River Road in dedicated lanes.

From River Road near Haig Drive, the alignment would turn right and enter a tunnel heading south, roughly parallel to Kenilworth Avenue. Near East West Highway (MD 410), the alignment would turn left and continue in the tunnel under Anacostia River Park. The alignment would transition to a surface alignment west of the Kenilworth Avenue/East West Highway intersection. The alternative would follow East West Highway in dedicated lanes.

High Investment BRT would turn right down Veterans Parkway in dedicated lanes. Unlike Medium Investment BRT, this alignment would cross under Annapolis Road before continuing on to Ellin Road.

Alternative 6: Low Investment LRT

The Low Investment LRT Alternative would operate in shared and dedicated lanes with minimal use of vertical grade separation and horizontal traffic separation. All LRT Alternatives would serve only the south entrance of the Bethesda Station and would operate there in a stub-end platform arrangement.

Low Investment LRT would begin on the Georgetown Branch right-of-way near the Bethesda Metro Station under the Air Rights Building. The hiker-biker trail connection to the Capital Crescent Trail would not be through the tunnel under the Air Rights Building, but rather through Elm Street Park on existing streets. The terminal station would be the Bethesda Metro Station with a connection to the southern end of the existing station platform.

After emerging from under the Air Rights Building, the transitway would follow the Georgetown Branch right-of-way, crossing Connecticut Avenue at-grade and crossing under Jones Mill Road. Between approximately Pearl Street and just west of Jones Mill Road, the trail would be on the north side of the transitway; elsewhere it would be on the south side.

The segment from Jones Mill Road to Spring Street in the CSX corridor would be the same as for Low and Medium Investment BRT.

After crossing Spring Street, Low Investment LRT would be the same as the Medium and High Investment BRT Alternatives.

Low Investment LRT would be the same as Medium Investment BRT from the SSTC to Bonifant Street to Wayne Avenue.

Turning right, Low Investment LRT would continue at-grade on Wayne Avenue in shared lanes, crossing Sligo Creek Parkway and entering a tunnel from Wayne Avenue to pass under Plymouth Street. As with High Investment BRT, the alignment emerges from the tunnel on Arliss Street.

The Low Investment LRT Alternative would then follow Piney Branch Road and University Boulevard at-grade in dedicated lanes. In keeping with the low investment definition of this alternative, the major intersections of New Hampshire Avenue and Riggs Road would not be grade-separated.

As this alternative approaches Adelphi Road, the grade of the existing roadway is too steep for the type of LRT vehicles being considered. For this reason, the transitway would cross the intersection below grade.

At Adelphi Road, the alignment would enter the University of Maryland campus on Campus Drive. The alignment would follow the same alignment to the College Park Metro Station as described for Medium Investment BRT.

From the College Park Metro Station to the terminus at the New Carrollton Metro Station, Low Investment LRT would be in dedicated lanes on River Road. On Kenilworth Avenue, the LRT



would be in a dedicated lane southbound, but a shared lane northbound. On East West Highway, the LRT would be in dedicated lanes with shared left turn lanes and in shared lanes under Baltimore-Washington Parkway. On Veterans Parkway, the LRT is in dedicated lanes.

As with Low Investment BRT, this alignment turns left on Annapolis Road from Veterans Parkway and then right on Harkins Road to the New Carrollton Metro Station. The segments on Annapolis Road and Harkins Lane would be dedicated.

Alternative 7: Medium Investment LRT

Medium Investment LRT is the same as Low Investment LRT from Bethesda to the CSX corridor, except that the alignment would cross over Connecticut Avenue.

Along the CSX corridor, the alignment would be the same as High Investment BRT, grade-separated (below) at 16th and Spring Streets. The alignment would be the same as Medium and High Investment BRT and Low Investment LRT from Spring Street through the SSTC.

From the SSTC, the alignment would follow Bonifant Street in dedicated lanes to Wayne Avenue. On Wayne Avenue, this alternative would be in shared lanes with added left turn lanes. The alignment would be the same as Low Investment LRT until Annapolis Road. The LRT would follow River Road, Kenilworth Avenue, East West Highway, and Veterans Parkway in dedicated lanes. At the intersection of Veterans Parkway and Annapolis Road the LRT continues across Annapolis, turning left at Ellin Road still in dedicated lanes.

Alternative 8: High Investment LRT

Alternative 8, High Investment LRT, would be the same as the High Investment BRT Alternative, except for the Bethesda terminus. The alignment would begin just west of the tunnel under the Air Rights Building. The hiker-biker trail would follow the alignment through the tunnel under the Air Rights Building. Because of physical constraints, the trail would be elevated above the westbound tracks. The trail would return to grade as it approaches Woodmont Avenue. The terminal station would be the Bethesda Metro Station with a connection to the southern end of the existing station platform.

1.2.4. Design Options

North Side of CSX

This design option is based on the Georgetown Branch Master Plan. From the eastern end of the Georgetown Branch right-of-way, the alignment would cross under the CSX corridor and then continue down the north side. It would emerge from the tunnel near Lyttonsville Road in Woodside. The alignment would be below the grade of 16th Street, passing under the bridge, but providing a station at that location. It would also pass under the Spring Street Bridge but would begin to rise on an aerial structure over the CSX right-of-way 1,000 feet northwest of Colesville Road due to the location of the Metro Plaza Building. The aerial structure over the CSX right-of-way would provide the required 23-foot clearance from top of rail to bottom of structure. The alternative would enter the SSTC parallel to, but at a higher level than, the existing tracks.

South Side of CSX with a Crossing West of the Falklands Chase Apartments

This option would operate on the south side of the CSX, as described either at or below grade at 16th Street. The alignment would cross the CSX corridor between Spring Street and Fenwick Lane. This option would continue along the north side of the CSX right-of-way on an aerial structure over the CSX right-of-way 1,000 feet northwest of Colesville Road, due to the location of the Metro Plaza Building. The aerial structure over the CSX right-of-way would provide the required 23-foot clearance from top of rail to bottom of structure. The alternative would enter the SSTC parallel to, but at a higher level than, the existing tracks.

Silver Spring/Thayer Avenue

This design option would begin at the SSTC where the alignment leaves the CSX corridor near Silver Spring Avenue. It would enter a tunnel on Silver Spring Avenue passing under Georgia Avenue and Fenton Street. At approximately Grove Street, the alignment would shift northward to continue under the storm drain easement and backyards of homes on Thayer and Silver Spring Avenues. The transitway would emerge from the tunnel behind the East Silver Spring Elementary School on Thayer Avenue and follow Thayer Avenue across Dale Drive to Piney Branch Road. If the mode selected were LRT, the grade of Piney Branch Road would require an aerial structure from west of Sligo Creek and Sligo Creek Parkway and would return to grade just west of Flower Avenue. This aerial structure requires that the road be widened. For this design option, a station would be located on Thayer Avenue where the alignment would emerge from the tunnel.

Preinkert/Chapel Drive

The Preinkert/Chapel Drive design option is being evaluated for both BRT and LRT through the University of Maryland campus. The alignment would run from the west on Campus Drive turning right onto Preinkert Drive where it would head southeast. The transitway would turn left to pass directly between LeFrak Hall and the South Dining Campus Hall and then northeast through the Lot Y parking lot. From there, the alignment would run east along Chapel Drive between Memorial Chapel and Marie Mount Hall and eventually would pass to the south of Lee Building at Chapel Fields. The alignment would continue onto Rossborough Lane, passing directly north of Rossborough Inn to cross US 1, and continues east through the East Campus development.

1.2.5. Stations and Station Facilities

Between 20 and 21 stations are being considered for each of the alternatives. **Table 1-1** provides the stations for each of the Build alternatives.



Table 1-1: Stations by Alternative

Segment Name	Low Invest. BRT	Medium Invest. BRT	High Invest. BRT	Low Invest. LRT	Medium Invest. LRT	High Invest. LRT
Bethesda Metro, North Entrance	Yes	Yes	Yes	N/A	N/A	N/A
Medical Center Metro	Yes	N/A	N/A	N/A	N/A	N/A
Bethesda Metro, South Entrance	N/A	Yes	Yes	Yes	Yes	Yes
Connecticut Avenue	Yes	Yes	Yes	Yes	Yes	Yes
Lyttonsville	Yes	Yes	Yes	Yes	Yes	Yes
Woodside/16th Street	Yes	Yes	Yes	Yes	Yes	Yes
Silver Spring Transit Center	Yes	Yes	Yes	Yes	Yes	Yes
Fenton Street	Yes	Yes	N/A	Yes	Yes	N/A
Dale Drive	Yes	Yes	Yes	Yes	Yes	Yes
Manchester Road	Yes	Yes	Yes	Yes	Yes	Yes
Arliss Street	Yes	Yes	Yes	Yes	Yes	Yes
Gilbert Street	Yes	Yes	Yes	Yes	Yes	Yes
Takoma/Langley Transit Center	Yes	Yes	Yes	Yes	Yes	Yes
Riggs Road	Yes	Yes	Yes	Yes	Yes	Yes
Adelphi Road	Yes	Yes	Yes	Yes	Yes	Yes
UM Campus Center	Yes	Yes	Yes	Yes	Yes	Yes
US 1	Yes	N/A	N/A	N/A	N/A	N/A
East Campus	N/A	Yes	Yes	Yes	Yes	Yes
College Park Metro	Yes	Yes	Yes	Yes	Yes	Yes
River Road	Yes	Yes	Yes	Yes	Yes	Yes
Riverdale Park	Yes	Yes	Yes	Yes	Yes	Yes
Riverdale Road	Yes	Yes	Yes	Yes	Yes	Yes
Annapolis Road	Yes	Yes	Yes	Yes	Yes	Yes
New Carrollton Metro	Yes	Yes	Yes	Yes	Yes	Yes

The design of the Purple Line stations has not been determined at this stage of the project; however, the stations would likely include the following elements: shelters, ticket vending machines, seating, and electronic schedule information. The stations would be located along the transitway and would be on local sidewalks or in the median of the streets, depending on the location of the transitway. Because both the BRT and LRT vehicles under consideration are “low floor,” the platforms would be about 14 inches above the height of the roadway. The platforms would be approximately 200 feet long and between 10 and 15 feet wide, depending on the anticipated level of ridership at each particular station. No new parking facilities would be constructed as part of the Purple Line. Municipal parking garages exist near the Bethesda and Silver Spring Metro Stations, and transit parking facilities exist at the College Park and New Carrollton Metro Stations.

Additional kiss-and-ride facilities would be considered at the stations at Connecticut Avenue on the Georgetown Branch right-of-way and Lyttonsville. The SSTC, College Park Metro Station, and New Carrollton Metro Station already have kiss-and-ride parking facilities available and the

Purple Line would not add more. It has been determined that kiss-and-ride facilities are not needed at the Takoma/Langley Transit Center.

1.2.6. Maintenance and Storage Facilities

LRT and BRT both require maintenance and storage facilities; however, the requirements in terms of location and size are not the same. LRT requires a facility located along the right-of-way while a BRT facility can be located elsewhere. Depending on the construction phasing and mode chosen, two maintenance facilities (one in Montgomery County and one in Prince George's County) are ideal.

The size of the facility depends on the number of vehicles required. A fleet of 40 to 45 LRT vehicles or 40 to 60 buses (including spares) would require approximately 20 acres. The Purple Line would also require storage for non-revenue vehicles and equipment such as: maintenance, supervisory, and security vehicles.

Activities at the maintenance facility would include:

- Vehicle Storage area (tracks for LRT)
- Inspection/Cleaning
- Running Repairs
- Maintenance/Repair
- Operations/Security
- Parking
- Materials/Equipment Storage

Two sites improve operations by providing services and storage near the ends of the alignment. It is possible to have one site provide the majority of the services and the other function as an auxiliary site.

Five potential sites were identified during the course of the alternatives analysis and were evaluated for environmental impacts. As part of the screening process three were eliminated from further consideration. These five sites are listed below:

- Lyttonsville – This is a maintenance facility on Brookville Road in Lyttonsville, currently used by Montgomery County Ride On buses and school buses. The Purple Line would require the use of some additional adjacent property.
- Haig Court – This site is located on River Road at Haig Court. It would require minimal grading, but is partly wooded, and is very close to the residential neighborhood of Riverdale which is also a historic district.
- North Veterans Parkway – This site is located on the north side of Veterans Parkway. This site is heavily wooded and includes steep grades.



- Glenridge Maintenance Facility – This site is located on the south side of Veterans Parkway near West Lanham Shopping Center. It is currently being used as a maintenance facility for Prince George’s County Park vehicles.
- MTA New Carrollton property – This site is a parcel owned but the MTA on the east side of the New Carrollton Metro station. It is not particularly well located for use by the Purple Line because it would require the Purple Line to pass under or around the New Carrollton Metro Station.

The Lyttonsville site and the Glenridge Maintenance Facility were identified as the two sites most appropriate for maintenance and storage facilities for the project based on potential environmental effects and location. These two sites would provide sufficient capacity for either BRT or LRT operations; and are well located near either end of the alignment.

1.2.7. Traction Power Substations

Light rail’s electric traction power system requires electrical substations approximately every 1.25 miles, depending on the frequency and size of the vehicles. These substations, which are approximately 10 feet by 40 feet, do not need to be immediately adjacent to the tracks. This flexibility means the substations can be located to minimize visual intrusions and can be visually shielded by fencing, landscaping, or walls, or can be incorporated into existing buildings. The number and location of these substations would be determined during the preliminary engineering phase of project development.

2. Preliminary Section 4(f) Evaluation

This Preliminary Section 4(f) Evaluation Technical Report presents the detailed analysis of the resources eligible for consideration under Section 4(f) of the U.S. Department of Transportation Act of 1966 (23 U.S.C. 138 and 49 U.S.C. 303), as amended. It also identifies opportunities for applying *de minimis* impact findings under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Appendix A contains excerpts from Section 4(f) regulations relevant to this evaluation.

This Preliminary Section 4(f) Evaluation has been prepared as a result of potential impacts to public parklands and recreational areas, and significant historic architectural properties and archaeological sites as a result of the Purple Line transportation project. No impacts to wildlife or waterfowl refuges are anticipated from this project.

2.1. Applicability of Section 4(f) Regulations

Section 4(f) of the U.S. Department of Transportation Act of 1966 requires that the proposed use of land from a publicly-owned parkland, recreation area, wildlife and/or waterfowl refuge, or any significant historic or archaeological site, as part of a federally funded or approved transportation project, is permissible only if there is no feasible and prudent alternative to the use. Final action requiring the taking of such land must also document and demonstrate that the proposed action includes all possible planning to minimize harm to the property resulting from such use.

Section 6009(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59 dated August 10, 2005, amended existing Section 4(f) legislation to simplify the processing and approval of projects that have only *de minimis* impacts on lands protected by Section 4(f). SAFETEA-LU allows the USDOT to determine that certain uses of Section 4(f) land would have no adverse effect on the protected resource. This revision provides that once the USDOT determines that a transportation use of Section 4(f) property, including any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures), results in a *de minimis* impact on that property, an analysis of avoidance alternatives is not required. When this is the case, and the responsible official(s) with jurisdiction over the resource agrees in writing, compliance with the Section 4(f) process is complete.

The *de minimis* impact criteria and associated determination requirements specified in Section 6009(a) of SAFETEA-LU are different for historic sites than for public parklands and recreational areas, and wildlife and waterfowl refuges. *De minimis* impacts related to historic sites are defined as the determination of either “No Adverse Effect” or “No Historic Properties Affected” in compliance with Section 106 of the National Historic Preservation Act (NHPA). *De minimis* impacts on public parklands and recreational areas, and wildlife and waterfowl refuges are defined as those that do not “adversely affect the features, activities, and attributes qualifying the property for protection under Section 4(f).”



2.2. Applicability of Other Relevant Regulations

2.2.1. Section 106 of the National Historic Preservation Act

Section 106 of the National Historic Preservation Act of 1966, as amended, requires federal agencies to consider the impacts of undertakings on historic properties (including architectural properties and archaeological sites) that are either listed in the National Register of Historic Places (National Register) or eligible for listing (36 CFR 800). If projects are federally permitted, licensed, funded, or partially funded, the project must comply with Section 106.

According to Section 106 regulations, the Criteria of Adverse Effect are used as a means to compare and contrast alignment options, ultimately assisting in selecting a Locally Preferred Alternative. Section 106 regulations stipulate that the Criteria of Adverse Effect must be applied to National Register eligible or listed resources within a project's Area of Potential Effects (APE). The Criteria of Adverse Effect is described in 36 CFR 800.5 as follows:

An adverse effect is found when an undertaking may alter, directly or indirectly, the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonable foreseeable effects by the undertaking that may occur later in time, be farther removed in distance or be cumulative (36 CFR 800.5)

Under Section 106 regulations, there are three possible determinations of effect:

1. No Historic Properties Affected (NPA) – This finding is applied when there are no listed or eligible historic properties within the APE;
2. No Adverse Effect (NAE) – This finding is applied there are historic properties within the APE, but the project impacts would not negatively affect the property's character-defining attributes that make it eligible for listing in the National Register; and
3. Adverse Effect (AE) – This finding is applied when the project has the potential to negatively affect a property's integrity and the character-defining attributes that make it eligible for listing in the National Register.

Coordination has been ongoing with the Maryland Historical Trust (MHT) regarding eligibility and potential impacts to historic architectural properties and archaeological sites. The MHT has requested that once a Locally Preferred Alternative is selected, and after considering input from the consulting parties and the public, MTA prepare a report that applies the Criteria of Adverse Effect to listed or eligible properties, which would be submitted to the MHT and all other

consulting parties for review and comment. The Final Section 4(f) Evaluation would include identification of any adversely affected resources.

2.2.2. Land and Water Conservation Fund Act

The Land and Water Conservation Fund Act of 1965 (16 USC 460) established a fund to subsidize State and Federal acquisition of lands and waters for recreational and conservation purposes. Section 6(f) of the Land and Water Conservation Fund Act requires that the Secretary of the U.S. Department of the Interior (USDOI) approve any conversion of lands purchased or developed with assistance under this act to a use other than public, outdoor recreation use. Under Section 6(f), the USDOI must ensure the replacement of Section 6(f) lands acquired for transportation projects and that the replacement lands are of equal value, location, and usefulness prior to approval.

Information from the Maryland-National Capital Park and Planning Commission (M-NCPPC) noted that the land acquisitions for some parks in the Purple Line corridor may have been financed with Land and Water Conservation Fund Act monies. In many cases, the M-NCPPC was unable to identify the funding sources at this time. Preliminary information has identified Section 6(f) funds were used for at least five park lands in the project area; however, specific parcels or locations where these funds were used cannot be identified. Further coordination with the M-NCPPC during subsequent stages of the project would determine if the parcels potentially impacted were acquired and/or developed with Section 6(f) funds. If the Locally Preferred Alternative is found to impact parklands purchased or developed with Section 6(f) funds, then coordination with the USDOI would occur.

2.2.3. Maryland Outdoor Recreation Land Loan Act

The Maryland Outdoor Recreation Land Loan Act of 1969, which established Program Open Space (POS), was created for the purpose of expediting the acquisition of outdoor recreation and open space areas and providing recreation facilities before land is devoted to other purposes. The Annotated Code of Maryland provides that ...”Land acquired or developed under a State grant from Program Open Space may not be converted without written approval of the Secretary of the Maryland Department of Natural Resources (DNR) and the Secretary of the Department of Budget and Management and the Secretary of the Department of Planning from outdoor public recreation or open space use to any other use. Any conversion in land use may be approved only after the local governing body replaces the land with land of at least equivalent area and of equal recreation or open space value, and for any conversion of land acquired or developed under a State grant from Program Open Space ...the appraised monetary value of the land proposed for acquisition shall be equal to or greater than the appraised monetary value of the land to be converted, under the proposed new use of the converted land.” [Natural Resources Article §5-906(e)(7) and (8)].

The DNR administers funding for Maryland’s state and local parks and conservation areas through the Program Open Space grants. This program has been a major source of funding for



park acquisition and development in Maryland since 1970. Within the Purple Line project area, Program Open Space funds have been used for:

- Purchase of stream valley, conservation, local and recreational parks.
- Development of local, regional, and recreational parks.
- Facility improvements (e.g., hiking, biking and/or equestrian trails).

Of those parks in the Purple Line corridor, the M-NCPPC has confirmed the following were acquired and/or developed with Program Open Space funds:

- Anacostia River Stream Valley Park including the Riverdale Community Recreation Center
- Capital Crescent Trail
- College Park Airport
- Glenridge Community Park/Northern Area Maintenance Office
- New Hampshire Estates Park
- Northwest Branch Stream Valley Park including the Adelphi Manor Community Recreation Center and the Lane Manor Community Recreation and Aquatic Center
- Northwest Branch Trail
- Paint Branch Stream Valley Park
- Riverdale Community Recreation Center (part of Anacostia River Stream Valley Park - Unit 2)
- West Lanham Hills Neighborhood Recreation Center

3. Identification and Description of Section 4(f) Resources

Land that meets the criteria for Section 4(f) protection includes publicly-owned parks and recreational areas, wildlife and/or waterfowl refuges, and historic and archaeological sites of national, state or local significance, whether or not these sites are publicly owned or open to the public. Except in unusual circumstances, only historic properties on or eligible for inclusion on the National Register of Historic Places are protected under Section 4(f).

3.1. Methodology Used for the Identification of Section 4(f) Resources

The Parks and Recreation Departments of Montgomery and Prince George's Counties provided GIS base mapping of existing park resources. The GIS data was reviewed and internet research conducted to confirm the locations of resources through field investigations. Mapping was developed with a list identifying relevant features of the resources potentially affected by the alternatives. Based on the research conducted, mapping was prepared showing the location and boundaries of all the potential Section 4(f) resources within 500 feet of the centerline of the Build alternative alignments. The MTA coordinated with jurisdictional officials to verify the significance and funding of those parks potentially impacted by the proposed alternatives.

3.2. Description of Section 4(f) Resources

Potential Section 4(f) resources located within the Purple Line corridor include public parklands and recreational areas as well as historic and archaeological resources. Public parklands and recreational areas consist of regional and community parks, recreational facilities associated with public schools, and trails. These resources and applicability of Section 4(f) are described in the following text.

3.2.1. Public Parklands and Recreational Areas

Montgomery County has 66,067 acres of parks, recreation, and open space. This total includes approximately 32,700 acres of Maryland-National Capital Park and Planning Commission (M-NCPPC) parkland, 12,000 acres of State parkland and 3,100 acres of National parkland. Two-thirds of the land in regional parks remains undeveloped in its natural state to help protect the environment. The M-NCPPC owns more than 395 developed parks that provide diverse active and passive recreational opportunities in the county.¹

Prince George's County contains over 50,400 acres of parkland including 25,240 acres of M-NCPPC-owned parkland, 6,947 acres of river parks, 7,830 acres of stream valley parks, and 7,737 acres of developed parkland. Approximately one-third of the M-NCPPC-owned parkland

¹ M-NCPPC, *Land Preservation, Parks, and Recreation Plan – Final Plan*, 2005.



has been developed to provide active and passive recreational opportunities in the county. Undeveloped parkland totals 2,726 acres.²

Other agencies provide recreation and open space for the public to enjoy. These providers include Federal and State Parks, the Maryland Department of Education (public schools), the Washington Suburban Sanitary Commission, private conservation areas, and Potomac Edison Power Company (PEPCO) transmission lines.

Figure 3-1 and Table 3-1 identify the public parklands and recreational areas located within a 500-foot buffer from the centerline of existing alignments for the alignments developed for the Purple Line Build alternatives. Of these resources, the Build alternatives would completely avoid the following: Calvert Neighborhood Park, Dale Drive Neighborhood Park, East Pines Neighborhood Recreation Center, East West Highway Neighborhood Conservation Area, Elm Street Urban Park, Flower Avenue Urban Park, Indian Creek Park, Leland Neighborhood Park, Long Branch-Arliss Neighborhood Park, Long Branch Stream Valley Park, Lynnbrook Local Park, Nolte Local Park, Paint Branch Valley Stream Park, and Sligo Cabin Neighborhood Park. Therefore, these parks and recreational areas are not specifically addressed in this Section 4(f) evaluation.

The Build alternatives would not directly impact Elm Street Urban Park, Metro Urban Park, or Rock Creek Regional Park.

At Elm Street Urban Park the Build alternatives include a proposed hiker-biker trail that would follow an existing signed bike route within the park and along the northwest edge of Elm Street. This trail connects with the Capital Crescent Trail. Since the Purple Line hiker-biker trail would follow the existing bike route, it would not impact this property.

Metro Urban Park is one of several small gathering spaces in downtown Silver Spring. Metro Urban Park is directly in the path of all the Build alternatives except Low Investment BRT, however, this small park is being removed with the construction of the Silver Spring Transit Center which will be completed by fall 2010, prior to construction of the Purple Line. Therefore, the Build alternatives would not impact this property.

All of the alternatives cross Rock Creek Regional Park within the Georgetown Branch right-of-way, but would not require park property.

The following section describes the public parklands and recreational areas that have potential right-of-way or other impacts from the Build alternatives.

Public Parklands

The Build alternatives potentially would impact eleven public parklands and recreational areas.

² Prince George's County Department of Parks and Recreation, *Parks and Recreation Facts*, 2006.

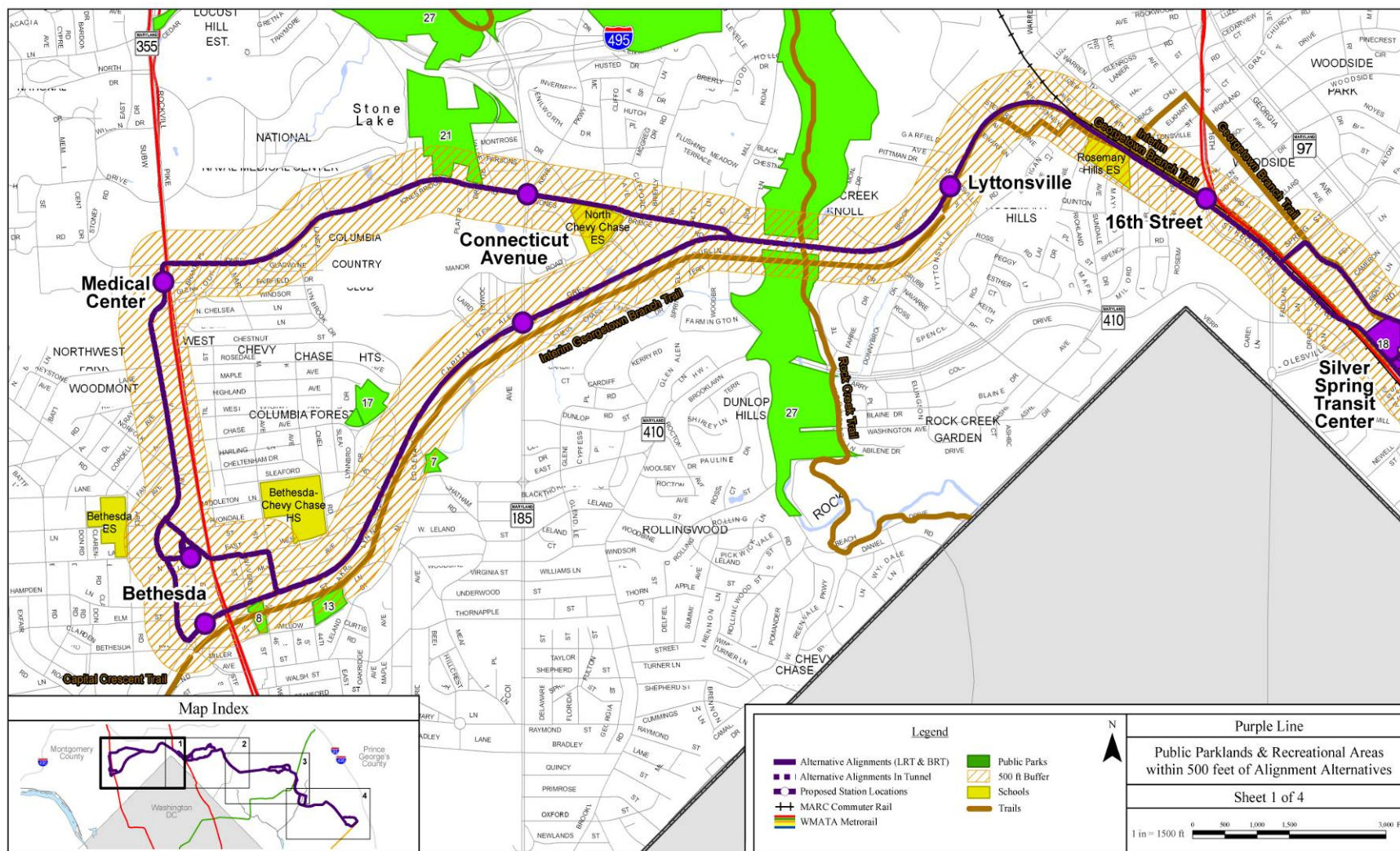


Figure 3-1: Public Parklands and Recreational Areas within 500 Feet of Alignment Alternatives

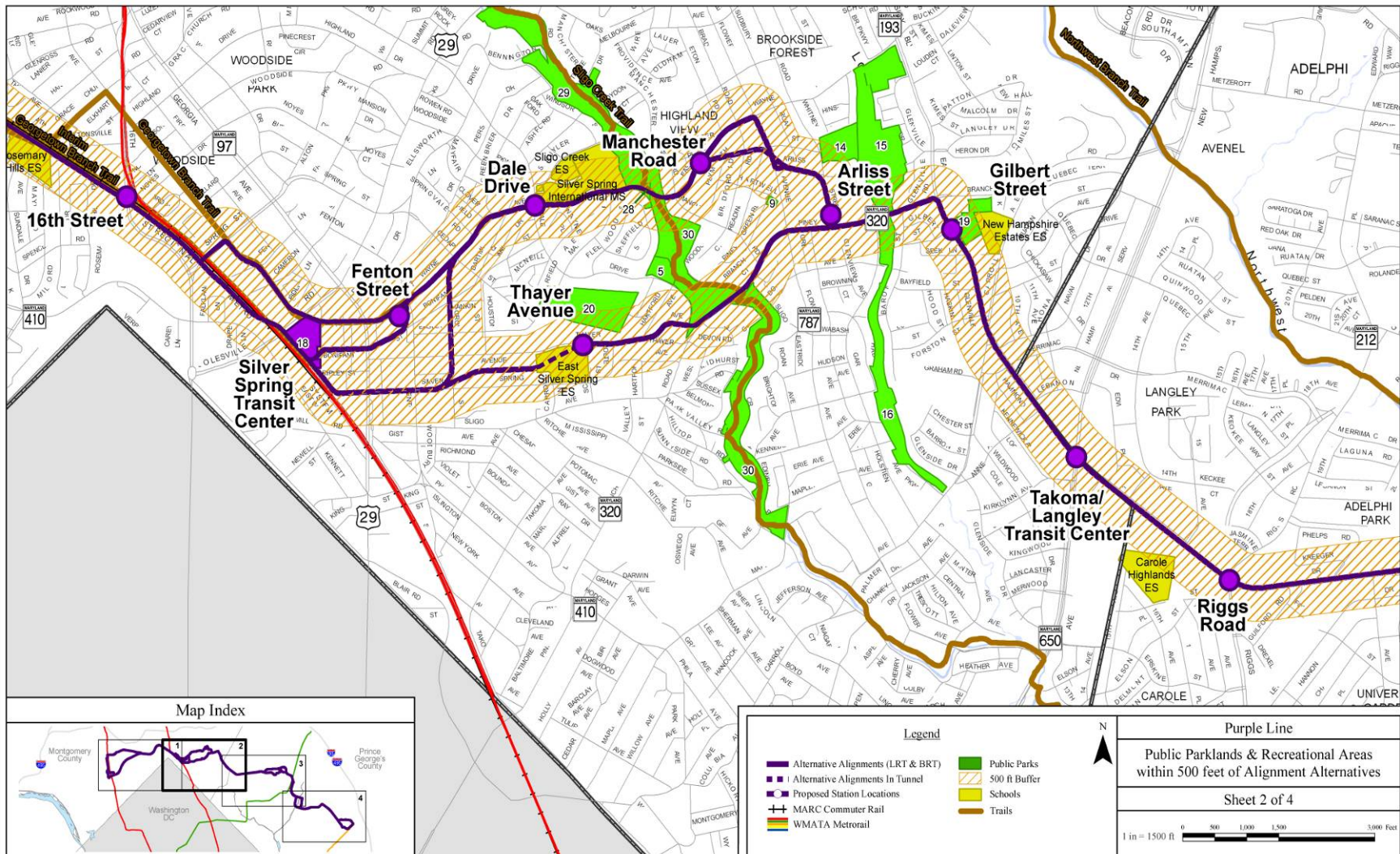


Figure 3-1: Public Parklands and Recreational Areas within 500 Feet of Alignment Alternatives (continued)

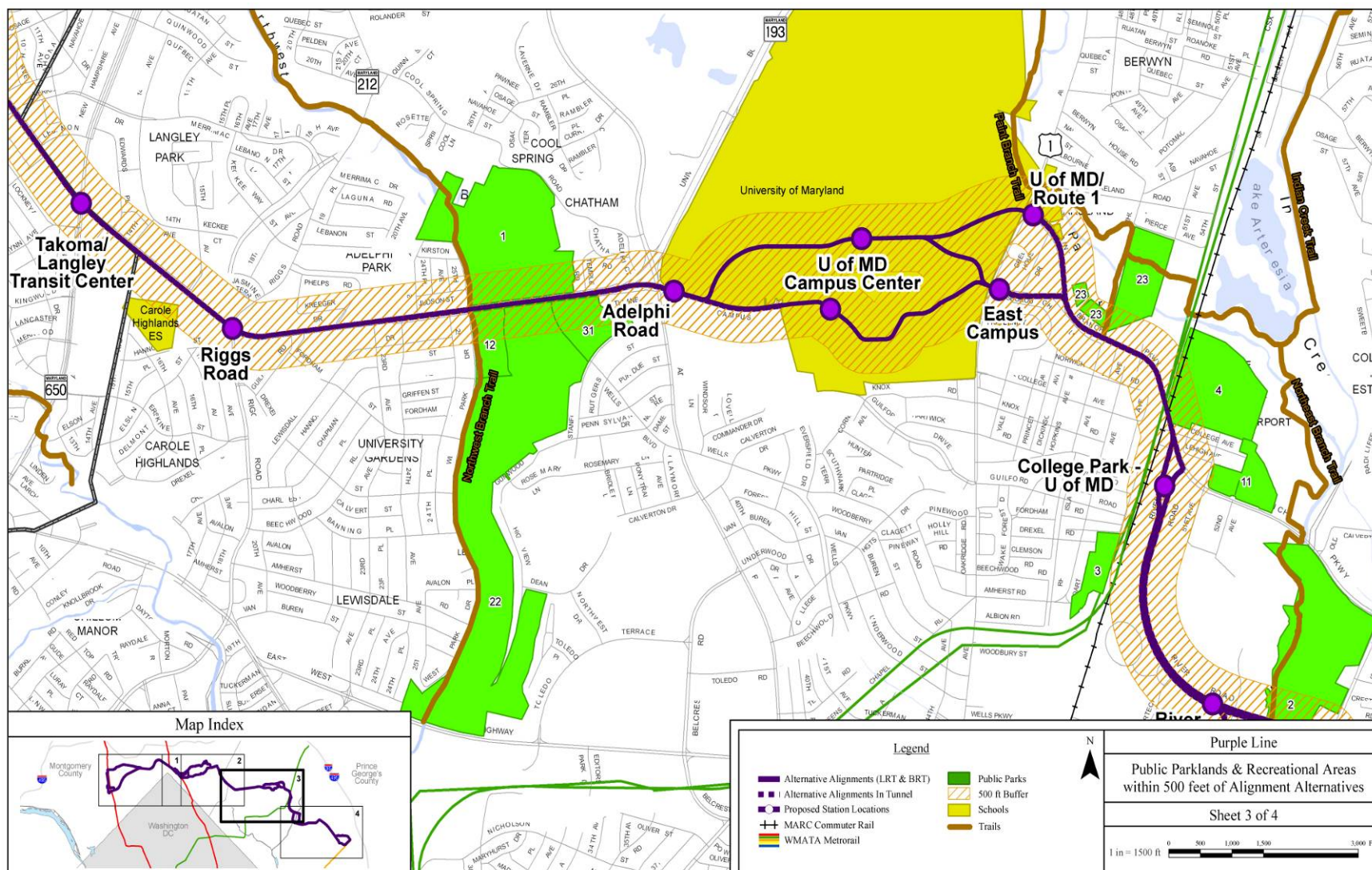


Figure 3-1: Public Parklands and Recreational Areas within 500 Feet of Alignment Alternatives (continued)

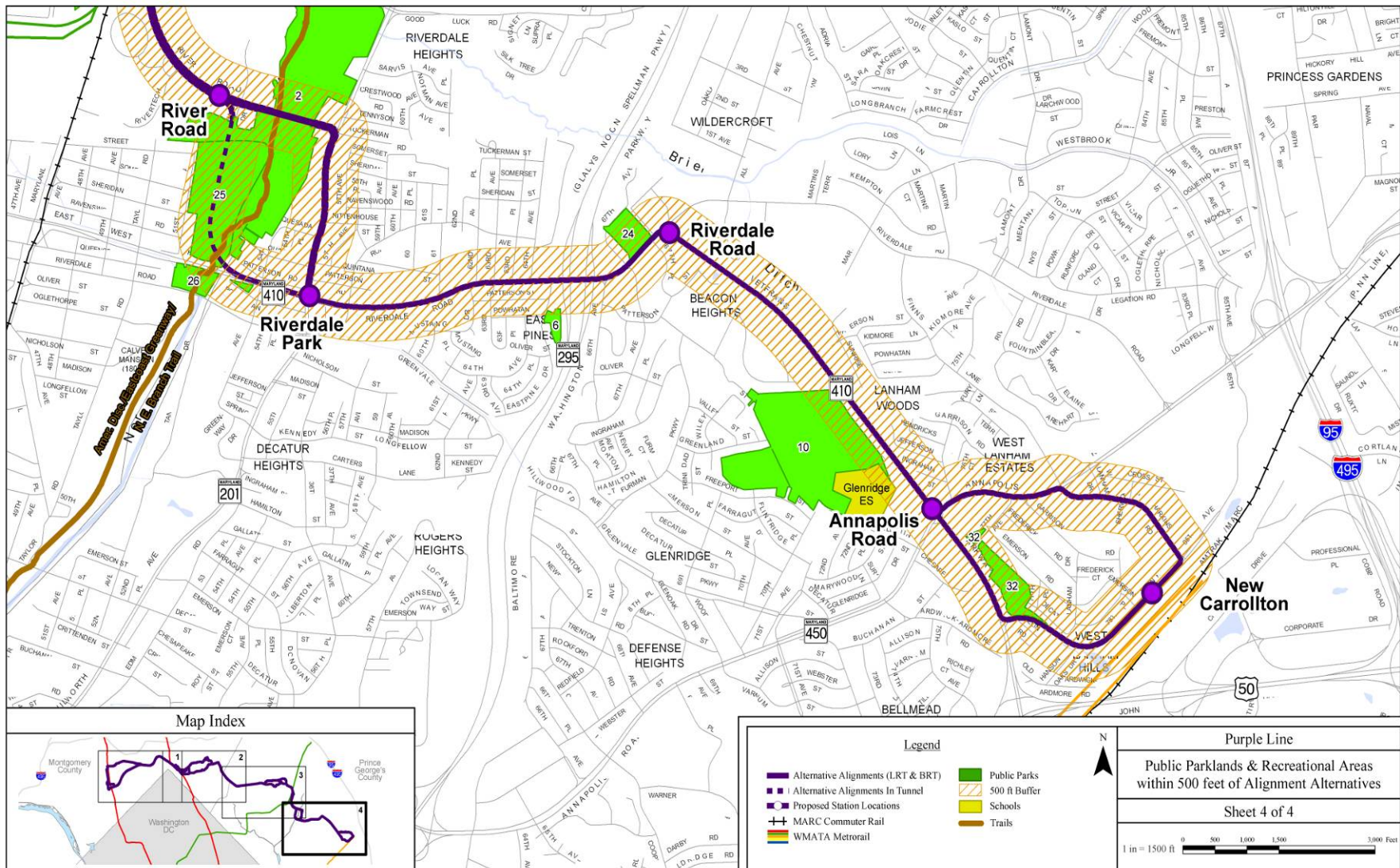


Figure 3-1: Public Parklands and Recreational Areas within 500 Feet of Alignment Alternatives (continued)

Table 3-1: Public Parklands and Recreational Areas within 500 Feet of Alignment Alternatives

ID	Name	Owner	Address	County	Approx Size (acres)	Funding*	Playground	Athletic Field	Community Center	Courts	Trail	Shelter	Picnic Area	Water Activities	Historic	Parking
Public Parklands																
1	Adelphi Manor Community Recreation Center (part of Northwest Branch Stream Valley Park)	M-NCPPC	2600 University Boulevard, Adelphi	Prince George's	34	CC, POS	X	X			X		X			X
2	Anacostia River Stream Valley Park	M-NCPPC	Prince George's Co. to Washington, DC	Prince George's	794	CC, POS	X	X	X	X	X					
3	Calvert Neighborhood Park	M-NCPPC	West of the B&O railroad tracks and south of Paint Branch Parkway, College Park	Prince George's	7	Unknown	X	X		X		X	X			X
4	College Park Airport	M-NCPPC	1909 Corporal Frank Scott Drive, College Park	Prince George's	34	Adv. Land, POS									X	X
5	Dale Drive Neighborhood Park	M-NCPPC	124 Dale Drive, Silver Spring	Montgomery	2	Unknown	X			X	X		X			
6	East Pines Neighborhood Recreation Center	Civic Assoc.	South of Riverdale Road and west of Baltimore-Washington Parkway	Prince George's	2	Unknown	X		X	X						X
7	East-West Highway Neighborhood Conservation Area	M-NCPPC	7101 Edgevale Street, Bethesda	Montgomery	2	Unknown										
8	Elm Street Urban Park	M-NCPPC	4600 Elm Street, Bethesda	Montgomery	2	Unknown	X					X	X			
9	Flower Avenue Urban Park	M-NCPPC	8746 Flower Avenue, Silver Spring	Montgomery	0.4	Unknown	X						X			



Table 3-1: Public Parklands and Recreational Areas Within 500 Feet of Alignment Alternatives (continued)

ID	Name	Owner	Address	County	Approx Size (acres)	Funding*	Playground	Athletic Field	Community Center	Courts	Trail	Shelter	Picnic Area	Water Activities	Historic	Parking
Public Parklands (continued)																
10	Glenridge Community Park/Northern Area Maintenance Office	M-NCPPC	5070 Flintridge Drive, Hyattsville	Prince George's	62	Part POS	X	X		X	X	X	X	X		X
11	Indian Creek Park	M-NCPPC	North of Paint Branch Parkway, College Park	Prince George's	N/A	Unknown		X		X	X					
12	Lane Manor Community Recreation and Aquatic Center (part of Northwest Branch Stream Valley Park)	M-NCPPC	7601 West Park Drive, Hyattsville	Prince George's	40	POS	X		X				X	X		X
13	Leland Neighborhood Park	M-NCPPC	4300 Elm Street, Chevy Chase	Montgomery	4	Unknown	X	X		X						
14	Long Branch-Arliss Neighborhood Park	M-NCPPC	8810 Garland Avenue, Silver Spring	Montgomery	6	Unknown	X	X		X			X			
15	Long Branch Local Park	M-NCPPC	8700 Piney Branch Road, Silver Spring	Montgomery	14	Unknown	X	X		X			X			
16	Long Branch Stream Valley Park	M-NCPPC	9500 Brunett Avenue, Silver Spring	Montgomery	51	Unknown										
17	Lynnbrook Local Park	M-NCPPC	8008 Newdale Road, Bethesda	Montgomery	6	Unknown	X	X	X	X			X			
18	Metro Urban Park	M-NCPPC	1171 Bonifant Street, Silver Spring	Montgomery	0.8	Unknown										
19	New Hampshire Estates Neighborhood Park	M-NCPPC	8825 Piney Branch Road, Takoma Park	Montgomery	5	POS	X	X					X			
20	Nolte Local Park	M-NCPPC	200 Denver Road, Silver Spring	Montgomery	16	Unknown	X	X					X			

Table 3-1: Public Parklands and Recreational Areas Within 500 Feet of Alignment Alternatives (continued)

ID	Name	Owner	Address	County	Approx Size (acres)	Funding*	Playground	Athletic Field	Community Center	Courts	Trail	Shelter	Picnic Area	Water Activities	Historic	Parking
Public Parklands (continued)																
21	North Chevy Chase Local Park	M-NCPPC	4105 Jones Bridge Road, Chevy Chase	Montgomery	32	Unknown		X	X	X				X	X	X
22	Northwest Branch Stream Valley Park	M-NCPPC	Oakview Drive in Montgomery Co. to Alt. US 1 in Prince George's County	Prince George's	519	CC, POS	X		X		X					
23	Paint Branch Stream Valley Park	M-NCPPC	North of the Capital Beltway to Lake Artemesia	Montgomery and Prince George's	385	Tax Sale, POS					X					
24	Park Police Headquarters	County	6700 Riverdale Road, Riverdale	Prince George's	6	Unknown										X
25	Riverdale Community Recreation Center (part of Anacostia River Stream Valley Park)	M-NCPPC	5500 Haig Drive, Riverdale	Prince George's	31	POS	X	X	X	X	X					X
26	Riverside Drive Park (part of Anacostia River Stream Valley Park)	M-NCPPC	Riverside Drive, Riverdale	Prince George's	N/A	Unknown	X	X		X	X	X	X			X
27	Rock Creek Regional Park	M-NCPPC	6700 Needwood Road, Rockville	Montgomery	1,800	POS	X				X	X	X	X	X	
28	Sligo Cabin Neighborhood Park	M-NCPPC	500 Sligo Avenue, Silver Spring	Montgomery	N/A	Unknown	X						X		X	
29	Sligo Creek Stream Valley Park – Unit 1	M-NCPPC	Chaney Drive, N.W. to Piney Branch Road, Takoma Park	Montgomery	37	Unknown	X						X		X	



Table 3-1: Public Parklands and Recreational Areas Within 500 Feet of Alignment Alternatives (continued)

ID	Name	Owner	Address	County	Approx Size (acres)	Funding*	Playground	Athletic Field	Community Center	Courts	Trail	Shelter	Picnic Area	Water Activities	Historic	Parking
Public Parklands (continued)																
30	Sligo Creek Stream Valley Park – Unit 2	M-NCPPC	Piney Branch Road, N.W. to US 29, Four Corners	Montgomery	39	Unknown	X	X		X					X	
31	University Hills Neighborhood Park (part of Northwest Branch Stream Valley Park)	M-NCPPC	University Boulevard, Adelphi	Prince George's	7	Unknown	X	X			X	X	X	X		X
32	West Lanham Hills Neighborhood Recreation Center	M-NCPPC	7700 Decatur Road, Landover Hills	Prince George's	6	Donation, POS	X		X	X	X	X				X

Table 3-1: Public Parklands and Recreational Areas Within 500 Feet of Alignment Alternatives (continued)

ID	Name	Owner	Address	County	Approx Size (acres)	Funding*	Playground	Athletic Field	Community Center	Courts	Trail	Shelter	Picnic Area	Water Activities	Historic	Parking
Recreational Trails																
Resources labeled by name on Figure 3-1	Northeast Branch Trail (part of the Anacostia Tributary Trail System included in the American Discovery Trail and East Coast Greenway)	M-NCPPC	Lake Artemesia to Anacostia River	Montgomery	3 – 6	Unknown					X					
	Anacostia Tributary Trail (system)	M-NCPPC	Wheaton to Washington, D.C.	Montgomery and Prince George's	24	Unknown					X					
	Capital Crescent Trail	M-NCPPC	Georgetown to Bethesda	Montgomery	11	POS					X					
	Interim Georgetown Branch Trail	M-NCPPC	Silver Spring to Lyttonsville	Montgomery	4.6	Unknown					X					
	Northwest Branch Trail (part of the Northwest Stream Valley Park)	M-NCPPC	MD 193 between Riggs/Adelphi Roads	Montgomery and Prince George's	16	POS					X					
	Paint Branch Trail	M-NCCPC	Vicinity of College Park Airport, College Park	Prince George's	4	Unknown					X					
	Rock Creek National Recreational Trail	M-NCPPC	9500 Brunett Avenue, Silver Spring	Montgomery	19	Unknown					X				X	
	Sligo Creek National Recreational Trail	M-NCPPC	Hermitage Avenue to Montgomery County line	Montgomery and Prince George's	10	Unknown					X				X	



Table 3-1: Public Parklands and Recreational Areas Within 500 Feet of Alignment Alternatives (continued)

ID	Name	Owner	Address	County	Approx Size (acres)	Funding*	Playground	Athletic Field	Community Center	Courts	Trail	Shelter	Picnic Area	Water Activities	Historic	Parking
Public Schools																
Resources labeled by name on Figure 3-1	Bethesda Elementary School	Board of Ed.	7600 Arlington Road, Bethesda	Montgomery	N/A	Not Applicable	X	X								X
	Bethesda-Chevy Chase High School	Board of Ed.	4301 East-West Highway, Bethesda	Montgomery	8	Not Applicable	X	X								X
	Carole Highlands Elementary School	Board of Ed.	1610 Hannon Street, Takoma Park	Prince George's	N/A	Not Applicable	X	X								X
	East Silver Spring Elementary School	Board of Ed.	631 Silver Spring Avenue, Silver Spring	Montgomery	9	Not Applicable	X	X								X
	Glenridge Elementary School	Board of Ed.	7200 Gallatin Street, Landover Hills	Prince George's	15	Not Applicable	X	X								X
	New Hampshire Estates Elementary School	Board of Ed.	8720 Carroll Avenue, Silver Spring	Montgomery	5	Not Applicable	X	X								X
	North Chevy Chase Elementary School	Board of Ed.	3700 Jones Bridge Road, Chevy Chase	Montgomery	8	Not Applicable	X	X								X
	Rosemary Hills Elementary School	Board of Ed.	2111 Porter Road, Silver Spring	Montgomery	7	Not Applicable	X	X								X
	Sligo Creek Elementary School and Silver Spring International Middle School	Board of Ed.	313 E. Wayne Avenue, Silver Spring	Montgomery	16	Not Applicable	X	X							X	X
	University of Maryland at College Park	Board of Ed.	US 1 at Campus Drive, College Park	Prince George's	1,500	Not Applicable	X	X		X					X	X

Notes: N/A = Not available *Acquired and/or developed with the following funding sources: CC – Capper-Crampton Act Fund (Federal); POS – Program Open Space Fund (State)
 Prince George's County M-NCPPC information on parks and funding dated December 2007

Sources: http://www.mc-mncppc.org/Parks/facilities/park_directory.shtm <http://www.montgomeryschoolsmd.org/departments/regulatoryaccountability/glance/fy2006/schools/02517.pdf>
<http://www.pgpcps.com/places/parks/anacostia.html> <http://www.pgpcps.com/places/parks.html> <http://americantrails.org/nationalrecreationtrails/about.htm>
<http://www.mcps.k12.md.us/departments/regulatoryaccountability/glance/fy2004/schools/02415.pdf> <http://americantrails.org/nationalrecreationtrails/about.htm>

- **North Chevy Chase Local Park** is located at 4105 Jones Bridge Road in Chevy Chase. This 32-acre park includes a playground, softball field, baseball field, and multi-use field. There are also two tennis courts, a picnic area, and a recreation building that is available for rent. It is considered to be potentially eligible for listing in the National Register.

North Chevy Chase Local Park



- **Sligo Creek Stream Valley Park** encompasses 200 acres. The corridor contains two units within the corridor. Unit 1, roughly 36.7 acres in size, extends from Chaney Drive northwest to Piney Branch Road in Takoma Park. Unit 2, 39.4 acres, extends from Piney Branch Road northwest to MD 29 in Four Corners. This park features playgrounds, softball fields, two lighted tennis courts, a picnic area, natural areas, and other amenities. Both units of the Sligo Creek Stream Valley Park are considered to be potentially eligible for listing in the National Register.

Sligo Creek Stream Valley Park



- **Long Branch Local Park** is located along Piney Branch Road in Silver Spring. The 14-acre facility includes a playground, softball field, multi-use field, tennis courts and a picnic area.
- **New Hampshire Estates Neighborhood Park** is located along Piney Branch Road in Takoma Park. The M-NCPPC acquired the land in 1976. The 4.7-acre park features two playgrounds, a football/soccer field, and a picnic area. Facilities within this park were developed using Program Open Space funds.

New Hampshire Estates Neighborhood Park



- **Northwest Branch Stream Valley Park** is located north and south of University Boulevard between Riggs and Adelphi Roads in Prince George's County. The 519-acre stream valley park includes the Lane Manor Community Recreation and Aquatic Center, a 16-mile hiker-biker trail, and other natural and hard surface recreational areas. Program Open Space funds were used to develop the trails, playground, and aquatic center in the mid-1980s.

Northwest Branch Stream Valley Park



- **Adelphi Manor Community Recreation Center** is located along MD 193 in College Park. It encompasses 34 acres and includes a baseball and cricket field. Parcel 109, consisting of more than nine acres, was purchased in November 1985 through the use of Program Open Space funds. Capper-Crampton funds were used for purchase of all but one remaining parcel associated with the recreation center. The funding source for the remaining parcel is unknown.

Adelphi Manor Community Recreation Center



University Hills Neighborhood Park is an approximately seven-acre facility located in Adelphi. The park features a duck pond, picnic shelter, a playfield, and a 0.34-mile loop trail for recreational activities.

University Hills Neighborhood Park



- **College Park Airport**, the world's oldest continuously operating airport, encompasses 34 acres of land in College Park, MD. The airport was founded in 1909 when Wilbur Wright gave flight instruction to the first military aviators. The College Park Aviation Museum, an affiliate of the Smithsonian Institution, is located on the runway of the airport. Visitors to the museum step into an open 1½-story exhibit space, which displays unique aircraft and artifacts and tells the story of the airport's many firsts in flight. Portions of the College Park Airport were developed with Program Open Space Funding. The airport property is listed in the National Register.

College Park Airport



Source: http://www.ci.college-park.md.us/local_att.htm

- **Anacostia River Stream Valley Park - Unit 2** is approximately 114 acres in size. The entire stream valley park system encompasses 794 acres with a number of natural recreational areas and community parks, one of which is the Riverdale Community Recreation Center. The Riverdale Community Recreation Center is located at 5500 Haig Drive in Riverdale and consists of 31 acres with ballfields, courts, playground,

and trail. Program Open Space funding was used to develop the Riverdale Community Recreation Center ballfields, courts, playground, and trail.

Anacostia River Stream Valley Park



Riverdale Community Recreation Center





Park Police Headquarters is located at 6700 Riverdale Road in Riverdale. The Park Police, founded in 1953, secures and protects over 23,000 acres of park property in Prince George's County. The headquarters building sits on almost six acres of land. Although the M-NCPPC owns this property, the primary purpose of the facility is for public safety rather than recreational use. Therefore, it is unlikely that this property would qualify for Section 4(f) protection as “significant” public parkland whose primary use is for recreation.

Park Police Headquarters

(View of grassy area and Riverdale Road in front of Park Police Headquarters)



- **Glenridge Recreation Center**

West Lanham Hills Neighborhood Recreation Center, located in Landover Hills, is an approximately six-acre facility that features a playground, recreation facility, basketball court, tennis court, trail, and a shelter. The playground, courts, trail, and picnic facilities were developed in the mid-1980s using Program Open Space funding.

West Lanham Hills Neighborhood Recreation Center



Recreational Trails

Trails are used for commuting, active recreation, and passive contemplation. They can be located in individual parks or connected with other trail systems in parks along natural greenway corridors. The Montgomery County park system has hundreds of miles of paved and unpaved hiker/biker/equestrian trails and Prince George's County has approximately 40 miles. Seven recreational trails are located within 500 feet of the Purple Line alignments.

The National Trail System Act of 1968 (Public Law 90-543) authorized creation of a national trail system comprised of National Recreation Trails, National Scenic Trails, and National Historic Trails. While National Scenic Trails and National Historic Trails may only be designated by an act of Congress, National Recreation Trails may be designated by the U.S. Secretary of the Interior or the Secretary of Agriculture to recognize exemplary trails of local and regional significance in response to an application from the trail's managing agency or organization. Through designation, these trails are recognized as part of America's national system of trails. National Recreation Trails are components of the National Trails System and recognize already existing trails that connect people to resources and improve their quality of life. The National Park Service Rivers, Trails, and Conservation Assistance Program and the U.S. Forest Service, in conjunction with other federal and nonprofit partners jointly administer the program. Each of the trails inducted into the system receive a certificate of designation and trail markers. Four trails within the project area are designated as part of the National Recreation Trails program (American Discovery Trail, East Coast Greenway, Rock Creek Trail, and Sligo Creek Trail). The seven recreational trails located within 500 feet of the Purple Line alignments are described below.

- **Capital Crescent Trail** is an 11-mile trail that was built on the abandoned Georgetown Branch railroad right-of-way from Silver Spring to Georgetown. Five-and-a-half miles of the Capital Crescent Trail are located in Montgomery County. The completed asphalt trail extends from Georgetown to Bethesda. An additional three miles is called the Interim Georgetown Branch Trail and is described below. It is planned to be completed when the Purple Line is built. The development and construction of the trail was funded using Program Open Space funds.

Interim Georgetown Branch Trail extends from Bethesda to Silver Spring and consists of two sections. The western portion is in an abandoned railroad right-of-way owned by Montgomery County. This three-mile portion, also known as the Interim Capital Crescent Trail, is made of crushed stone and extends for three miles from Lyttonsville in west Silver Spring to Bethesda. The eastern section consists of a 1.6-mile signed bike route, connecting Silver Spring to the crushed stone trail on the Georgetown Branch railroad right-of-way in Lyttonsville.³ The November 1986 *Georgetown Branch Master Plan Amendment* designated the right-of-way “a public right-of-way intended to be used for public purposes such as conservation, recreation, transportation and utilities”. The 1986 Amendment also noted that “any use of the right-of-way for a transitway between Silver Spring and Bethesda will require a future master plan amendment” without specifying what type of technology would be used for the transitway.

³ “Georgetown Branch Trail” silverspringtrails.org. <http://home.comcast.net/~phylla1/sstrails/altroute.html> (Accessed November 2008)



The required master plan amendment was approved and adopted in January 1990. The January 1990 *Georgetown Branch Master Plan Amendment*, reserved the abandoned right-of-way for transit and recreational use. The Interim Georgetown Branch Trail is not considered a Section 4(f) resource because the railroad right-of-way was purchased with the express intent of accommodating transit service in the future. Prior to the construction of the Interim Trail the Montgomery County Council consulted with the Federal Transit Administration about the potential for the Interim Trail to become a 4(f) property, thus precluding its future use for transit. Based on recommendations from the FTA Montgomery County Council passed resolutions in August 1, 1995 and July 30, 1996 reiterating that the purpose and plans for which the right-of-way was purchased were for transportation purposes including both light rail and trail and that the section between Bethesda and Silver Spring remains designated as a transportation corridor. The correspondence and related resolutions are attached in Appendix B.

For this reason, the Interim Georgetown Branch Trail, which is reserved for transportation purposes, will not be analyzed further in this Section 4(f) evaluation. Additionally, based on research completed to date, Program Open Space funds were not used for the development or construction of the Interim Georgetown Branch Trail.

Interim Georgetown Branch Trail



- **Rock Creek Trail** is the second trail in the Montgomery County parks system to receive distinction as one of 40 new National Recreation Trails designated by the U.S. Secretary of the Interior on June 2, 2007. Rock Creek Trail is a 19-mile, paved surface, hiker-biker trail, which is hilly in parts and offers scenic views of Lake Needwood and Lake Frank.
- **Sligo Creek Trail**, with 10 miles of paved surface, is one of the oldest in Montgomery County and received the National Recreation Trail designation in 2006. The trail, connected to a countywide trail system, shares some sections of right-of-way with vehicular traffic. The trail is the heaviest-used facility in the Sligo Creek Stream Valley Park system. It extends from Hermitage Avenue at its northern end, using Ventura Avenue before crossing into Sligo Creek Stream Valley Park. The trail continues south, ending at the Northwest Branch Trail.

Sligo Creek Trail (and Sligo Creek Stream Valley Park)



- **Northwest Branch Trail** is part of the Northwest Stream Valley Park system. Located in the southeastern portion of Montgomery County, it extends 16 miles north and south of the Capital Beltway. Approximately ten miles of the trail's surface is natural surface. The trail follows the Northwest Branch River. The hard surface portion of the trail connects with Prince George's County's Anacostia Tributary Trail System while the natural surface portion extends to Wheaton Regional Park. Heading southeast, the trail extends into Prince George's County ending at the confluence of the northwest and northeast branches of the Anacostia River. The Northwest Branch Trail was developed with Program Open Space funds.
- **Northeast Branch Trail** is part of the Anacostia Tributary Trail system. The Northeast Branch Trail is a three-mile trail that runs northeast from US 1 to Lake Artemesia. The portion of this trail between Paint Branch Parkway and US 1 is used by the American Discovery Trail, and the East Coast Greenway. These two trail systems are composed of local trails and roads to create long trail systems. The East Coast Greenway is a National Recreation Trail that connects cities and towns of the East Coast with a continuous, traffic-free path. The East Coast Greenway spans 3,000 miles between Calais, Maine and Key West, Florida. Nearly one-fifth of the greenway is on traffic-free paths, and the rest is mapped out on roads. In the Purple Line corridor the East Coast Greenway continues beyond the northeast terminus of the Northeast Branch Trail at Lake Artemesia and then continues west from US 1, the southern terminus for the Northeast Branch Trail, before crossing into Washington, D.C. The American Discovery Trail is also a National Recreation Trail created by linking local trails, canal towpaths, and country roads to create a continuous trail across the United States from Delaware to California. It diverges from the other two trails at Good Luck Road, turning east and heading through Greenbelt Park to the northeast. The trail follows the route of the East Coast Greenway from US 1 into Washington, D.C. Program Open Space funding was not used for the development of these three trails.

Northeast Branch Trail



- **Paint Branch Trail** is a four-mile trail that originates at Lake Artemesia at the northern terminus of the Northeast Branch Trail and runs northwest following Paint Branch ending just south of the Capital Beltway at Cherry Hill Road. The southern half of the trail has a spur route which diverges from the main trail at Rhode Island Avenue northeast of the College Park Community Center and continues south terminating at Paint Branch Parkway.

Paint Branch Trail



Public Recreational Facilities Associated With Public Schools

School facilities are considered eligible for Section 4(f) protection if they are publicly-owned, open to the public, their major purpose is for recreation, and they are considered to be significant recreational resources. Should a build alternative be selected additional coordination would be undertaken with Montgomery County and Prince George's County Schools.

The recreational areas and amenities associated with public schools contribute to the recreational amenities and open space of Montgomery and Prince George's counties. The 2005 *Land Preservation, Parks and Recreation Plan* supports additional partnerships with Montgomery County Schools to increase the suitability of school fields and other facilities for public recreational uses. The Prince George's County Department of Parks and Recreation helps to

fulfill park and recreation needs by joining with other local public agencies to use their facilities or lands. Partnerships have been formed with the Washington Suburban Sanitary Commission, the county school system, and state agencies to provide recreational opportunities where the Department does not own land. Agreements exist between M-NCPPC and local schools districts to improve school field maintenance with the goal of maximizing the use of existing ballfields.

The following ten schools are located within 500 feet of the centerline of the Purple Line alignments. See Table 3-1 for the type of recreational amenities provided at these schools.

- **Bethesda Elementary School**, located on Arlington Road in Bethesda, accommodates Kindergarten through 5th grade and enrolls 572 students. Recreational facilities at this school include a playground and athletic fields.
- **Bethesda-Chevy Chase High School** is located on East-West Highway in Bethesda. This school has 1,608 students in grades 9 through 12. Recreational facilities at this school include a playground and athletic fields.
- **East Silver Spring Elementary School**, located on Silver Spring Avenue in Silver Spring, accommodates Kindergarten through 2nd grade and enrolls 251 students. Recreational facilities at this school include a playground and athletic fields.

East Silver Spring Elementary School



- **New Hampshire Estates Elementary School**, located on Carroll Avenue in Silver Spring, accommodates pre-Kindergarten to 2nd grade and enrolls 409 students. Recreational facilities at this school include a playground and athletic fields.
- **North Chevy Chase Elementary School** is located at the intersection of Jones Bridge Road and Montgomery Avenue in Chevy Chase. This school accommodates grades 3 through 6 and currently has an enrollment of 306 students. Recreational facilities at this school include a playground and athletic fields.

North Chevy Chase Elementary School



- **Rosemary Hills Elementary School** is located on Porter Road in Silver Spring. This elementary school accommodates pre-Kindergarten to 2nd grade with an enrollment of 572 students. Recreational facilities at this school include a playground and athletic fields.
- **Sligo Creek Elementary School and Silver Spring International Middle School** are two individual schools that share the same building and property located at the intersection of Sligo Creek Parkway and Wayne Avenue. Sligo Creek Elementary School has 621 students and Silver Spring International Middle School has 748 students. Recreational facilities at this school include a playground and athletic fields. These schools are potential eligible for the National Register.

Sligo Creek Elementary School and Silver Spring International Middle School



- **Carole Highlands Elementary School** is located on Hannon Street in Takoma Park. It accommodates pre-Kindergarten through 6th grade and has an enrollment of 600 students. Recreational facilities at this school include a playground and athletic fields.

- **The University of Maryland** is located in College Park and covers an area of 1,500 acres. The campus is roughly bounded by University Boulevard on the west, Campus Drive on the south, Baltimore Avenue/US 1 on the east and Metzerott Road on the north. Recreational facilities at this school include multiple athletic fields and tennis courts. This campus is potential eligible for the National Register.

University of Maryland at College Park



Source: <http://maps.live.com>

- **Glenridge Elementary School** is located on Gallatin Street in Landover Hills. This school has 635 students in pre-Kindergarten through 6th grade. Recreational facilities at this school include a playground and athletic fields.

Glenridge Elementary School



Wildlife and/or Waterfowl Refuges

There are three Wildlife Refuges or Wildlife Management Areas in Montgomery County and two Wildlife Management Areas in Prince George's County. None of these resources fall within the Purple Line corridor. Therefore, the Purple Line alignments would not impact wildlife or waterfowl refuges. For this reason, wildlife and waterfowl refuges will not be analyzed in this Section 4(f) evaluation.



Cultural Resources: Historic Architectural Properties and Archaeological Sites

In addition to public parklands, recreation areas, wildlife and/or waterfowl refuges, Section 4(f) considers the proposed use of land from any significant historic architectural property or archaeological site. The Section 4(f) requirements apply only to historic and archaeological resources that are listed on or eligible for listing on the National Register of Historic Places (National Register) unless the USDOT determines that the application of Section 4(f) is otherwise appropriate. Historic architectural properties and archaeological sites are discussed separately, below.

Historic Architectural Properties

An Area of Potential Effects (APE) for the Purple Line was defined in the early stages of project planning. The APE is within a 500-foot buffer along each side of the proposed project alignments where the project may directly or indirectly affect historic properties and archaeological sites. A reconnaissance-level architectural survey was completed in 2005. This initial investigation included identification and preliminary recommendations of eligibility for historic architectural properties more than 50 years of age. Information on previously identified and previously evaluated resources was found within files and mapping at the MHT.

A detailed architectural survey in 2007 used mapping, data, and resource information from the 2005 survey, and additional field reconnaissance and photographic documentation. Resources were identified by reviewing previous inventories and surveys contained in the MHT's files, historic maps, archival records, aerial photographs, property deeds, construction information, and field reconnaissance. Resources, including buildings, structures, objects, districts, and sites more than 50 years old, were evaluated for National Register eligibility under Criteria A (association with a historically significant event), B (association with a historically significant person), C (historically significant design), and/or D (historically significant information potential), and the appropriate Criterion Considerations, which allow resources not normally eligible for the National Register to qualify for listing. (Within the Purple Line APE, Considerations A for religious properties; F for commemorative properties; and G for resources less than 50 years of age will apply). Select historic architectural properties less than 50 years old were evaluated if they appeared to have the potential to be exceptionally important according to National Register guidelines. Preliminary determinations of eligibility were made for properties that were either previously identified but not evaluated or newly identified. For the Purple Line, MTA and MHT agreed to treat potentially eligible properties as eligible while project planning occurs, in order to facilitate the project's progress. This survey is documented in the *Architectural History Technical Report*.

The Purple Line APE contains numerous historic architectural properties including potential historic districts. Forty-nine listed, eligible, or potentially eligible historic architectural properties and districts were identified in the Purple Line APE. Special attention was paid to historic districts and the individual resources contained within them as identified through the surveys. Refer to the *Architectural History Technical Report* for more information on these resources. Of the 49 National Register-listed, eligible, or potentially eligible properties, it is anticipated that only one would be adversely affected because of substantial efforts to avoid, minimize, and mitigate adverse effects during the planning phase of the project. This single adverse effect would occur to the Falkland Apartments (M:36-12).

Falkland Apartments. The Falkland Apartments complex (M: 36-12) was determined eligible for the National Register in 1999. The garden-style apartment complex is located at 8301-05 16th Street in Silver Spring. Constructed in 1937, it is located on 22 acres and consists of three separate groupings of two-story duplexes and two- and three-story “walk-up” apartments. The complex was designed by Washington, D.C. architect Louis Justement and was one of the Federal Housing Administration’s first projects. The Falkland Apartments feature Colonial Revival stylistic details, and the distinctive cupola on one building provides a local visual landmark. The Falkland Apartments complex was determined eligible for the National Register under Criterion C for its distinctive architectural design.

Falkland Apartments



Archaeological Sites

Significant archaeological sites listed on or eligible for listing on the National Register may also qualify for Section 4(f) protection if preservation in place of these sites is warranted. The APE for historic architectural properties was used to evaluate the project’s potential impacts to known archaeological sites. Information on previously-identified archaeological sites was gathered from the site files at MHT. Fifteen previously recorded archaeological sites are located within 500 feet of the Purple Line alignments. Of these, ten sites have been the subject of determinations of eligibility and five sites have not been evaluated for their significance under the National Register criteria. Of the ten sites evaluated, two sites, the Taylor Site and College Park Airport, were deemed to be eligible for inclusion on the National Register, and eight were determined not eligible. Of the five sites not yet evaluated for National Register eligibility, three sites may retain historic integrity. The two National Register eligible archaeological sites and five not yet evaluated archaeological sites are described below. The eight sites previously determined to be not eligible for listing in the National Register would not qualify for Section 4(f) protection and, therefore, are not discussed in this Section 4(f) evaluation.

- **Taylor Site (18MO243).** The Taylor Site is located in an area covered by grass and trees to the southeast of the National Institutes of Health campus on Wisconsin Avenue in Montgomery County. The prehistoric artifacts recovered indicated a multi-component short-term resource procurement camp, with diagnostic tools and ceramics suggesting periodic occupation from the Late Archaic through Middle Woodland cultural periods. The site was found to contain a wide variety of prehistoric and late historic artifacts. The historic artifacts were linked to the



development of the Town and Country Golf Club in the 1920s and were not considered significant. The site was identified as part of planning studies for the proposed extension of Woodmont Avenue, and this road project was redesigned to avoid any impacts. Although portions of the site have been disturbed, relatively intact portions of the site were identified. The site is considered eligible for listing on the National Register under Criterion D.

- **College Park Airport Site (18PR200).** College Park Airport was established in 1909. Wilber Wright conducted training exercises at the field with military officers that flew the United States government's first airplane. College Park Airport is considered by many as the Cradle of Aviation. The airport was added to the National Register in 1977. A portion of the historic College Park Airport (PG: 66-4) was subjected to systematic archaeological investigation in 1980 as a compliance project related to planned airport redevelopment. The testing focused on the structural remains of four earlier hangars associated with the airport's early development. Although the project did yield artifacts associated with the airport's period of significance, there was no definitive determination as to whether these resources were contributory to the significance of this National Register-listed historic property. Due to the historic significance of the airport, the College Park Airport archaeological site is considered to be eligible for listing on the National Register.
- **Clean Drinking Water Manor Site (18MO030).** Clean Drinking Water Manor was constructed in 1750 by Charles Jones. The structure was a brick-filled frame building measuring one-and-a-half stories. Records indicate that a cluster of brick outbuildings were constructed at the same time as the main manor house. These outbuildings included a kitchen, servants' quarters, and a well. A large portion of the Clean Drinking Water Manor Site was destroyed during construction of a nursing home and nearby roadways. However, beyond these construction disturbances, intact portions of the site may still exist and may contain structural remains as well as other features such as privies. When a Locally Preferred Alternative is selected, a Phase IA sensitivity study may need to be conducted on the Clean Drinking Water Manor Site to determine site boundaries and limits of disturbance.
- **Sligo Cabin Site (18MO356).** The Sligo Cabin Site was identified during the construction of a recreational facility at Sligo Creek Park during a non-systematic survey completed by the Maryland-National Capital Park and Planning Commission. The site was identified by James D. Sorenson via a pedestrian reconnaissance in 1991. Non-diagnostic prehistoric artifacts and late nineteenth to early twentieth century artifacts were recovered during the walkover. Portions of this site were destroyed with grading activities during construction of the facility. The extent of this disturbance related to the size and depth of the site is unknown. When a Locally Preferred Alternative is selected, a Phase IA sensitivity study may need to be conducted on the Sligo Cabin Site to determine site boundaries and limits of disturbance.
- **Trolley Bridge Site (18PR257).** The Trolley Bridge Site was identified during the Phase IA Archaeological Survey of the Calvert Road Relocation in 1989. This bridge carried a local trolley over the Paint Branch drainage. The bridge was originally built

in 1895 and was later structurally altered in the early twentieth century. The Trolley Bridge was a through-type girder bridge built by the Youngstown Bridge Company for the Columbia and Maryland Railway Company. Field observations during an earlier survey revealed that the bridge decking was gone and that the metal structure was suffering from severe corrosion. No subsurface testing was performed around the bridge at the time of the survey, so no determination of eligibility was made at that time. The site is essentially a standing bridge structure, and it is unlikely that any related significant archaeological features exist around the abutments. Therefore, the site would not likely qualify for protection under Section 4(f) and is not analyzed further in this Section 4(f) evaluation.

- **Engineering and Research Corporation Site (18PR258).** The Engineering and Research Corporation (ERCO) site was identified during the Phase I archaeological survey of the Calvert Road Relocation in 1985. This site contains remnants of a late-twentieth century air field with standing structures and a runway associated with the World War II era. No subsurface excavations took place during an earlier survey, and only a surface observation was completed in 1985. No determination of eligibility occurred during the survey. The structures and runway were determined eligible for the National Register in 2002. While the structures and runway may be significant mid-twentieth century historic resources, it is unlikely that archaeological investigation would yield any significant historical information about the complex that could not be obtained from archival sources. In addition, the limited archaeological potential of the site has been diminished by substantial development in the area. Therefore, this site would not likely qualify for protection under Section 4(f) and is not analyzed further in this Section 4(f) evaluation.
- **Fire Site (18PR263).** The Fire Site was identified during the Phase I archaeological survey of the Calvert Road Relocation in 1985. This site contains a prehistoric quartzite lithic scatter. As part of a previous survey, a systematic testing grid was established on the site and shovel test pits were excavated within the area. The site was likely disturbed by construction of a runway, but the extent of that disturbance is unknown to date. When a final alternative is selected, a Phase IA sensitivity study may be needed on the Fire Site to determine site boundaries and limits of disturbance.

Areas of Archaeological Potential and Future Cultural Resources Evaluations

This report presents previously identified archaeological sites and historic architectural properties included in the MHT GIS database (and verified by other sources). However, 21 additional areas of prehistoric and historic archaeological potential have been identified within the project area. These areas of potential resources could contain relatively intact landforms or were portions of yards associated with former or extant historic structures. (Refer to the *2005 Phase IA Bi-County Transitway Cultural Resource Reconnaissance Survey* for more detail on these locations.) A reconnaissance survey level of data collection and analysis is appropriate for preliminary evaluation of the Purple Line's Section 4(f) impacts. Most of the previously identified archaeological sites and historic architectural properties noted in this report have not yet had formal Determinations of Eligibility for listing in the National Register of Historic Places. As discussed earlier these National Register eligibility evaluations will be executed for all historic architectural properties and archaeological sites within the APE of the Locally Preferred



Alternative, once selected. A comprehensive survey effort for the eastern section of the alignment (Silver Spring to New Carrollton) would be completed should a Build alternative be selected as the Locally Preferred Alternative. As noted in Section 2.2.1 the *Final Section 4(f) Evaluation Technical Report* to be prepared for the Final Environmental Impact Statement for the Purple Line will be submitted to the MHT and all other consulting parties for review and comment. The *Final Section 4(f) Evaluation Technical Report* would include identification of any adversely affected resources.

4. Potential Section 4(f) Uses

The alternatives under study have the potential to result in use of Section 4(f) resources including public parklands and recreational areas, recreational trails, and significant historic and archaeological resources.

4.1. Definition of Section 4(f) Use

A Section 4(f) use may be direct, temporary, or constructive. Use of Section 4(f) resources occurs when:

- **Direct Use:** Land from a Section 4(f) property is permanently incorporated into a transportation project (i.e., when it has been purchased as right-of-way;
- **Temporary Easement Use:** Temporary easement use may be considered Section 4(f) use if the land is subject to temporary or permanent adverse changes, such as contour alterations or removal of mature trees and other vegetation. Temporary easement use is not considered a Section 4(f) use if all of the following conditions exist:
 - The occupancy is of short duration (defined as less than the time needed for the construction of the project)
 - No change of ownership of the land occurs
 - Both the nature and magnitude of the changes to the Section 4(f) land are minimal
 - No permanent adverse physical changes, nor interference with activities or purposes of the resources on a temporary or permanent basis, are anticipated
 - The land is returned to a condition that is at least as good as existed prior to the project.

A documented agreement of the appropriate Federal, State, or local officials having jurisdiction over the land regarding the above conditions is required.

- **Constructive Use:** A constructive use of a resource occurs when the project's proximity impacts are so severe that the protected features that qualify a property under Section 4(f) are substantially impaired. Constructive use of a Section 4(f) resource consists of impacts which substantially impair the function, integrity, use, access, value or setting of the resource, even though the project does not directly use the land. Examples of a constructive use include:
 - Access: A restriction on access substantially diminishes the utility of a resource.
 - Noise: The projected noise level increase from the project substantially interferes with the use and enjoyment of a Section 4(f) resource (e.g., hearing performances



at an outdoor amphitheatre or interrupting a quiet setting when the setting is a recognizable feature of the resource).

- Vibration: A vibration impact from the operation of a project impairs the use of a resource or affects the structural integrity of a historic building or impairs its utility.
- Visual/Aesthetics: The proximity of the proposed project substantially impairs the visual quality of a resource where these aesthetic qualities are considered important contributing elements to the value of a resource (i.e., obstructing or eliminating the primary views of an architecturally significant building).

4.2. Potential Section 4(f) Uses of Project

Potential Section 4(f) uses were identified using GIS mapping showing locations of Section 4(f) resources within the 500-foot buffer extending from the centerline of the proposed alignments, and including the limits of disturbance for the Purple Line alignments. This was completed using the engineering drawings and GIS-compatible shape files that identified the property right-of-way and limits of disturbance required for each alternative. The GIS quantified the amount of impacts for all alternatives based on the limits of disturbance. In the absence of direct impacts, the potential proximity impacts to Section 4(f) resources were assessed through evaluation of whether the alternatives would affect a factor or factors that contribute to the Section 4(f) resource's function and use (e.g., noise effects on a park where serenity is an important contributing factor to its value). Coordination with jurisdictional officials to verify the significance and funding of those resources potentially directly or indirectly impacted by the proposed alternatives will continue as the project develops.

All of the Build alternatives and their associated design options were evaluated to see if they would result in the direct, temporary, or constructive use of the identified Section 4(f) resources. It was determined that of the Section 4(f) impacts would result from each of the built alternatives resources located within 500 feet of the Purple Line, the alignments would potentially require right-of-way from 11 public parklands, five recreational trails, five public school properties, one historic architectural properties, and five archaeological sites (two of which are potentially eligible for listing in the National Register and three for which National Register eligibility is not determined).

The MTA intends to pursue a finding of *de minimis* impact for the parks and recreational areas in the corridor that have potential impacts from the Build alternatives. Subsequent engineering activities would seek to further reduce impacts whenever practicable. The following sections describe the potential direct, indirect, and cumulative effects on these resources.

4.2.1. Direct Use of Public Parklands and Recreational Areas

The No Build alternative would not affect Section 4(f) resources; however, it not considered to be a prudent alternative because it does not meet the project purpose and need. The No Build alternative would leave unaddressed the mobility problems for the various travel patterns to, from, and among the major activity centers, its residential communities and its regional transit system network, especially the Metrorail system. It leaves unaddressed the economic and community development, environmental, and master plan goals established for communities and jurisdictions along the corridor. The No Build alternative serves as a baseline for comparison of impacts across the alternatives studied for the project.

The TSM Alternative would not affect Section 4(f) resources. The TSM Alternative would provide a new through-route bus service between Bethesda and New Carrollton. Its combination of limited stops and selected intersection and signal improvement strategies would help to provide service that is faster and more reliable that what is currently available. However, the TSM would address the identified problems of mobility and access, environmental, master plan, community and economic development plans, to a limited degree, leaving many of the needs and goals unaddressed or under-addressed.

Each of the Build alternatives meets the purpose and need of the project and would require right-of-way from Section 4(f) resources. Table 4-1 identifies the potential direct use of public parklands and recreational areas, by alternative.

The impacts are discussed by alternative, which incorporate multiple design options as part of the overall impact analysis for each alternative. The impacts identified for each resource would most likely be lower than this “worst-case” analysis, as redundant impacts from multiple design options are removed and the design is refined during the subsequent detailed engineering phase for a Locally Preferred Alternative. These potential impacts are not expected to alter the use or function of any of the resources. In some cases, pedestrian paths and/or vehicle access roads would be impacted and could be relocated. However, the alternatives would not impede the long-term access to the public parklands and recreational areas. During construction access to public parklands and recreational is expected to be maintained and construction activities would not restrict recreational opportunities at these facilities. The Purple Line would benefit recreational users by providing improved transit access to the public parklands and recreational areas.

The development of early resource inventories and conceptual engineering activities to keep the Purple Line alignments within existing transportation rights-of-way, as much as possible, helped to avoid and minimize the impacts on many of the public parklands and recreational areas. The potential direct effects from station locations on public parklands, recreational areas, and trails were also considered in the identification of potential location for stations. Bus stops and shelters would be designed to be sensitive to the surrounding environs of these resources. Similarly, impacts associated with the two proposed maintenance and storage facility locations have been avoided or would be minimized or mitigated. Both of the proposed locations (Lyttonsville area in Montgomery County and the Glenridge Park Maintenance Facility in Prince George’s County) are currently used as maintenance facilities. The proposed maintenance and



storage facility in Lyttonsville would not impact public parklands and recreational areas. The proposed maintenance and storage facility at the Glenridge Park Maintenance Facility would require 10.5 acres of property owned by the Parks department. However, the property required for the proposed Purple Line maintenance and storage facility is entirely used by the existing park maintenance facility. The MTA is currently working with Prince George's County to indentify a site on which to relocate the park maintenance facility. The proposed Purple Line maintenance and storage facility would not affect the recreational facilities at the Glenridge Community Park.

Public Parklands

The Build alternatives potentially would impact eleven public parklands and recreational areas. All parkland impacts would be due to the widening of existing roadways:

- **North Chevy Chase Local Park** would be impacted by Low Investment BRT, requiring approximately 0.02 acre of this 32-acre property. This alternative closely parallels the parcel boundary, but would not affect the recreational facilities. All other alternatives would not impact this property.
- **Sligo Creek Stream Valley Park - Unit 2** would be impacted by all Build alternatives. The impacts would range from 0.43 to 0.90 acre of this 39-acre stream valley park but would not affect the recreational facilities.
- **Long Branch Local Park** would be impacted by all Build alternatives. The impacts would range from 0.01 to 0.06 acre of this 14-acre property but would not affect the recreational facilities.
- **New Hampshire Estates Neighborhood Park** would be impacted by all Build alternatives. The impacts would range between 0.05 and 0.14 acre land along the edge of this almost five-acre property including the brick columns, walkways, and benches, which would be relocated. Recreational activities provided at the park would not be affected.
- **Adelphi Manor Community Recreation Center** would be impacted by all of the Build alternatives. Impacts would range from 0.03 to 0.07 acre of this 34-acre property. Recreational amenities associated with the park would not be affected.
- **Northwest Branch Stream Valley Park** would be impacted by all of the Build alternatives. Impacts to this 519-acre park would range from 0.25 to 0.36 acre, in an area located along the park boundaries. No recreational amenities would be impacted.
- **University Hills Neighborhood Park** is an approximately seven-acre facility located in Adelphi. The Build alternatives would impact between 0.02 and 0.06 acre of this property but would not affect the recreational facilities.

University Hills Neighborhood Park



- **College Park Airport** would be impacted by all of the Build alternatives, which would require between 0.004 and 0.005 acre along the park boundaries. No recreational facilities would be affected.
- **Anacostia River Stream Valley Park - Unit 2** would be impacted by Low and Medium Investment BRT, and the Preinkert/Chapel Drive design option, and Low and Medium Investment LRT, and the Preinkert/Chapel Drive design option. These alternatives would impact 0.65 acre of land. These alignments would travel along River Road at the edge of the Anacostia River Stream Valley Park, north of the Riverdale Community Recreation Center. These alignments would not impact the recreational facilities at Riverdale Community Recreation Center. High Investment BRT and LRT would not impact the Anacostia River Stream Valley Park or the Riverdale Community Recreation Center since these alignments would travel in a tunnel under the park and the portals would be located outside of the park boundaries.

Anacostia River Stream Valley Park

(View of entrance to Riverdale Community Recreation Center at River Road and Haig Drive)





- **Park Police Headquarters** is located at 6700 Riverdale Road in Riverdale. The BRT alternatives would impact a strip of land up to 0.45 acre in the front of this property along Riverdale Road, an access road, and a semi-circular driveway. Vehicle access and pedestrian connections would be relocated. The LRT alternatives do not impact this facility. The primary use of this facility is for public safety and not recreation, and there are no recreational facilities available for use by the general public. Therefore, potential impacts to the Park Police Headquarters property would likely not be subject to Section 4(f) requirements. This evaluation includes the Park Police Headquarters property until written correspondence is received from M-NCPPC that clarifies the use and significance of the property, and concurs with the non-applicability of Section 4(f) requirements for this property.
- **West Lanham Hills Neighborhood Recreation Center** would be impacted by all of the Build alternatives with the exception of Low Investment BRT and LRT. Up to 0.46 acre of this nine-acre park would be affected. Right-of-way would be required along the park's southern boundary. No recreational facilities would be affected.

Recreational Trails

The Build alternatives would potentially impact five recreational trails in the Purple Line corridor. Two of the five trails within the Purple Line corridor are located in Montgomery County and the other three are in Prince George's County and would have the following potential impacts (listed from west to east):

- **Sligo Creek Trail**, a National Recreational Trail, would be crossed by all of the Build alternatives along Wayne Avenue, except the Silver Spring/Thayer Avenue design option. This design option would cross the trail on Piney Branch Road. All of the Build alternatives would impact between 0.02 and 0.06 mile of the Sligo Creek Trail.

Sligo Creek Trail (at Piney Branch Road)



- **Rock Creek Trail**, a National Recreational Trail, would not be directly affected by the Build alternatives. However, the Purple Line and the proposed hiker-biker trail would cross the Rock Creek Trail on two new bridges replacing the existing bridge. The proposed hiker-biker trail would travel along a bridge adjacent to and lower than

the transit bridge and provide a “switchback” ramp connection to the Rock Creek Trail. Construction of the ramp would require regrading the hillside and removing trees within the existing right-of-way. All of the Build alternatives would impact up to 0.03 mile of the Rock Creek Trail. The new connection would comply with Americans with Disabilities Act (ADA) guidelines and enhance access to the Rock Creek Trail and Park.

- **Northwest Branch Trail** would be impacted by all Build alternatives. Impacts under all Build alternatives would be up to 0.03 mile.
- **Northeast Branch Trail** encompasses American Discovery Trail and East Coast Greenway – individual trails that merge into the Northeast Branch Trail between Paint Branch Parkway and US 1 before diverging into their respective routes, west of US 1. The local designation within the Purple Line corridor is the Northeast Branch Trail. The Build alternatives would impact between 0.02 and 0.04 mile in the same location.
- **Paint Branch Trail** would be impacted by all Build alternatives, with the exception of Low Investment BRT. The Build alternatives would impact between 0.02 and 0.04 mile of this trail. The impacted portion of the trail is a spur of the main trail that terminates at Paint Branch Parkway. The Build alternatives would potentially impact the southern end of this spur.

Public Schools

The Build alternatives would potentially impact five public school properties.

- **North Chevy Chase Elementary School** would be impacted by Low Investment BRT only, which would travel along the front, north side of the school property but would not affect its recreational facilities. Impacts to this property would be the result of the widening of Jones Bridge Road in this area. Low Investment BRT would impact 0.28 acre of property which includes four vehicular entrances north of the facility that provide access from Jones Bridge Road. One of the four westernmost vehicular entrances leads to a parking lot on the west side of the school and a court located on the south side of the school. Two of the three other entrances lead to a semi-circular driveway that provides access to the main entrance of the school. The fourth entrance provides access to a parking lot on the north side of school. The entrances could be reconfigured if this alternative is selected as the Locally Preferred Alternative.
- **Sligo Creek Elementary School and Silver Spring International Middle School** share the same building and property that would be affected by all of the Build alternatives except the Silver Spring/Thayer Avenue design option of High Investment BRT and LRT. Impacts would range from 0.03 to 0.36 acre and would affect land situated along the school property line on Wayne Avenue. The alternatives would not affect the schools’ recreational facilities. The impacts to this property would be the result of widening of Wayne Avenue for the addition of left turn lanes under the Medium Investment Alternatives and/or the addition of a station



at Dale Drive. The driveway leading to the school parking lot from Wayne Avenue would likely be relocated to Dale Drive.

- **East Silver Spring Elementary School** would be affected only by the Silver Spring/Thayer Avenue design option of High Investment BRT and LRT. These alternatives would impact 1.65 acres along the northeast corner of the school property but would not affect its recreational facilities. The alternatives would pass in tunnel under a path which provides access to the school from Thayer Avenue. The path would be relocated slightly to the west and a second path providing access from the east would be added.
- **Rosemary Hills Elementary School** would be affected by all of the Build alternatives. The alternatives would travel along a new transitway between the CSX right-of-way and the school property. A buffer of trees currently provides visual screening of the CSX tracks from the school recreational facilities. The alternatives would remove some trees to accommodate construction and would reduce the visual screening for the recreational facilities. All of the Build alternatives would impact between 0.28 and 0.32 acre of the school property but would not displace its recreational facilities.
- **University of Maryland** is located in College Park and encompasses 1,500 acres. The Build alternatives would cross Adelphi Road and enter campus on Campus Drive. All of the Build alternatives, except the Preinkert/Chapel Drive design options and the High Investment BRT and LRT, would travel along the future Union Drive extended to Campus Drive. Union Drive extended, identified in the *University of Maryland Facilities Master Plan 2001-2020*, will extend eastward from the existing Union Drive near Cole Field House in an arc to the south, to connect to Campus Drive near Presidential Drive. The roadway will pass through part of the James H. Kehoe Track and Field Facility. This area contains existing long jump and high jump facilities (see photo). However, the University plans to relocate the track and field facility and redevelop this entire area to fulfill its long-range vision for a mixed-use, "western gateway" to the campus. All the alternatives would cross many vehicular entrances to parking lots and sidewalks within the campus on both the north and south side. Vehicle access and pedestrian connections would be relocated, as needed. East of US 1, the alignments follow Paint Branch Parkway along the contours of University of Maryland property on the northeast side of the roadway. Total impacts on University of Maryland property range from approximately 7.02 to 13.91 acres. The *Facilities Master Plan* incorporates the Purple Line. Since the university is planning to relocate the James H. Kehoe Track and Field Facility within the near future, impacts on recreational features may be avoided. As project planning continues MTA will investigate the appropriateness of a *de minimis* finding for this facility.

University of Maryland Track and Field Facility
(Partial high jump facility shown in foreground)



4.2.2. Temporary Use (Construction) Impacts of Public Parklands and Recreational Areas

As described in Section 4.1, temporary easement use may be considered Section 4(f) use if the land is subject to temporary or permanent adverse changes, such as contour alterations or removal of mature trees and other vegetation. Temporary easement use is not considered a Section 4(f) use under certain conditions.

The No Build and TSM alternatives would not have temporary use impacts on Section 4(f) parkland and recreation resources

Construction specifications for the Purple Line Build alternatives would incorporate the following conditions relative to public parklands and recreational areas including trails and schools:

- The duration (of the occupancy) would be temporary, i.e., less than the time needed for completing the proposed action, and there would be no change in ownership of the land.
- The scope of the effort would be minor, i.e., both the nature and magnitude of the changes to the 4(f) resource would be minimal.
- There would be no permanent adverse impacts to public parklands and recreational areas and effective coordination with the owner would be carried out to avoid interference with the activities and operation of the property, on both temporary and permanent bases.
- Any property associated with public parklands and recreational areas to be used for construction would be fully restored, i.e., it would be returned to a condition which is at least as good as that which existed prior to the project.

Because all the above conditions exist, temporary easement use is not considered a Section 4(f) use.



Table 4-1: Potential Direct Use of Section 4(f) Resources

Potential Impact (Acres)																							
Name	Total Size (Acres)	No Build	TSM	Low Inv BRT	Percent of Total	Med Inv BRT	Percent of Total	Preinkert/ Chapel Drive Design Option	Percent of Total	High Inv BRT	Percent of Total	Silver Spring/ Thayer Avenue Design Option	Percent of Total	Low Inv LRT	Percent of Total	Med Inv LRT	Percent of Total	Preinkert/Chapel Drive Design Option	Percent of Total	High Inv LRT	Percent of Total	Silver Spring/ Thayer Avenue Design Option	Percent of Total
Parks																							
North Chevy Chase Local Park	32	No Impact	No Impact	0.02	0.06%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%
Sligo Creek Stream Valley Park - Unit 2	39			0.43	1.10%	0.90	2.31%	0.90	2.31%	0.73	1.87%	0.78	2.01%	0.73	1.87%	0.90	2.31%	0.90	2.31%	0.73	1.87%	0.78	2.01%
Long Branch Local Park	14			0.01	0.07%	0.01	0.07%	0.01	0.10%	0.06	0.45%	0.06	0.45%	0.06	0.43%	0.06	0.45%	0.06	0.45%	0.06	0.45%	0.06	0.45%
New Hampshire Estates Neighborhood Park	5			0.05	0.99%	0.05	0.99%	0.05	0.99%	0.14	2.79%	0.14	2.80%	0.14	2.79%	0.14	2.89%	0.14	2.89%	0.14	2.79%	0.14	2.79%
Adelphi Manor Community Recreation Center	34			0.07	0.21%	0.07	0.21%	0.07	0.21%	0.03	0.10%	0.03	0.10%	0.03	0.10%	0.07	0.20%	0.07	0.20%	0.03	0.10%	0.03	0.10%
Northwest Branch Stream Valley Park	519			0.36	0.07%	0.36	0.07%	0.36	0.07%	0.25	0.05%	0.25	0.05%	0.25	0.05%	0.25	0.05%	0.25	0.05%	0.25	0.05%	0.25	0.05%
University Hills Neighborhood Park	7			0.06	0.86%	0.06	0.86%	0.06	0.86%	0.02	0.25%	0.02	0.25%	0.02	0.25%	0.02	0.25%	0.02	0.25%	0.02	0.25%	0.02	0.25%
College Park Airport	34			0.004	0.01%	0.004	0.01%	0.005	0.01%	0.005	0.01%	0.005	0.01%	0.005	0.01%	0.005	0.01%	0.005	0.01%	0.005	0.01%	0.005	0.01%
Anacostia River Stream Valley Park	794			0.65	0.08%	0.65	0.08%	0.65	0.08%	0.00	0.00%	0.00	0.00%	0.65	0.08%	0.65	0.08%	0.65	0.08%	0.00	0.00%	0.00	0.00%
Park Police Headquarters	6			0.44	7.3%	0.45	7.5%	0.45	7.5%	0.45	7.5%	0.45	7.5%	0.00	0%	0.00	0%	0.00	0%	0.00	0%	0.00	0%
W. Lanham Hills Neighborhood Recreation Center	9			0.00	0.00%	0.46	5.11%	0.46	5.11%	0.46	5.11%	0.46	5.11%	0.00	0.00%	0.27	2.95%	0.27	2.95%	0.27	2.94%	0.27	2.94%
TOTAL	---			2.02	—	3.02	—	3.02	—	2.15	—	11.60	—	1.98	—	2.37	—	2.37	—	1.51	—	1.56	—

Table 4-1: Potential Direct Use of Section 4(f) Resources (continued)

Potential Impact (Acres)																									
Name	Total Size (Acres)	No Build	TSM	Low Inv BRT	Percent of Total	Med Inv BRT	Percent of Total	Preinkert/ Chapel Drive Option	Percent of Total	High Inv BRT	Percent of Total	Silver Spring/ Thayer Avenue Option	Percent of Total	Low Inv LRT	Percent of Total	Med Inv LRT	Percent of Total	Preinkert/Chapel Drive Option	Percent of Total	High Inv LRT	Percent of Total	Silver Spring/ Thayer Avenue Option	Percent of Total		
Recreational Trails																									
Sligo Creek Trail	10	No Impact	No Impact	0.04	0%	0.06	1%	0.06	1%	0.06	1%	0.02	0%	0.06	1%	0.06	1%	0.06	1%	0.06	1%	0.02	0%		
Rock Creek Trail	19			0.03	0%	0.03	0%	0.03	0%	0.03	0%	0.03	0%	0.03	0%	0.03	0%	0.03	0%	0.03	0%	0.03	0%		
Northwest Branch Trail	16			0.02	0%	0.02	0%	0.03	0%	0.02	0%	0.02	0%	0.02	0%	0.02	0%	0.03	0%	0.02	0%	0.02	0%		
Northeast Branch Trail	3			0.03	1%	0.03	1%	0.03	1%	0.02	0%	0.02	0%	0.04	1%	0.04	1%	0.04	1%	0.04	1%	0.02	0%	0.02	1%
Paint Branch Trail	4			0.00	0%	0.03	0%	0.03	0%	0.02	0%	0.02	0%	0.04	0%	0.04	0%	0.04	0%	0.04	0%	0.04	0%	0.04	1%
TOTAL	---					0.12	—	0.17	—	0.18	—	0.15	—	0.11	—	0.19	—	0.19	—	0.2	—	0.17	—	0.13	—
Schools																									
North Chevy Chase ES	8	No Impact	No Impact	0.28	4%	0.00	0%	0.00	0%	0.00	0%	0.00	0%	0.00	0%	0.00	0%	0.00	0%	0.00	0%	0.00	0%		
Sligo Creek ES and Silver Spring International MS	16			0.03	0%	0.08	1%	0.08	1%	0.05	0%	0.00	0%	0.05	0%	0.36	2%	0.36	2%	0.05	0%	0.00	0%		
East Silver Spring ES	9			0.00	0%	0.00	0%	0.00	0%	0.00	0%	1.65	19%	0.00	0%	0.00	0%	0.00	0%	0.00	0%	1.65	19%		
Rosemary Hills ES	7			0.24	4%	0.28	4%	0.28	4%	0.28	4%	0.28	4%	0.32	5%	0.32	5%	0.32	5%	0.32	5%	0.32	5%		
University of Maryland	1,500			13.91	1%	10.62	1%	7.02	0%	9.58	1%	9.58	1%	11.08	1%	11.08	1%	7.21	0%	9.58	1%	9.58	1%		
TOTAL	---					0.55	—	10.98	—	7.38	—	9.91	—	12.51	—	11.45	—	11.76	—	7.89	—	9.93	—	11.55	—

Notes: Proposed maintenance and storage facilities at Lyttonsville and Glenridge do not impact public parklands and recreational areas because they are existing maintenance sites. All potential impacts based on conceptual engineering available to date and subject to change. GIS data not available for trail resources at this time. Potential impacts on trails are estimated based on readily available information and subject to change.



4.2.3. Constructive Use Impacts on Public Parklands and Recreational Areas

As described in Section 4.1, constructive use impacts usually consist of changes in noise, vibration, and visual/aesthetic quality and the impacts are so severe that the protected features that qualify a property under Section 4(f) are substantially impaired.

Noise

The LRT alternatives would have “no impact” per FTA guidelines on noise in the public parklands and recreational areas, trails, and public school properties due largely to the presence of vehicle skirts placed on all Purple Line light rail vehicles. The proposed Glenridge Maintenance and Storage Facility could have severe noise impacts due to wheel squeal to the adjacent Glenridge Elementary School. This noise could be mitigated with the construction of a noise wall surrounding the maintenance and storage facility.

The BRT alternatives would have noise impacts at the Sligo Creek Elementary School and Silver Spring International Middle School properties which exhibited a 2 to 4 dBA increase in noise (moderate effect per FTA guidelines) under all of the BRT alternatives except for Low Investment BRT near Sligo Creek Elementary School (no impact). The BRT alternatives would have no noise impacts at the public parklands and recreational areas. Appropriate mitigation measures for potential noise impacts would be determined following the selection of a Locally Preferred Alternative. Refer to the *Noise and Vibration Technical Report* for more information.

The No Build and TSM alternatives would not have constructive use noise impacts to public parkland and recreational area Section 4(f) resources

The projected noise impacts of each of the Build alternatives would not be so severe as to substantially impair the protected features that qualify the resources under 4(f).

Vibration

The No Build and TSM alternatives would not have vibratory impacts to public parkland and recreational area Section 4(f) resources.

As noted in the *Noise and Vibration Technical Report*, all of the Build alternatives were found to have no vibratory impacts in the vicinity of public parkland and recreational area Section 4(f) resources.

Visual/Aesthetic Quality

Visually sensitive areas are defined as those where viewers are likely to notice changes. In general, parks, trails, and natural areas contain areas of high visual sensitivity. Development within or near parks, trails and natural areas is likely to be noticed more than development in more urbanized environments. Generally, the Build alternatives pass through parks, trails, and recreational areas on existing roads and are considered compatible with the original character of the roadways and communities along the alignment. Most of the roadways are arterials and already have a number of frequently operating bus routes on them. The BRT alternatives would likely have limited visual effects. LRT and its required infrastructure (rails, catenary wires, and

traction power substations) would have a greater effect, but would still be suitable to the corridor. Fencing and lighting would be located where needed, for safety reasons. These elements would cause potential visual effects for the adjacent land uses and recreational users.

The Build alternatives would have visual impacts. Primary visual impacts of concern are changes in the following locations where transit is being introduced:

- Rock Creek Regional Park
- Sligo Creek Stream Valley Park
- Long Branch Local Park
- Northwest Branch Stream Valley Park
- Anacostia River Stream Valley Park
- Sligo Creek Trail

All of the Build alternatives cross Rock Creek Regional Park within the Georgetown Branch right-of-way. The Interim Georgetown Branch Trail currently crosses Rock Creek Regional Park on a trestle bridge. The Purple Line would operate on a new bridge with an adjacent, slightly lower, pedestrian bridge for the trail. Both bridges would be designed to be consistent with the character of structures in Rock Creek Park. With thoughtful design the Purple Line bridges would not have a negative visual impact on Rock Creek Regional Park. Construction of the transitway and a permanent trail would incorporate new landscaping.

The Build alternatives cross four other large linear parks on existing roadways: Sligo Creek Stream Valley Park, Long Branch Local Park, Northwest Branch Stream Valley Park, and Anacostia River Stream Valley Park. The roadways on which the Purple Line would operate as it crosses Long Branch, Northwest Branch, and Anacostia River parks are four lanes wide, heavily traveled, and are currently used by buses. Therefore, the addition of LRT or BRT in these areas would not represent a major change in visual conditions.

The crossing of Sligo Creek Parkway on Wayne Avenue would require widening of the existing bridge, which would represent a visual effect.

If the High Investment LRT Silver Spring/Thayer Avenue design option were selected, the aerial structure required for the LRT on Piney Branch Road would result in substantial visual impacts for users of the Sligo Creek Trail.

The maintenance and storage facility location at Lyttonsville contains an existing Montgomery County bus maintenance facility adjacent to light industrial uses. Because of the existing light industrial character of the site, and the ability to screen the site with fencing or vegetation, the Purple Line is unlikely to have major visual effects to Rock Creek Park.

The maintenance and storage facility location at the Glenridge Community Park/Northern Area Maintenance Office contains an existing maintenance facility surrounded by wooded areas.



Because of the existing light industrial character of the site, and the ability to screen the site with fencing or vegetation, the Purple Line is unlikely to have major visual effects.

As noted earlier, the Interim Georgetown Branch Trail is a transportation facility and thus is not covered under Section 4(f) restrictions.

The No Build and TSM alternatives would not have constructive use visual effects to public parkland and recreational area Section 4(f) resources

The projected visual effects of each of the Build alternatives would not be so severe as to substantially impair the protected features that qualify the resources under 4(f).

4.2.4. Section 4(f) Uses of Cultural Resources

Those historic architectural properties and archaeological sites that were previously listed in the National Register; previously determined eligible for listing in the National Register; or considered potentially eligible for listing in the National Register as part of the current project have been evaluated to determine if the Purple Line would have any effects to their historic character by applying the Criteria of Adverse Effect. An adverse effect is found when an undertaking directly or indirectly alters the characteristics that qualify a property for listing in the National Register in a manner that diminishes one of the seven aspects of integrity (location, design, setting, materials, workmanship, association, and feeling). Types of potential adverse effects considered included physical impacts, such as destruction of all or part of a building; property takes that adversely impact the historic setting of a resource, even if built resources are not directly impacted; noise and vibration impacts evaluated according to accepted professional standards; changes to significant viewsheds; and cumulative effects that may occur later in time.

Table 4-2 identifies the cultural resources determined to be adversely affected by the Build alternatives. Effects that are considered adverse include sites where right-of-way needs would result in property takings or changes that affect the character defining features of the resources.

Table 4-2: Section 4(f) Uses of Cultural Resources

Resource Name	MIHP Number	Alternatives With Impacts	Summary of Potential Impact
Historic Architectural Properties			
Falkland Apartments	M: 36-12	All alternatives except the Low Investment BRT	Removal of units from the ends of two buildings of the Falkland Apartments
Archaeological Sites			
Taylor Site	18MO243	Low Investment BRT	TBD
Clean Drinking Water Manor Site	18MO030	TBD	TBD
Sligo Cabin Site	18MO356	TBD	TBD
College Park Airport Site	18PR200	All alternatives	TBD
Fire Site	18PR263	TBD	TBD

4.2.5. Potential Impacts on National Register Eligible Historic Architectural Properties within APE

Falkland Apartments (M: 36-12)

Construction of the Purple Line would result in the removal of units from the ends of two buildings of the Falkland Apartments. This demolition would diminish the historic property's design, materials, and workmanship and would be an adverse effect on the Falkland Apartments. The demolition would occur with all Build alternatives, except the Low Investment BRT alternative, and would be an Adverse Effect under Section 106 guidelines and a Section 4(f) use of this historic architectural property.

4.2.6. Potential Impacts on National Register Eligible Archaeological Sites within APE

Taylor Site (18MO243)

The Taylor Site is located in an area covered by grass and trees to the southeast of the National Institutes of Health campus on Wisconsin Avenue in Montgomery County. The prehistoric artifacts recovered indicated a multi-component short-term resource procurement camp, with diagnostic tools and ceramics suggesting periodic occupation from the Late Archaic through Middle Woodland cultural periods. The site was found to contain a wide variety of prehistoric and late historic artifacts. The historic artifacts were linked to the development of the Town and Country Golf Club in the 1920s and were not considered significant. The site was identified as part of planning studies for the proposed extension of Woodmont Avenue, and this road project was redesigned to avoid any impacts. Although portions of the site have been disturbed, relatively intact portions of the site were identified. The site is considered eligible for listing on the National Register under Criterion D. The Low Investment BRT alternative along Woodmont Avenue is adjacent to this site. Should this alternative be selected as the Locally Preferred Alternative, additional investigations would be undertaken to assess adjacent portions of the site so that impacts can be avoided or minimized.

College Park Airport Site (18PR200)

College Park Airport was established in 1909. Wilber Wright conducted training exercises at the field with military officers that flew the United States government's first airplane. College Park Airport is considered by many as the Cradle of Aviation. The airport was added to the National Register in 1977. A portion of the historic College Park Airport (NR: 436) was subjected to systematic archaeological investigation in 1980 as a compliance project related to planned airport redevelopment. The testing focused on the structural remains of four earlier hangars associated with the airport's early development. Although the project did yield artifacts associated with the airport's period of significance, there was no definitive determination as to whether these resources were contributory to the significance of this National Register-listed historic property. Due to the historic significance of the airport, the College Park Airport archeological site is considered to be eligible for listing in the National Register. All of the Build alternatives require between 0.004 and 0.005 acre of the College Park Airport property. Should one of the Build alternatives be selected, additional investigations would be undertaken to assess adjacent portions of the site so that impacts can be avoided or minimized.



4.2.7. Potential Impacts on Other Archaeological Sites within APE (National Register Status Not Determined)

Clean Drinking Water Manor Site (18MO030)

Clean Drinking Water Manor was constructed in 1750 by Charles Jones. The structure was a brick-filled frame building measuring one-and-a-half stories. Records indicate that a cluster of brick outbuildings were constructed at the same time as the main manor house. These outbuildings included a kitchen, servants' quarters, and a well. A large portion of the Clean Drinking Water Manor Site was destroyed during construction of a nursing home and nearby roadways. However, beyond these construction disturbances, intact portions of the site may still exist and may contain structural remains as well as other features such as privies. All of the Build alternatives along Jones Bridge, Brookville, and Crescent roads are adjacent to this site. When a Locally Preferred Alternative is selected, a Phase IA sensitivity study may need to be conducted on the Clean Drinking Water Manor Site to determine site boundaries, limits of disturbance, and National Register potential.

Sligo Cabin Site (18MO356)

The Sligo Cabin Site was identified during the construction of a recreational facility at Sligo Creek Park during a non-systematic survey completed by the Maryland-National Capital Park and Planning Commission. The site was identified by James D. Sorenson via a pedestrian reconnaissance in 1991. Non-diagnostic prehistoric artifacts and late nineteenth to early twentieth century artifacts were recovered during the walkover. Portions of this site were destroyed with grading activities during construction of the facility. The extent of this disturbance related to the size and depth of the site is unknown. All the Build alternatives along Wayne Avenue are adjacent to this site. When a Locally Preferred Alternative is selected, a Phase IA sensitivity study may need to be conducted on the Sligo Cabin Site to determine site boundaries and limits of disturbance.

Fire Site (18PR263)

The Fire Site was identified during the Phase I archaeological survey of the Calvert Road Relocation in 1985. This site contains a prehistoric quartzite lithic scatter. As part of a previous survey a systematic testing grid was established on the site, and shovel test pits were excavated within the area. The site was likely disturbed by construction of a runway, but the extent of that disturbance is unknown to date. Low and Medium Investment BRT and LRT along River Road are adjacent to this site. Should any of these alternatives be selected as the Locally Preferred Alternative, a Phase IA sensitivity study may be needed on the Fire Site to determine site boundaries, limits of disturbance, and National Register potential.

4.2.8. Historic Parks

Five parks were identified that are potentially eligible for the National Register. The Build alternatives could affect three of the five parks. Refer to Section 3.2 for descriptions and Section 4.2.1 for potential impacts on the following parks:

- North Chevy Chase Park

- Sligo Creek Stream Valley Park - Unit 2
- College Park Airport

Future research would be conducted to determine if any other parks may be eligible for the National Register for historic associations. Some parks may not be individually eligible, but may be contributing elements to historic districts or potential historic districts. Generally, these parks were treated as resources that are potentially eligible for the National Register as contributing resources. Intensive survey and documentation would be undertaken should a build alternative be selected for the Locally Preferred Alternative is selected, and MHT concurrence would be sought on eligibility and effect at that time.

4.2.9. Potential Station Impacts on Cultural Resources

Twenty-two potential station locations have been identified. The potential direct effects from station locations have been taken into account and have been included in the 500-foot APE buffer for standing structures on either side of the alignment. The overall design and aesthetics of bus shelters located adjacent to historic districts and historic resources would be sensitive to the architectural context of these resources.

4.2.10. Potential Indirect and Cumulative Effects on Cultural Resources

The indirect and cumulative effects on cultural resources are a function of local and municipal preservation planning procedures and regulations. Please refer to the Indirect and Cumulative Effects Technical Report for more detailed information.

4.2.11. Summary of Findings for Cultural Resources

The Purple Line could have Section 4(f) use of one National Register eligible historic architectural property, two archaeological sites eligible for the National Register, two archaeological sites for which National Register status has not yet been determined, and three National Register eligible historic parks. At this time, it is prudent to suspend detailed impact studies on cultural resources until the selection of a Locally Preferred Alternative due to the preliminary planning stage, the scale of the project APE, and the uncertainty of project variables pertaining to anticipated ground disturbance (e.g., station locations, transit mode, tunnels vs. elevated structures). A detailed analysis of impacts on cultural resources, including archaeological sites, would be conducted if a Build alternative is selected as the Locally Preferred Alternative. Avoidance and minimization would be considered wherever feasible. However, if adverse effects occur, an appropriate mitigation plan would be developed by the MTA in coordination with the MHT and other consulting parties as appropriate.

5. Measures to Minimize Harm

Measures to minimize harm have been investigated to reduce the potential impacts of the alternatives. The primary method of minimizing impacts to Section 4(f) resources focuses on staying within the existing transportation rights-of-way to avoid resource impacts. Additional measures could be incorporated into the design and operation of the Locally Preferred Alternative to further avoid, minimize, or mitigate project-related impacts.

5.1. Minimization and Mitigation Measures for Public Parklands and Recreational Areas

General measures to minimize or mitigate impacts of the alternatives would be developed through coordination with the agencies of jurisdiction and could include:

- Replacement land of equal or greater natural resource and economic value could be provided in a manner to be agreed upon by the jurisdictional agency and the MTA.
- Retaining walls may be considered during the detailed engineering phase, if a Build alternative is chosen as the Locally Preferred Alternative
- Erosion and sediment control measures would be provided and strictly enforced to minimize water quality impacts.
- Temporary and permanent access to Section 4(f) resources would be maintained with the Locally Preferred Alternative.
- Additional appropriate mitigation measures such as landscaping, noise barriers, etc. would be evaluated and included in the design of Locally Preferred Alternative where feasible.
- Clearing could be limited to no more vegetation than necessary.
- Landscape screening or other forms of screening (e.g., privacy fencing and earth berms) could be installed in locations where construction and operation of the Locally Preferred Alternative substantially alters existing sensitive viewshed or results in moderate to severe noise impacts.
- Controlled lighting, selection of light pole height and spacing, and directional shielding could be considered in areas with sensitive viewsheds. .
- Use of existing poles or buildings to support the catenary wires or new signage could minimize intrusiveness of the Locally Preferred Alternative in visually sensitive areas.
- Use of compatible materials and architectural treatments to blend with the surrounding environment could be incorporated into the project.



Alternatively the use of parkland and recreational facilities could potentially be mitigated by placing additional facilities at school sites or lighting school facilities at middle and high schools to expand the capacity of ballfields.

5.2. Minimization and Mitigation Measures for Cultural Resources

As part of the Purple Line, the MTA has initiated formal consultation pursuant to Section 106 of the National Historic Preservation Act (36 CFR 800). The Section 106 consultation has included coordination with the MHT, as well as the local county and municipal authorities. As previously noted, intensive cultural resources surveys and documentation would be completed when a Locally Preferred Alternative is selected. The MHT has requested that, due to the large scale of the undertaking and the relatively minor anticipated effects, the intensive level of survey be deferred until a Locally Preferred Alternative is selected. Once a Locally Preferred Alternative is selected, and after considering input from the consulting parties and the public, MTA would prepare a report that applies the Criteria of Adverse Effect to listed or eligible properties, which would be submitted to the MHT and all other consulting parties for review and comment. The concurrence of the MHT would be sought on eligibility and effect at that time.

Avoidance and minimization would be considered wherever feasible. If adverse effects are identified on significant historic architectural properties or archaeological sites, including historic parklands, then the Final Section 4(f) Evaluation would be prepared to reassess the identified adversely affected resources with regard to Section 4(f) requirements. An appropriate mitigation plan would be developed by the MTA in coordination with the MHT and other consulting parties, as appropriate.

5.3. Minimization and Mitigation Measures for Construction Activities

With proper planning and implementation, construction-related impacts to Section 4(f) resources could be avoided or minimized. The following sections describe the mitigation measures that would reduce short-term construction effects for the Build alternatives.

5.3.1. Noise and Vibration

Measures that can be used to lessen construction noise fall into two general categories: 1) design considerations; and 2) construction staging or sequencing of operations. Design considerations would include: erecting temporary walls or earth berms between the noise source and the sensitive receptor, the identification of haul routes that avoid sensitive receptors to the maximum extent possible; and locating stationary noise generating equipment away from public parklands and recreational areas, and other sensitive receptors.

Mitigation measures related to construction staging or sequencing of operations may include restricted activities near noise or vibration sensitive receptors, limited hours of loading and hauling operations, stockpiling excavated materials in the station excavation during non-haul hours, the use of rubber-tired excavation equipment instead of tracked equipment, and backup alarms on trucks operating in sensitive areas. Other measures include using shields, impervious

fences or other physical sound barriers to inhibit transmission of noise; using sound retardant housings or enclosures around noise producing equipment; using effective intake and exhaust mufflers on internal combustion engines and compressors; directing construction equipment and other vehicles carrying spill, concrete or other material over streets and routes that would cause the least disturbance to park patrons.

5.3.2. Access

Access to Section 4(f) resources would be maintained to the maximum extent possible. Access for fire and emergency vehicles would be maintained at all times. Particular attention would be given to maintaining public safety during the construction period. Public access to construction areas would be limited to the greatest extent possible. This can be accomplished with temporary fencing, warning signs and other safety precautions. Maintenance of traffic and construction staging would be planned and scheduled to minimize traffic delays and interruptions to the maximum extent possible. Coordination with and approval by the involved jurisdictions would be required. Appropriate signing, the project website, and other notices would be used to notify motorists of road closures and detours, and pedestrians of sidewalk closures and detours.

5.4. Summary of Potential Use of Section 4(f) Resources

Table 5-1 summarizes the potential use of each Section 4(f) resource, by alternative.



Table 5-1: Summary of Potential Use of Section 4(f) Resources

Name	Total Size	Permanent Use												Temporary Use (Yes/No)	Constructive Use (Yes/No)	De Minimis (Yes/No)
		No Build	TSM	Low Inv BRT	Med Inv BRT	Preinkert/ Chapel Option	High Inv BRT	SS/ Thayer Option	Low Inv LRT	Med Inv LRT	Preinkert/ Chapel Option	High Inv LRT	SS/ Thayer Option			
Public Parklands (acres)																
*North Chevy Chase Local Park	32 ac	No Impact	No Impact	0.02	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	No	No	Yes
*Sligo Creek Stream Valley Park – Unit 2	39 ac			0.43	0.90	0.90	0.73	0.78	0.73	0.90	0.90	0.73	0.78	No	No	Yes
Long Branch Local Park	14 ac			0.01	0.01	0.01	0.06	0.06	0.06	0.06	0.06	0.06	0.06	No	No	Yes
New Hampshire Estates Neighborhood Park	5 ac			0.05	0.05	0.05	0.14	0.14	0.14	0.14	0.14	0.14	0.14	No	No	Yes
Adelphi Manor Community Recreation Center	34 ac			0.07	0.07	0.07	0.03	0.03	0.03	0.07	0.07	0.03	0.03	No	No	Yes
Northwest Branch Stream Valley Park	519 ac			0.36	0.36	0.36	0.25	0.25	0.25	0.25	0.25	0.25	0.25	No	No	Yes
University Hills Neighborhood Park	7 ac			0.06	0.06	0.06	0.02	0.02	0.02	0.02	0.02	0.02	0.02	No	No	Yes
*College Park Airport	34 ac			0.004	0.004	0.005	0.005	0.005	0.005	0.005	0.005	0.005	0.005	No	No	Yes
Anacostia River Stream Valley Park	794 ac			0.65	0.65	0.65	0.00	0.00	0.65	0.65	0.65	0.00	0.00	No	No	Yes
Park Police Headquarters	6 ac			0.44	0.45	0.45	0.45	0.45	0.00	0.00	0.00	0.00	0.00	No	No	Yes
West Lanham Hills Neighborhood Recreation Center	9 ac			0.00	0.46	0.46	0.46	0.46	0.00	0.27	0.27	0.27	0.27	No	No	Yes

Table 5-1: Summary of Potential Use of Section 4(f) Resources (continued)

Name	Total Size	Permanent Use												Temporary Use (Yes/No)	Constructive Use (Yes/No)	De Minimis (Yes/No)
		No Build	TSM	Low Inv BRT	Med Inv BRT	Preinkert/ Chapel Option	High Inv BRT	SS/ Thayer Option	Low Inv LRT	Med Inv LRT	Preinkert/ Chapel Option	High Inv LRT	SS/ Thayer Option			
Recreational Trails (miles)																
Sligo Creek Trail	10 mi	No Impact	No Impact	0.04	0.06	0.06	0.06	0.02	0.06	0.06	0.06	0.06	0.02	No	No	Yes
Rock Creek Trail	19 mi			0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	No	No	Yes
Northeast Branch Trail	3 mi			0.03	0.03	0.03	0.02	0.02	0.04	0.04	0.04	0.02	0.02	No	No	Yes
Northwest Branch Trail	16 mi			0.02	0.02	0.03	0.02	0.02	0.02	0.02	0.03	0.02	0.02	No	No	Yes
Paint Branch Trail	4 mi			0.00	0.03	0.03	0.02	0.02	0.04	0.04	0.04	0.04	0.04	No	No	Yes
Public Schools																
North Chevy Chase Elementary School	8 ac	No Impact	No Impact	0.28	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	No	No	Yes
Sligo Creek ES and Silver Spring International MS	16 ac			0.03	0.08	0.08	0.05	0.00	0.05	0.36	0.36	0.05	0.00	No	No	Yes
East Silver Spring Elementary School	9 ac			0.00	0.00	0.00	0.00	1.65	0.00	0.00	0.00	0.00	1.65	No	No	Yes
Rosemary Hills Elementary School	7 ac			0.24	0.28	0.28	0.28	0.28	0.32	0.32	0.32	0.32	0.32	No	No	Yes
University of Maryland	1,500 ac			13.91	10.62	7.02	9.58	9.58	11.08	11.08	7.21	9.58	9.58	No	No	Yes



Table 5-1: Summary of Potential Use of Section 4(f) Resources (continued)

Name	Total Size	Permanent Use												Temporary Use (Yes/No)	Constructive Use (Yes/No)	De Minimis (Yes/No)
		Alt. 1: No Build	Alt. 2: TSM	Alt. 3: Low Inv BRT	Alt. 4: Med Inv BRT	Alt. 4: Preinkert/ Chapel Option	Alt. 5: High Inv BRT	Alt. 5: SS/ Thayer Option	Alt. 6: Low Inv LRT	Alt. 7: Med Inv LRT	Alt. 7: Preinkert/ Chapel Option	Alt. 8: High Inv LRT	Alt. 8: SS/ Thayer Option			
*Cultural Resources																
Falkland Apartments	22 ac	No Impact	No Impact	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	No	No	No
Taylor Site	N/A			TBD	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	TBD	TBD	No
Clean Drinking Water Manor Site	N/A			TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	No
Fire Site	N/A			TBD	TBD	TBD	0.00	0.00	TBD	TBD	TBD	0.00	0.00	TBD	TBD	No
Sligo Cabin Site	N/A			TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	No
College Park Airport Site	N/A			TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	No

Notes: *Public parklands that also are historic parklands or historic architectural resources eligible for the National Register. They are listed once under “Public Parklands” to avoid double counting. The College Park Airport (archaeological) Site is listed separately.

Proposed maintenance and storage facilities at Lyttonsville and Glenridge do not impact public parklands and recreational areas because they are existing maintenance sites.

All potential impacts based on conceptual engineering available to date and subject to change. Official GIS data not available for trail resources at this time. Potential impacts on trails are estimated based on readily available information and subject to change.

Northeast Branch Trail impact includes American Discovery Trail and East Coast Greenway as all three trails share same physical facility, locally designated as the Northeast Branch Trail, in the Purple Line project area.

N/A = Not Available TBD = To Be Determined following selection of a Locally Preferred Alternative

6. Net Harm Analysis

The first test under Section 4(f) is to determine which alternatives are feasible and prudent. An alternative is feasible if it is technically possible to design and build that alternative. It is possible to identify alternatives that meet the project's goals and objectives, but are not feasible to develop. Moreover, it is possible to identify feasible alternatives could meet the project's goals and objectives but are not prudent due to cost, social, economic, and environmental factors or potential associated community disruption. An alternative may be rejected as not being prudent and feasible if it:

- It does not meet the project purpose and need
- It involves extraordinary operational or safety problems
- There are unique problems or truly unusual factors present with it
- It results in unacceptable and severe adverse social, economic or other environmental impacts
- It would cause extraordinary community disruption
- It has additional construction costs of an extraordinary magnitude, or
- There is an accumulation of factors that collectively, rather than individually, have adverse impacts that present unique problems or reach extraordinary magnitudes

Where sufficient analysis demonstrates that a particular alternative is not prudent or feasible, the analysis or consideration of that alternative as a viable alternative comes to an end. If all remaining alternatives use land from Section 4(f) resources, then an analysis must be performed to determine which alternative results in the least overall harm to the 4(f) resources.

As noted in Section 4 of this report, the No Build and TSM Alternatives would not fully meet the Purpose and Need for the Purple Line and, therefore, are not addressed in the Net Harm Analysis. As noted in Section 5 of this report, the Build alternatives that are being carried forward into the Net Harm Analysis would meet the Purpose and Need for the Proposed Action to varying degrees. These alternatives would potentially result in Section 4(f) improvements.

6.1. Least Harm Standard

Section 4(f) regulations indicate that, if the analysis concludes that there is no feasible and prudent avoidance alternative to the use of the land from the property, then the USDOT may approve only the alternative that:

1. Causes the least overall harm in light of the statute's preservation purpose. The least overall harm is determined by balancing the following factors:
 - i. The ability to mitigate adverse impacts to each Section 4(f) property (including any measures that result in benefits to the property);



- ii. The relative severity of the remaining harm, after mitigation, to the protected activities, attributes, or features that qualify each Section 4(f) property for protection;
- iii. The relative significance of each Section 4(f) property;
- iv. The views of the official(s) with jurisdiction over each Section 4(f) property;
- v. The degree to which each alternative meets the purpose and need for the project;
- vi. After reasonable mitigation, the magnitude of any adverse impacts to resources not protected by Section 4(f); and
- vii. Substantial differences in costs among the alternatives.

The Net Harm Analysis consisted of a qualitative evaluation of the size, location, and nature of all impacts to Section 4(f) resources, including *de minimis* impacts and potential mitigation measures, to assess the overall harm to Section 4(f) resources from each alternative. The Net Harm Analysis considered the effects of the impact after mitigation, the severity and location of the use, and the probability that the remainder of the property would continue to serve the same functions as before. Under the Net Harm Standard, the alternative that results in the least net harm must be selected. However, Section 4(f) regulations state that, if the net harm to Section 4(f) resources in all the alternatives is equal, then the project may select any one of them. In other words, if the project proposes to use similar amounts of similar Section 4(f) resources, there is no alternative that would cause the least overall harm. The Net Harm Analysis has determined the following results:

- Potential impacts among the Build alternatives to public parklands range from 1.51 acres to 3.02 acres in total.
- For all affected public parklands, none of the alternatives directly affect any recreational features or amenities provided.
- In most cases, the affected areas are located along the perimeter of the resources or along adjacent roadways that traverse the public parklands and recreational areas.

Overall, impacts to public parklands and recreational areas affect less than less than three percent of the overall land area associated with the affected resources with the exception of the West Lanham Hills Neighborhood Recreational Center. Impacts across alternatives for this resource range from less than one percent of the total land area to slightly more than five percent of the total land area. The potential impacts to the Park Police Headquarters property (7.5% of total land area) would likely not be subject to Section 4(f) requirements, as discussed previously).

- Mitigation for land acquisition would consist of compensation at fair market value or execution of a permanent easement allowing MTA to occupy the property.
- Potential impacts among the Build alternatives to recreational trails (excluding the Interim Georgetown Branch Trail which is not a Section 4(f) resource) range from 0.11 miles to 0.20 miles. Temporary connections/detours would be constructed to

avoid temporary impacts; permanent impacts would be avoided by replacing affecting sections of trail as part of the project.

- All Build alternatives could impact land associated with public schools which support community recreational needs. With the exception of the University of Maryland at College Park, recreational amenities and features would not be affected by any of the Build alternatives.
- Majority of impacts associated with public school property consists of sliver acquisitions of land along adjacent roadways and impacts to access drives. Relocation or reconstruction of access drives would be included in the project to mitigate such impacts.
- At the University of Maryland at College Park, impacts consist of land acquisition and could affect the existing long jump and high jump facilities at the James H. Kehoe Track and Field Facility and Ludwig Field. However, the university is planning to relocate these recreational facilities within the near future so that impacts on recreational features may be avoided.

In general, none of the Build alternatives would permanently result in adversely impacts on the features, attributes, or activities associated with the public parklands and recreational areas. Therefore, the proposed action should meet the criteria for *de minimis* impacts in accordance with Section 4(f) regulations.

The proposed action would have the potential to adversely affect National Register-listed, eligible and potentially eligible resources (historic and archaeological resources). This determination, however, would be made once a Locally Preferred Alternative is selected for the project. Following selection of the Locally Preferred Alternative, MTA would complete intensive field studies on affected resources and would define measures to avoid, minimize, or mitigate impacts on these resources. This process would include coordination with the MHT and other Section 106 consulting parties.

6.2. Measures to Minimize Harm and Mitigation

In addition to determining that no prudent and alternatives are available to avoid the use of Section 4(f) resources, the project approval process requires the consideration of “all possible planning to minimize harm” on the Section 4(f) resource. Minimization of harm entails both alternative design modifications that lessen the effect on Section 4(f) resources, and mitigation measures that compensate for residual effects. Mitigation measures involving public parklands and recreational areas, or wildlife and waterfowl refuges may involve a replacement of land or facilities of comparable value and function, or monetary compensation, which could be used to enhance the remaining land. Mitigation of historic architectural properties and archaeological sites usually consists of those measures necessary to preserve the historic integrity of the resource, and agreed to in accordance with 36 CFR Part 800, by the sponsoring agency, State Historic Preservation Office (SHPO) or the Tribal Historic Preservation Officer, and as appropriate, the Advisory Council on Historic Preservation.

7. Evaluation of De Minimis Opportunities

This section summarizes the potential for *de minimis* findings for Section 4(f) resources.

A Legacy for Users (SAFETEA-LU), Pub. L. 109-59 amended existing Section 4(f) legislation at Section 138 of Title 23 and Section 303 of title 49, United States Code, to simplify the processing and approval of projects that have only *de minimis* impacts on lands protected by Section 4(f). This revision provides that once the Department of Transportation (DOT) determines that a transportation use of Section 4(f) property, after consideration of any impact avoidance, minimization, and mitigation or enhancement measures, results in a *de minimis* impact on that property, an analysis of avoidance alternatives is not required, and the Section 4(f) evaluation process is complete.

Impacts of a transportation project on a park, recreation area, or wildlife and/or waterfowl refuge that qualifies for Section 4(f) protection may be determined to be *de minimis* if:

- The transportation use of the Section 4(f) resource, 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); and
- The officials with jurisdiction over the property are informed of FTA's intent to make the *de minimis* impact finding based on their written concurrence that the project would 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.

The amendments further allow that after the DOT has considered any impact avoidance, minimization, and mitigation or enhancement measures, and made the *de minimis* determination, that it is not necessary to analyze avoidance alternatives, and the Section 4(f) is complete.

The MTA has investigated and recommends a *de minimis* impact finding for all of the public parklands and recreational areas. The Purple Line alignments generally follow existing streets, which minimize the potential effects on parks and recreational areas. None of the Build alternatives would impact recreational facilities nor adversely affect the protected activities, features, and attributes of the resources. The DOT determined that a transportation use of Section 4(f) property, including any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures), results in a *de minimis* impact on that property, an analysis of avoidance alternatives is not required. When this is the case, and the responsible official(s) with jurisdiction over the resource agrees in writing, compliance with the Section 4(f) process is complete.



The recreational functions of the public parklands and recreational areas, including trails and recreational areas associated with community schools, would remain intact and would not be affected substantially by the Build alternatives. Despite the use of small portions of affected parklands and recreational areas, the Build alternatives would offer major benefits because of improved accessibility to the parks by transit.

The Build alternatives would have temporary construction-related impacts to public parklands and recreational areas; however, mitigation measures would minimize the potential impacts so that a temporary use of a Section 4(f) resource would not occur with construction of the Locally Preferred Alternative.

The Build alternatives would not have a constructive use on public parklands and recreational areas (i.e., would not result in proximity impacts which substantially impair the function, integrity, use, access, value or setting of the resource, even though the project does not directly use the land).

The MTA would continue to coordinate with and inform the M-NCPPC and Board of Education (for both Montgomery and Prince George's counties) of its intent to make a *de minimis* impact finding for the potentially impacted resources identified in this document. As of the publication of this document, these agencies have not responded with written confirmation stating that the protected activities, features, and attributes of the resource are not adversely affected.

Coordination has been ongoing with the MHT regarding eligibility and potential impacts to historic and archaeological resources. The MHT has requested that, due to the large scale of the undertaking and the relatively minor anticipated effects, the intensive level of survey can be deferred until a Locally Preferred Alternative is selected. The MHT has requested that once a Locally Preferred Alternative is selected, and after considering input from the consulting parties and the public, MTA prepare a report that applies the Criteria of Adverse Effect to listed or eligible properties, which would be submitted to the MHT and all other consulting parties for review and comment. If adverse effects are identified on significant historic or archaeological resources, the Final Section 4(f) Evaluation would include the identified adversely affected resources and determine if a *de minimis* finding or a full Section 4(f) Evaluation would be required for those resources.

The public would have an opportunity to review and comment on the effects of the project on these resources. As a routine matter, FTA does not need to consult with the Department of the Interior (DOI) on *de minimis* impact findings unless the Section 4(f) resource is owned or administered by the DOI. The FTA would need to obtain the written concurrence of the appropriate official with jurisdiction over each resource being considered for a *de minimis* finding. The written concurrence of the official with jurisdiction should state that the protected activities, features, and attributes of the resource are not adversely affected.

The Section 4(f) evaluation process is considered complete for those resources once concurrence for *de minimis* findings is obtained from officials with jurisdiction over the park, recreation area,

or from the MHT. Therefore, avoidance alternatives for those properties do not need to be identified.

The NEPA documentation will contain information regarding the *de minimis* impact finding and the public will be afforded an opportunity to review and comment during the formal NEPA process. This information includes, at a minimum, a description of the involved Section 4(f) resource(s), the impact(s) to the resources and any impact avoidance, minimization, and mitigation or enhancement measures that are included in the project as part of the *de minimis* finding. The public involvement activities held during the formal NEPA process will be sufficient to satisfy the public notice and comment requirements for the *de minimis* impact finding and conclude the Section 4(f) process for these resources. All comments received on the *de minimis* impact finding, and responses to comments, will be documented in the same manner that other comments on the proposed action would be handled during the NEPA process.

8. Consultation and Coordination

Section 4(f) requires consultation with the federal, state, or local officials having jurisdiction over the affected public parklands, recreational areas, wildlife and waterfowl refuges, and significant historic and archaeological resources. Coordination should address the identification, analysis, and potential impacts on Section 4(f) resources. Table 8-1 summarizes the consultation and coordination efforts that have taken place to date.

The M-NCPPC and Board of Education (for both Montgomery and Prince George's counties) and the MHT are the primary officials with jurisdiction over the Section 4(f) resources in the Purple Line corridor. Section 4(f) also requires that the U.S. Department of the Interior (DOI), the U.S. Department of Agriculture (USDA), and the U.S. Department of Housing and Urban Development (HUD) be given an opportunity to coordinate and comment on the Section 4(f) evaluation, as appropriate. No lands owned by the USDA or HUD were identified in the Purple Line corridor; therefore, no coordination was initiated with these agencies. The DOI is invited to project team meetings and Interagency Coordination Meetings. The DOI, USDA, and HUD will have further opportunity to provide comments on this Preliminary Section 4(f) Evaluation Technical Report during the Draft Environmental Impact Statement comment period.

Section 6(f) of the Land and Water Conservation Fund Act (16 USC 460) requires that the Secretary of the DOI approve any conversion of lands purchased or developed with assistance under this act to a use other than public, outdoor recreation use. Preliminary information has identified Section 6(f) funds were used for at least five park lands potentially in the project area. However, at this time, it is not known which specific parcels or locations where these funds were used. If a Build alternative is selected as the Locally Preferred Alternative, then further research and coordination would occur for those parks to determine if the selected alternative would affect the specific parcels acquired and/or developed with Section 6(f) funds. If the Locally Preferred Alternative is found to impact parcels acquired and/or developed with Section 6(f) funds, then coordination with the DOI would be undertaken.

Program Open Space was created for the purpose of expediting the acquisition of outdoor recreation and open space areas and providing recreation facilities before land is devoted to other purposes. Program Open Space requires that the Secretaries of the Maryland Departments of Natural Resources (DNR), Budget and Management, and State Planning approve the conversion to any other use for land acquired or developed with Program Open Space funds. Program Open Space funds were used for many of the parks in the corridor. If a Build alternative is selected as the Locally Preferred Alternative, then further research and coordination would occur for those parks to determine if the selected alternative would affect the specific parcels acquired and/or developed with Program Open Space funds. If the Locally Preferred Alternative is found to impact parcels acquired and/or developed with Program Open Space funds, then coordination with DNR would occur.



Table 8-1: Summary of Section 4(f) Consultation and Coordination

Public Involvement Opportunity	Attendees	Date(s)	Major Topics/Issues
Notice of Intent	N/A	September 3, 2003	N/A
Scoping Meeting	Environmental Agencies and General Public	September 10, 16, 17, 24, 2003 September 25, 2003	Public scoping Agency scoping
Interagency Coordination Meetings	DNR and M-NCPPC	October 1, 2004 April 29, 2005 April 7, 2006	Project update Alignment review
Field Reconnaissance Meetings	Environmental Agencies	December 2, 2003 November 8, 2007	Alignment review Alignment review
Informational Meetings	Environmental Agencies and General Public	November 8, 10, 15, 16, 17 2004 June 12, 14, 19, 21, 2006 December 3, 5, 10, 12, 13 2007 May 8, 12, 14, 15, 21, 2008	Public open houses
Public Parks Meeting	M-NCPPC and Project Team	October 25, 2007 November 15, 2007	Historic context and funding of parks
Section 4(f)/Section 106 Cultural Resources Meetings	MHT and Project Team	November 8, 2007	Confirmation of review/approval procedures for cultural resources

8.1. Notice of Intent, Scoping Meetings, and Informational Meetings

The Notice of Intent, Scoping Meetings, and Informational Meetings provide an opportunity to inform the public of the Purple Line project, answer questions, and receive comments.

The Notice of Intent (NOI) notified the public that an environmental impact statement would be prepared (40 CFR 1508.22) for the project. The NOI for the Purple Line was published in the Federal Register on September 3, 2003.

The Scoping Meetings and Information Meetings were held with environmental agencies, including agencies with jurisdiction over Section 4(f) resources in September 2003. Information presented at the scoping meetings included maps and other displays of the study corridor and presented project information and potential alignment and technology alternatives. Representatives from the MTA and the consultant team were available to discuss issues, take comments and answer questions. Three other rounds of open houses were held in November, 2004, June 2006, December 2007, and May 2008.

8.2. Project Coordination Meetings

Agency involvement for the Purple Line Project includes coordination meetings with resource agencies in the form of Interagency Working Group Meetings, Field Reconnaissance Meetings, and Coordination Meetings with individual agencies, as previously shown in Table 8-1.

8.2.1. Interagency Working Group Meetings

The Interagency Working Group consists of environmental managers or regulatory staff from the federal, state, and local agencies involved in the project, including the M-NCPPC and the MHT. The Interagency Working Group meetings provide an opportunity for input and technical expertise to guide the preparation of information in the environmental documents and permit applications for the project. The goals of the Interagency Working Group are communication, and cooperation, to identify and resolve issues early and quickly, identify agency roles and responsibilities, and to partnership to develop technical methodologies and analyses. The Interagency Working Group holds coordination meetings approximately twice a month to review avoidance and minimization alternatives, mitigation opportunities, and to address specific agency information and requirements associated with the project.

The M-NCPPC is actively involved in the Purple Line project and attends community meetings, field reconnaissance meetings, and project team meetings regarding specific issues that require M-NCPPC input. The M-NCPPC has included the Purple Line between Bethesda and Silver Spring in their existing master plans and is currently preparing a “Functional Master Plan” which will include support for the project east of Silver Spring.

Prince George’s County is also actively involved in the Interagency Coordination Meetings, field reconnaissance meetings, and community meetings. Although the master plans for Prince George’s County have not been updated to include the Purple Line project, the county is working on a “Functional Master Plan” which will specifically include the project.

8.2.2. Field Reconnaissance Meetings

Field reconnaissance meetings are held approximately twice a year. The purpose of the field reconnaissance meetings are to inform and solicit input from the regulatory agency partners. The environmental managers or regulatory staff from federal, state, and local agencies (including the M-NCPPC and the MHT) attended the field reconnaissance meetings. The goals of the field reconnaissance meetings are to update the regulatory agency partners on project components with regard to natural resources, to identify and resolve issues early and quickly, and to partner to develop technical methodologies and analyses.

8.2.3. Coordination Meetings

Meetings were held with the M-NCPPC and the MHT at various times during the project for purposes of confirming research/inventory data, reviewing the alternatives and design options under consideration, and discussing potential impacts and mitigation measures. Additional



discussions are anticipated to occur with the M-NCPPC and the MHT regarding the project's potential impacts to Section 4(f) resources. Issues may include the M-NCPPC's input regarding the relative harm that would be caused by each of the alternatives and design options under consideration, and mitigation measures that could lessen potential impacts.

8.3. Section 4(f)/Section 106 Coordination

As part of the Purple Line project, the MTA and its consultants have carried out formal consultation pursuant to Section 106 of the National Historic Preservation Act (36 CRF 800). This consultation has included representatives at the MHT, as well as the local county and municipal authorities. These agencies have been identified as Section 106 consulting parties and formal consultation and inter-agency coordination will continue throughout the project planning process. At the time of this report, no other parties have formally requested to be considered formal consulting parties.

MTA and its consultants have continued the process to identify potential interested and consulting parties. In addition to the public outreach program, information was provided on the Section 106 and the cultural resources planning process to a wide range of federal, state, and regional agencies, through presentations at the Interagency Working Group review meetings.

Coordination has been ongoing with the MHT regarding eligibility and potential impacts to historic and archaeological resources. Coordination has included requests for information, submittal of cultural resources and parks inventories, and review of the proposed transportation improvements. The MHT has indicated that, due to the large scale of the undertaking and the relatively minor anticipated effects, it has agreed with the MTA that the intensive level of survey can be deferred until a Locally Preferred Alternative is selected. The extensive information collected during the reconnaissance of cultural resources should sufficiently inform the project planning process.

Once a Locally Preferred Alternative is selected, and after considering input from the consulting parties and the public, MTA will prepare a report that applies the Criteria of Adverse Effect to listed or eligible properties, which will be submitted to the MHT and all other consulting parties for review and comment. If adverse effects are identified, MTA will draft a Memorandum of Agreement (MOA) that includes the identification of adversely affected resources and measures to minimize or mitigate project impacts to such resources. If needed, the MOA will also contain a plan for additional archaeological studies.

The MHT and other consulting parties would be provided the opportunity to review the draft MOA and provide comments. Once the MHT has provided comments, a final MOA will be prepared. The MHT, the FTA, MTA and any parties that assume responsibility under the MOA will be signatories to the MOA. The FTA may invite all consulting parties to concur with the MOA. The FTA may also invite additional parties to be signatories. However, pursuant to 36 CFR 800, "the refusal of any party invited to concur in the Memorandum of Agreement does not invalidate the Memorandum of Agreement." The Final Section 4(f) Evaluation would include the identified adversely affected resources and determine if a *de minimis* finding or a full Section 4(f) Evaluation would be required for those resources.

8.4. Correspondence

Written correspondence was used to provide an official record of coordination, to verify data researched to date, and to solicit input from the officials with jurisdiction over Section 4(f) resources. Appendix C includes copies of the written correspondence sent to and received from the agencies regarding Section 106/Section 4(f) issues. Coordination will continue with these agencies throughout the NEPA process.

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Appendix A

Section 4(f) Regulations and Related Guidance

Appendix A: Section 4(f) Regulations and Related Guidance

Copies of the following regulations appear in this section:

- 49 USC 303 – Policy on Lands, Wildlife and Waterfowl Refuges, and Historic Sites
- 16 USC 1247 – Interim Use of Railroad Rights-of-Way
- Pub.L. 109-59 – SAFETEA-LU Section 6009 (amended Section 4(f) to include *de minimis* impacts)
- 23 CFR 774 – Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(f))
- USDOT Section 4(f) Policy Paper (revised June 7, 1989)

UNITED STATES CODE ANNOTATED
TITLE 49. TRANSPORTATION
SUBTITLE I--DEPARTMENT OF TRANSPORTATION
CHAPTER 3--GENERAL DUTIES AND POWERS
SUBCHAPTER I--DUTIES OF THE SECRETARY OF TRANSPORTATION

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Current through P.L. 106-259, approved 8-9-2000

§ 303. Policy on lands, wildlife and waterfowl refuges, and historic sites

(a) It 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.

(b) The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States, in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities or facilities.

(c) The Secretary may approve a transportation program or project (other than any project for a park road or parkway under section 204 of title 23) 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--

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

(2) 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.

CREDIT(S)

1996 Main Volume

(Added Pub.L. 97-449, Jan. 12, 1983, 96 Stat. 2419, and amended Pub.L. 100-17, Title I, § 133(d), Apr. 2, 1987, 101 Stat. 173.)

< General Materials (GM) - References, Annotations, or Tables >

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1983 Acts.

Revised Section	Source (U.S.Code)	Source (Statutes at Large)
303(a)	49:1651(b)(2).	Oct. 15, 1966,

further directed, in administering the urban open-space program under title VII of the Housing Act of 1961, [42 U.S.C.A. § 1500 et seq.] to encourage such recreation trails.

(c) Secretary of Agriculture to encourage States, local agencies, and private interests

The Secretary of Agriculture is directed, in accordance with authority vested in him, to encourage States and local agencies and private interests to establish such trails.

(d) Interim use of railroad rights-of-way

The Secretary of Transportation, the Chairman of the Interstate Commerce Commission, and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976 [45 U.S.C.A. § 801 et seq.], shall encourage State and local agencies and private interests to establish appropriate trails using the provisions of such programs. Consistent with the purposes of that Act, and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this chapter, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes. If a State, political subdivision, or qualified private organization is prepared to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use, and for the payment of any and all taxes that may be levied or assessed against such rights-of-way, then the Commission shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use in a manner consistent with this chapter, and shall not permit abandonment or discontinuance inconsistent or disruptive of such use.

(e) Designation and marking of trails; approval of Secretary of Interior

Such trails may be designated and suitably marked as parts of the nationwide system of trails by the States, their political subdivisions, or other appropriate administering agencies with the approval of the Secretary of the Interior.

(Pub.L. 90-543, § 8, Oct. 2, 1968, 82 Stat. 925; Pub.L. 95-625, Title V, § 551(22), Nov. 10, 1978, 92 Stat. 3516; Pub.L. 98-11, Title II, § 208, Mar. 28, 1983, 97 Stat. 48.)

Historical Note

References in Text. The Land and Water Conservation Fund Act, referred to in subsec. (a), is Pub.L. 88-578, Sept. 3, 1964, 78 Stat. 897, as amended, which is classified generally to section 4601-4 et seq. of this title. For classification in the Code, see Short Title note set out under section 4601-4 of this title and Tables volume.

Act of October 15, 1966, referred to in subsec. (a), is Pub.L. 89-665, as amended, popularly known as the "National Historic Preservation Act" which is classified generally to subchapter II (section 470 et seq.) of chapter 1A of this title. For complete classi-

“(B) INDIVIDUAL ELEMENTS.—Subject to subparagraph (C), the Secretary shall determine, through the administrative process established for exempting the Interstate System from section 106 of the National Historic Preservation Act (16 U.S.C. 470f), those individual elements of the Interstate System that possess national or exceptional historic significance (such as a historic bridge or a highly significant engineering feature). Such elements shall be considered to be a historic site under section 303 of title 49 or section 138 of this title, as applicable.

“(C) CONSTRUCTION, MAINTENANCE, RESTORATION, AND REHABILITATION ACTIVITIES.—Subparagraph (B) does not prohibit a State from carrying out construction, maintenance, restoration, or rehabilitation activities for a portion of the Interstate System referred to in subparagraph (B) upon compliance with section 303 of title 49 or section 138 of this title, as applicable, and section 106 of the National Historic Preservation Act (16 U.S.C. 470f).”.

SEC. 6008. INTEGRATION OF NATURAL RESOURCE CONCERNS INTO TRANSPORTATION PROJECT PLANNING.

Section 109(c)(2) of title 23, United States Code, is amended—

(1) by striking “consider the results” and inserting “consider—

“(A) the results”;

(2) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(B) the publication entitled ‘Flexibility in Highway Design’ of the Federal Highway Administration;

“(C) ‘Eight Characteristics of Process to Yield Excellence and the Seven Qualities of Excellence in Transportation Design’ developed by the conference held during 1998 entitled ‘Thinking Beyond the Pavement National Workshop on Integrating Highway Development with Communities and the Environment while Maintaining Safety and Performance’; and

“(D) any other material that the Secretary determines to be appropriate.”.

SEC. 6009. PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES.

(a) PROGRAMS AND PROJECTS WITH DE MINIMIS IMPACTS.—

(1) TITLE 23.—Section 138 of title 23, United States Code, is amended—

(A) in the first sentence, by striking “it is hereby” and inserting the following: “(a) DECLARATION OF POLICY.—It is”; and

(B) by adding at the end the following:

“(b) DE MINIMIS IMPACTS.—

“(1) REQUIREMENTS.—

“(A) REQUIREMENTS FOR HISTORIC SITES.—The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

“(B) REQUIREMENTS FOR PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—The requirements of subsection (a)(1) shall be considered to be satisfied with respect to an area described in paragraph (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area. The requirements of subsection (a)(2) with respect to an area described in paragraph (3) shall not include an alternatives analysis.

“(C) CRITERIA.—In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

“(2) HISTORIC SITES.—With respect to historic sites, the Secretary may make a finding of de minimis impact only if—

“(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), that—

“(i) the transportation program or project will have no adverse effect on the historic site; or

“(ii) there will be no historic properties affected by the transportation program or project;

“(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation if the Council is participating in the consultation process); and

“(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

“(3) PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—With respect to parks, recreation areas, or wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if—

“(A) the Secretary has determined, after public notice and opportunity for public review and comment, that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this section; and

“(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.”

(2) TITLE 49.—Section 303 of title 49, United States Code, is amended—

(A) by striking “(c) The Secretary” and inserting the following:

“(c) APPROVAL OF PROGRAMS AND PROJECTS.—Subject to subsection (d), the Secretary”; and

(B) by adding at the end the following:

“(d) DE MINIMIS IMPACTS.—

“(1) REQUIREMENTS.—

“(A) REQUIREMENTS FOR HISTORIC SITES.—The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) if the

Notice.

Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

“(B) REQUIREMENTS FOR PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—The requirements of subsection (c)(1) shall be considered to be satisfied with respect to an area described in paragraph (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area. The requirements of subsection (c)(2) with respect to an area described in paragraph (3) shall not include an alternatives analysis.

“(C) CRITERIA.—In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

“(2) HISTORIC SITES.—With respect to historic sites, the Secretary may make a finding of de minimis impact only if—

“(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), that—

“(i) the transportation program or project will have no adverse effect on the historic site; or

“(ii) there will be no historic properties affected by the transportation program or project;

“(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation if the Council is participating in the consultation process); and

“(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

“(3) PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—With respect to parks, recreation areas, or wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if—

“(A) the Secretary has determined, after public notice and opportunity for public review and comment, that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this section; and

“(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.”.

Notice.

23 USC 138 note.
Deadline.
Regulations.

(b) CLARIFICATION OF EXISTING STANDARDS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall (in consultation with affected agencies and interested parties) promulgate regulations that clarify the factors to be considered and the standards to be applied in determining the prudence and feasibility of alternatives under section 138 of title 23 and section 303 of title 49, United States Code.

(2) REQUIREMENTS.—The regulations—

(A) shall clarify the application of the legal standards to a variety of different types of transportation programs and projects depending on the circumstances of each case; and

(B) may include, as appropriate, examples to facilitate clear and consistent interpretation by agency decision-makers.

(c) IMPLEMENTATION STUDY.—

(1) IN GENERAL.—The Secretary shall—

(A) conduct a study on the implementation of this section and the amendments made by this section; and

(B) commission an independent review of the study plan and methodology, and any associated conclusions, by the Transportation Research Board of the National Academy of Sciences.

(2) COMPONENTS.—In conducting the study, the Secretary shall evaluate—

(A) the processes developed under this section and the amendments made by this section and the efficiencies that may result;

(B) the post-construction effectiveness of impact mitigation and avoidance commitments adopted as part of projects conducted under this section and the amendments made by this section; and

(C) the quantity of projects with impacts that are considered de minimis under this section and the amendments made by this section, including information on the location, size, and cost of the projects.

(3) REPORT REQUIREMENT.—The Secretary shall prepare—

(A) not earlier than the date that is 3 years after the date of enactment of this Act, a report on the results of the study conducted under this subsection; and

(B) not later than March 1, 2010, an update on the report required under subparagraph (A).

(4) REPORT RECIPIENTS.—The Secretary shall—

(A) submit the report, review of the report, and update required under paragraph (3) to—

(i) the appropriate committees of Congress;

(ii) the Secretary of the Interior; and

(iii) the Advisory Council on Historic Preservation;

and

(B) make the report and update available to the public.

SEC. 6010. ENVIRONMENTAL REVIEW OF ACTIVITIES THAT SUPPORT DEPLOYMENT OF INTELLIGENT TRANSPORTATION SYSTEMS.

23 USC 512 note.

(a) CATEGORICAL EXCLUSIONS.—Not later than one year after the date of enactment of this Act, the Secretary shall initiate a rulemaking process to establish, to the extent appropriate, categorical exclusions for activities that support the deployment of intelligent transportation infrastructure and systems from the requirement that an environmental assessment or an environmental impact statement be prepared under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) in compliance with the standards for categorical exclusions established by that Act.

Regulations.
Deadline.

(b) NATIONWIDE PROGRAMMATIC AGREEMENT.—

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Electronic Code of Federal Regulations

e-CFR
TM

e-CFR Data is current as of July 9, 2008

Amendment from March 12, 2008

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23 CFR--PART 774

View Printed Federal Register page 73 FR 13395 in PDF format.

Amendment(s) published March 12, 2008, in 73 FR 13395

Effective Date(s): April 11, 2008

4. Add part 774 to read as follows:

PART 774—PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES (SECTION 4(F))

Sec. 774.1 Purpose. 774.3 Section 4(f) approvals. 774.5 Coordination. 774.7 Documentation. 774.9 Timing. 774.11 Applicability. 774.13 Exceptions. 774.15 Constructive use determinations. 774.17 Definitions.

Authority: 23 U.S.C. 103(c), 109(h), 138, 325, 326, 327 and 204(h)(2); 49 U.S.C. 303; Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, Aug. 10, 2005, 119 Stat. 1144); 49 CFR 1.48 and 1.51.

§ 774.1 Purpose.

The purpose of this part is to implement 23 U.S.C. 138 and 49 U.S.C. 303, which were originally enacted as Section 4(f) of the Department of Transportation Act of 1966 and are still commonly referred to as "Section 4(f)."

§ 774.3 Section 4(f) approvals.

The Administration may not approve the use, as defined in § 774.17, of Section 4(f) property unless a determination is made under paragraph (a) or (b) of this section.

(a) The Administration determines that:

(1) There is no feasible and prudent avoidance alternative, as defined in § 774.17, to the use of land from the property; and

(2) The action includes all possible planning, as defined in § 774.17, to minimize harm to the property resulting from such use; or

(b) The Administration determines that the use of the property, including any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures) committed to by the applicant, will have a *de minimis* impact, as defined in §774.17, on the property.

(c) If the analysis in paragraph (a)(1) of this section concludes that there is no feasible and prudent avoidance alternative, then the Administration may approve only the alternative that:

(1) Causes the least overall harm in light of the statute's preservation purpose. The least overall harm is determined by balancing the following factors:

(i) The ability to mitigate adverse impacts to each Section 4(f) property (including any measures that result in benefits to the property);

(ii) The relative severity of the remaining harm, after mitigation, to the protected activities, attributes, or features that qualify each Section 4(f) property for protection;

(iii) The relative significance of each Section 4(f) property;

(iv) The views of the official(s) with jurisdiction over each Section 4(f) property;

(v) The degree to which each alternative meets the purpose and need for the project;

(vi) After reasonable mitigation, the magnitude of any adverse impacts to resources not protected by Section 4(f); and

(vii) Substantial differences in costs among the alternatives.

(2) The alternative selected must include all possible planning, as defined in §774.17, to minimize harm to Section 4(f) property.

(d) Programmatic Section 4(f) evaluations are a time-saving procedural alternative to preparing individual Section 4(f) evaluations under paragraph (a) of this section for certain minor uses of Section 4(f) property. Programmatic Section 4(f) evaluations are developed by the Administration based on experience with a specific set of conditions that includes project type, degree of use and impact, and evaluation of avoidance alternatives.¹ An approved programmatic Section 4(f) evaluation may be relied upon to cover a particular project only if the specific conditions in the programmatic evaluation are met

¹ FHWA has issued five programmatic Section 4(f) evaluations: (1) Final Nationwide Programmatic Section 4(f) Evaluation and Determination for Federal-Aid Transportation Projects That Have a Net Benefit to a Section 4(f) Property; (2) Nationwide Section 4(f) Evaluations and Approvals for Federally-Aided Highway Projects With Minor Involvement With Public Parks, Recreation Lands, Wildlife and Waterfowl Refuges, and Historic Sites; (3) Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects With Minor Involvements With Historic Sites; (4) Historic Bridges; Programmatic Section 4(f) Evaluation and Approval; and (5) Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects.

(1) The determination whether a programmatic Section 4(f) evaluation applies to the use of a specific Section 4(f) property shall be documented as specified in the applicable programmatic Section 4(f) evaluation.

(2) The Administration may develop additional programmatic Section 4(f) evaluations. Proposed new or revised programmatic Section 4(f) evaluations will be coordinated with the Department of Interior, Department of Agriculture, and Department of Housing and Urban Development, and published in the Federal Register for comment prior to being finalized. New or revised programmatic Section 4(f) evaluations shall be reviewed for legal sufficiency and approved by the Headquarters Office of the Administration.

(e) The coordination requirements in §774.5 must be completed before the Administration may make

Section 4(f) approvals under this section. Requirements for the documentation and timing of Section 4(f) approvals are located in §§774.7 and 774.9, respectively.

§ 774.5 Coordination.

(a) Prior to making Section 4(f) approvals under §774.3(a), the Section 4(f) evaluation shall be provided for coordination and comment to the official(s) with jurisdiction over the Section 4(f) resource and to the Department of the Interior, and as appropriate to the Department of Agriculture and the Department of Housing and Urban Development. The Administration shall provide a minimum of 45 days for receipt of comments. If comments are not received within 15 days after the comment deadline, the Administration may assume a lack of objection and proceed with the action.

(b) Prior to making *de minimis* impact determinations under §774.3(b), the following coordination shall be undertaken:

(1) For historic properties:

(i) The consulting parties identified in accordance with 36 CFR part 800 must be consulted; and

(ii) The Administration must receive written concurrence from the pertinent State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), and from the Advisory Council on Historic Preservation (ACHP) if participating in the consultation process, in a finding of "no adverse effect" or "no historic properties affected" in accordance with 36 CFR part 800. The Administration shall inform these officials of its intent to make a *de minimis* impact determination based on their concurrence in the finding of "no adverse effect" or "no historic properties affected."

(iii) Public notice and comment, beyond that required by 36 CFR part 800, is not required.

(2) For parks, recreation areas, and wildlife and waterfowl refuges:

(i) Public notice and an opportunity for public review and comment concerning the effects on the protected activities, features, or attributes of the property must be provided. This requirement can be satisfied in conjunction with other public involvement procedures, such as a comment period provided on a NEPA document.

(ii) The Administration shall inform the official(s) with jurisdiction of its intent to make a *de minimis* impact finding. Following an opportunity for public review and comment as described in paragraph (b)(2)(i) of this section, the official(s) with jurisdiction over the Section 4(f) resource must concur in writing that the project will not adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection. This concurrence may be combined with other comments on the project provided by the official(s).

(c) The application of a programmatic Section 4(f) evaluation to the use of a specific Section 4(f) property under §774.3(d)(1) shall be coordinated as specified in the applicable programmatic Section 4(f) evaluation.

(d) When Federal encumbrances on Section 4(f) property are identified, coordination with the appropriate Federal agency is required to ascertain the agency's position on the proposed impact, as well as to determine if any other Federal requirements may apply to converting the Section 4(f) land to a different function. Any such requirements must be satisfied, independent of the Section 4(f) approval.

§ 774.7 Documentation.

(a) A Section 4(f) evaluation prepared under §774.3(a) shall include sufficient supporting documentation to demonstrate why there is no feasible and prudent avoidance alternative and shall summarize the results of all possible planning to minimize harm to the Section 4(f) property.

(b) A *de minimis* impact determination under §774.3(b) shall include sufficient supporting documentation to demonstrate that the impacts, after avoidance, minimization, mitigation, or enhancement measures are taken into account, are *de minimis* as defined in §774.17; and that the coordination required in

§774.5(b) has been completed.

(c) If there is no feasible and prudent avoidance alternative the Administration may approve only the alternative that causes the least overall harm in accordance with §774.3(c). This analysis must be documented in the Section 4(f) evaluation.

(d) The Administration shall review all Section 4(f) approvals under §§774.3(a) and 774.3(c) for legal sufficiency.

(e) A Section 4(f) approval may involve different levels of detail where the Section 4(f) involvement is addressed in a tiered EIS under §771.111(g) of this chapter.

(1) When the first-tier, broad-scale EIS is prepared, the detailed information necessary to complete the Section 4(f) approval may not be available at that stage in the development of the action. In such cases, the documentation should address the potential impacts that a proposed action will have on Section 4(f) property and whether those impacts could have a bearing on the decision to be made. A preliminary Section 4(f) approval may be made at this time as to whether the impacts resulting from the use of a Section 4(f) property are *de minimis* or whether there are feasible and prudent avoidance alternatives. This preliminary approval shall include all possible planning to minimize harm to the extent that the level of detail available at the first-tier EIS stage allows. It is recognized that such planning at this stage may be limited to ensuring that opportunities to minimize harm at subsequent stages in the development process have not been precluded by decisions made at the first-tier stage. This preliminary Section 4(f) approval is then incorporated into the first-tier EIS.

(2) The Section 4(f) approval will be finalized in the second-tier study. If no new Section 4(f) use, other than a *de minimis* impact, is identified in the second-tier study and if all possible planning to minimize harm has occurred, then the second-tier Section 4(f) approval may finalize the preliminary approval by reference to the first-tier documentation. Re-evaluation of the preliminary Section 4(f) approval is only needed to the extent that new or more detailed information available at the second-tier stage raises new Section 4(f) concerns not already considered.

(3) The final Section 4(f) approval may be made in the second-tier CE, EA, final EIS, ROD or FONSI.

(f) In accordance with §§771.105(a) and 771.133 of this chapter, the documentation supporting a Section 4(f) approval should be included in the EIS, EA, or for a project classified as a CE, in a separate document. If the Section 4(f) documentation cannot be included in the NEPA document, then it shall be presented in a separate document. The Section 4(f) documentation shall be developed by the applicant in cooperation with the Administration.

§ 774.9 Timing.

(a) The potential use of land from a Section 4(f) property shall be evaluated as early as practicable in the development of the action when alternatives to the proposed action are under study.

(b) Except as provided in paragraph (c) of this section, for actions processed with EISs the Administration will make the Section 4(f) approval either in the final EIS or in the ROD. Where the Section 4(f) approval is documented in the final EIS, the Administration will summarize the basis for its Section 4(f) approval in the ROD. Actions requiring the use of Section 4(f) property, and proposed to be processed with a FONSI or classified as a CE, shall not proceed until notification by the Administration of Section 4(f) approval.

(c) After the CE, FONSI, or ROD has been processed, a separate Section 4(f) approval will be required, except as provided in §774.13, if:

(1) A proposed modification of the alignment or design would require the use of Section 4(f) property; or

(2) The Administration determines that Section 4(f) applies to the use of a property; or

(3) A proposed modification of the alignment, design, or measures to minimize harm (after the original Section 4(f) approval) would result in a substantial increase in the amount of Section 4(f) property used,

a substantial increase in the adverse impacts to Section 4(f) property, or a substantial reduction in the measures to minimize harm.

(d) A separate Section 4(f) approval required under paragraph (c) of this section will not necessarily require the preparation of a new or supplemental NEPA document. If a new or supplemental NEPA document is also required under §771.130 of this chapter, then it should include the documentation supporting the separate Section 4(f) approval. Where a separate Section 4(f) approval is required, any activity not directly affected by the separate Section 4(f) approval can proceed during the analysis, consistent with §771.130(f) of this chapter.

(e) Section 4(f) may apply to archeological sites discovered during construction, as set forth in §774.11(f). In such cases, the Section 4(f) process will be expedited and any required evaluation of feasible and prudent avoidance alternatives will take account of the level of investment already made. The review process, including the consultation with other agencies, will be shortened as appropriate.

§ 774.11 Applicability.

(a) The Administration will determine the applicability of Section 4(f) in accordance with this part.

(b) When another Federal agency is the Federal lead agency for the NEPA process, the Administration shall make any required Section 4(f) approvals unless the Federal lead agency is another U.S. DOT agency.

(c) Consideration under Section 4(f) is not required when the official(s) with jurisdiction over a park, recreation area, or wildlife and waterfowl refuge determine that the property, considered in its entirety, is not significant. In the absence of such a determination, the Section 4(f) property will be presumed to be significant. The Administration will review a determination that a park, recreation area, or wildlife and waterfowl refuge is not significant to assure its reasonableness.

(d) Where Federal lands or other public land holdings (e.g., State forests) are administered under statutes permitting management for multiple uses, and, in fact, are managed for multiple uses, Section 4(f) applies only to those portions of such lands which function for, or are designated in the plans of the administering agency as being for, significant park, recreation, or wildlife and waterfowl refuge purposes. The determination of which lands so function or are so designated, and the significance of those lands, shall be made by the official(s) with jurisdiction over the Section 4(f) resource. The Administration will review this determination to assure its reasonableness.

(e) In determining the applicability of Section 4(f) to historic sites, the Administration, in cooperation with the applicant, will consult with the official(s) with jurisdiction to identify all properties on or eligible for the National Register of Historic Places (National Register). The Section 4(f) requirements apply to historic sites on or eligible for the National Register unless the Administration determines that an exception under §774.13 applies.

(1) The Section 4(f) requirements apply only to historic sites on or eligible for the National Register unless the Administration determines that the application of Section 4(f) is otherwise appropriate.

(2) The Interstate System is not considered to be a historic site subject to Section 4(f), with the exception of those individual elements of the Interstate System formally identified by FHWA for Section 4(f) protection on the basis of national or exceptional historic significance.

(f) Section 4(f) applies to all archeological sites on or eligible for inclusion on the National Register, including those discovered during construction, except as set forth in §774.13(b).

(g) Section 4(f) applies to those portions of federally designated Wild and Scenic Rivers that are otherwise eligible as historic sites, or that are publicly owned and function as, or are designated in a management plan as, a significant park, recreation area, or wildlife and waterfowl refuge. All other applicable requirements of the Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287, must be satisfied, independent of the Section 4(f) approval.

(h) When a property formally reserved for a future transportation facility temporarily functions for park, recreation, or wildlife and waterfowl refuge purposes in the interim, the interim activity, regardless of

duration, will not subject the property to Section 4(f).

(i) When a property is formally reserved for a future transportation facility before or at the same time a park, recreation area, or wildlife and waterfowl refuge is established and concurrent or joint planning or development of the transportation facility and the Section 4(f) resource occurs, then any resulting impacts of the transportation facility will not be considered a use as defined in §774.17. Examples of such concurrent or joint planning or development include, but are not limited to:

(1) Designation or donation of property for the specific purpose of such concurrent development by the entity with jurisdiction or ownership of the property for both the potential transportation facility and the Section 4(f) property; or

(2) Designation, donation, planning, or development of property by two or more governmental agencies with jurisdiction for the potential transportation facility and the Section 4(f) property, in consultation with each other.

§ 774.13 Exceptions.

The Administration has identified various exceptions to the requirement for Section 4(f) approval. These exceptions include, but are not limited to:

(a) Restoration, rehabilitation, or maintenance of transportation facilities that are on or eligible for the National Register when:

(1) The Administration concludes, as a result of the consultation under 36 CFR 800.5, that such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, and

(2) The official(s) with jurisdiction over the Section 4(f) resource have not objected to the Administration conclusion in paragraph (a)(1) of this section.

(b) Archeological sites that are on or eligible for the National Register when:

(1) The Administration concludes that the archeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This exception applies both to situations where data recovery is undertaken and where the Administration decides, with agreement of the official(s) with jurisdiction, not to recover the resource; and

(2) The official(s) with jurisdiction over the Section 4(f) resource have been consulted and have not objected to the Administration finding in paragraph (b)(1) of this section.

(c) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites that are made, or determinations of significance that are changed, late in the development of a proposed action. With the exception of the treatment of archeological resources in §774.9(e), the Administration may permit a project to proceed without consideration under Section 4(f) if the property interest in the Section 4(f) land was acquired for transportation purposes prior to the designation or change in the determination of significance and if an adequate effort was made to identify properties protected by Section 4(f) prior to acquisition. However, if it is reasonably foreseeable that a property would qualify as eligible for the National Register prior to the start of construction, then the property should be treated as a historic site for the purposes of this section.

(d) Temporary occupancies of land that are so minimal as to not constitute a use within the meaning of Section 4(f). The following conditions must be satisfied:

(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 which 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.

(e) Park road or parkway projects under 23 U.S.C. 204.

(f) Certain trails, paths, bikeways, and sidewalks, in the following circumstances:

(1) Trail-related projects funded under the Recreational Trails Program, 23 U.S.C. 206(h)(2);

(2) National Historic Trails and the Continental Divide National Scenic Trail, designated under the National Trails System Act, 16 U.S.C. 1241–1251, with the exception of those trail segments that are historic sites as defined in §774.17;

(3) Trails, paths, 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; and

(4) Trails, paths, bikeways, and sidewalks that are part of the local transportation system and which function primarily for transportation.

(g) Transportation enhancement projects and mitigation activities, where:

(1) The use of the Section 4(f) property is solely for the purpose of preserving or enhancing an activity, feature, or attribute that qualifies the property for Section 4(f) protection; and

(2) The official(s) with jurisdiction over the Section 4(f) resource agrees in writing to paragraph (g)(1) of this section.

§ 774.15 Constructive use determinations.

(a) A constructive use occurs when the transportation project does not incorporate 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 under Section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features, or attributes of the property are substantially diminished.

(b) If the project results in a constructive use of a nearby Section 4(f) property, the Administration shall evaluate that use in accordance with §774.3(a).

(c) The Administration shall determine when there is a constructive use, but the Administration is not required to document each determination that a project would not result in a constructive use of a nearby Section 4(f) property. However, such documentation may be prepared at the discretion of the Administration.

(d) When a constructive use determination is made, it will be based upon the following:

(1) Identification of the current activities, features, or attributes of the property which qualify for protection under Section 4(f) and which may be sensitive to proximity impacts;

(2) An analysis of the proximity impacts of the proposed project on the Section 4(f) property. If any of the proximity impacts will be mitigated, only the net impact need be considered in this analysis. The analysis should also describe and consider the impacts which could reasonably be expected if the proposed project were not implemented, since such impacts should not be attributed to the proposed project; and

(3) Consultation, on the foregoing identification and analysis, with the official(s) with jurisdiction over the Section 4(f) property.

(e) The Administration has reviewed the following situations and determined that a constructive use occurs when:

(1) The projected noise level increase attributable to the project substantially interferes with the use and enjoyment of a noise-sensitive facility of a property protected by Section 4(f), such as:

(i) Hearing the performances at an outdoor amphitheater;

(ii) Sleeping in the sleeping area of a campground;

(iii) Enjoyment of a historic site where a quiet setting is a generally recognized feature or attribute of the site's significance;

(iv) Enjoyment of an urban park where serenity and quiet are significant attributes; or

(v) Viewing wildlife in an area of a wildlife and waterfowl refuge intended for such viewing.

(2) The proximity of the proposed project substantially impairs esthetic features or attributes of a property protected by Section 4(f), where such features or attributes are considered important contributing elements to the value of the property. Examples of substantial impairment to visual or esthetic qualities would be the location of a proposed transportation facility in such proximity that it obstructs or eliminates the primary views of an architecturally significant historical building, or substantially detracts from the setting of a Section 4(f) property which derives its value in substantial part due to its setting;

(3) The project results in a restriction of access which substantially diminishes the utility of a significant publicly owned park, recreation area, or a historic site;

(4) The vibration impact from construction or operation of the project substantially impairs the use of a Section 4(f) property, such as projected vibration levels that are great enough to physically damage a historic building or substantially diminish the utility of the building, unless the damage is repaired and fully restored consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, i.e., the integrity of the contributing features must be returned to a condition which is substantially similar to that which existed prior to the project; or

(5) The ecological intrusion of the project substantially diminishes the value of wildlife habitat in a wildlife and waterfowl refuge adjacent to the project, substantially interferes with the access to a wildlife and waterfowl refuge when such access is necessary for established wildlife migration or critical life cycle processes, or substantially reduces the wildlife use of a wildlife and waterfowl refuge.

(f) The Administration has reviewed the following situations and determined that a constructive use does not occur when:

(1) Compliance with the requirements of 36 CFR 800.5 for proximity impacts of the proposed action, on a site listed on or eligible for the National Register, results in an agreement of "no historic properties affected" or "no adverse effect;"

(2) The impact of projected traffic noise levels of the proposed highway project on a noise-sensitive activity do not exceed the FHWA noise abatement criteria as contained in Table 1 in part 772 of this chapter, or the projected operational noise levels of the proposed transit project do not exceed the noise impact criteria for a Section 4(f) activity in the FTA guidelines for transit noise and vibration impact assessment;

(3) The projected noise levels exceed the relevant threshold in paragraph (f)(2) of this section because of high existing noise, but the increase in the projected noise levels if the proposed project is constructed, when compared with the projected noise levels if the project is not built, is barely perceptible (3 dBA or less);

(4) There are proximity impacts to a Section 4(f) property, but a governmental agency's right-of-way acquisition or adoption of project location, or the Administration's approval of a final environmental document, established the location for the proposed transportation project before the designation, establishment, or change in the significance of the property. However, if it is reasonably foreseeable that a property would qualify as eligible for the National Register prior to the start of construction, then the property should be treated as a historic site for the purposes of this section; or

(5) Overall (combined) proximity impacts caused by a proposed project do not substantially impair the activities, features, or attributes that qualify a property for protection under Section 4(f);

(6) Proximity impacts will be mitigated to a condition equivalent to, or better than, that which would occur if the project were not built, as determined after consultation with the official(s) with jurisdiction;

(7) Change in accessibility will not substantially diminish the utilization of the Section 4(f) property; or

(8) Vibration levels from project construction activities are mitigated, through advance planning and monitoring of the activities, to levels that do not cause a substantial impairment of protected activities, features, or attributes of the Section 4(f) property.

§ 774.17 Definitions.

The definitions contained in 23 U.S.C. 101(a) are applicable to this part. In addition, the following definitions apply:

Administration. The FHWA or FTA, whichever is making the approval for the transportation program or project at issue. A reference herein to the Administration means the State when the State is functioning as the FHWA or FTA in carrying out responsibilities delegated or assigned to the State in accordance with 23 U.S.C. 325, 326, 327, or other applicable law.

All possible planning. All possible planning means that all reasonable measures identified in the Section 4(f) evaluation to minimize harm or mitigate for adverse impacts and effects must be included in the project.

(1) With regard to public parks, recreation areas, and wildlife and waterfowl refuges, the measures may include (but are not limited to): design modifications or design goals; replacement of land or facilities of comparable value and function; or monetary compensation to enhance the remaining property or to mitigate the adverse impacts of the project in other ways.

(2) With regard to historic sites, the measures normally serve to preserve the historic activities, features, or attributes of the site as agreed by the Administration and the official(s) with jurisdiction over the Section 4(f) resource in accordance with the consultation process under 36 CFR part 800.

(3) In evaluating the reasonableness of measures to minimize harm under §774.3(a)(2), the Administration will consider the preservation purpose of the statute and:

(i) The views of the official(s) with jurisdiction over the Section 4(f) property;

(ii) Whether the cost of the measures is a reasonable public expenditure in light of the adverse impacts of the project on the Section 4(f) property and the benefits of the measure to the property, in accordance with §771.105(d) of this chapter; and

(iii) Any impacts or benefits of the measures to communities or environmental resources outside of the Section 4(f) property.

(4) All possible planning does not require analysis of feasible and prudent avoidance alternatives, since such analysis will have already occurred in the context of searching for feasible and prudent alternatives that avoid Section 4(f) properties altogether under §774.3(a)(1), or is not necessary in the case of a *de minimis* impact determination under §774.3(b).

(5) A *de minimis* impact determination under §774.3(b) subsumes the requirement for all possible

planning to minimize harm by reducing the impacts on the Section 4(f) property to a *de minimis* level.

Applicant. The Federal, State, or local government authority, proposing a transportation project, that the Administration works with to conduct environmental studies and prepare environmental documents. For transportation actions implemented by the Federal government on Federal lands, the Administration or the Federal land management agency may take on the responsibilities of the applicant described herein.

CE. Refers to a Categorical Exclusion, which denotes an action with no individual or cumulative significant environmental effect pursuant to 40 CFR 1508.4 and §771.117 of this chapter; unusual circumstances are taken into account in making categorical exclusion determinations.

De minimis impact. (1) For historic sites, *de minimis* impact means that the Administration has determined, in accordance with 36 CFR part 800 that no historic property is affected by the project or that the project will have "no adverse effect" on the historic property in question.

(2) For parks, recreation areas, and wildlife and waterfowl refuges, a *de minimis* impact is one that will not adversely affect the features, attributes, or activities qualifying the property for protection under Section 4(f).

EA. Refers to an Environmental Assessment, which is a document prepared pursuant to 40 CFR parts 1500–1508 and §771.119 of this title for a proposed project that is not categorically excluded but for which an EIS is not clearly required.

EIS. Refers to an Environmental Impact Statement, which is a document prepared pursuant to NEPA, 40 CFR parts 1500–1508, and §§771.123 and 771.125 of this chapter for a proposed project that is likely to cause significant impacts on the environment.

Feasible and prudent avoidance alternative. (1) A feasible and prudent avoidance alternative avoids using Section 4(f) property and does not cause other severe problems of a magnitude that substantially outweighs the importance of protecting the Section 4(f) property. In assessing the importance of protecting the Section 4(f) property, it is appropriate to consider the relative value of the resource to the preservation purpose of the statute.

(2) An alternative is not feasible if it cannot be built as a matter of sound engineering judgment.

(3) An alternative is not prudent if:

(i) It compromises the project to a degree that it is unreasonable to proceed with the project in light of its stated purpose and need;

(ii) It results in unacceptable safety or operational problems;

(iii) After reasonable mitigation, it still causes:

(A) Severe social, economic, or environmental impacts;

(B) Severe disruption to established communities;

(C) Severe disproportionate impacts to minority or low income populations; or

(D) Severe impacts to environmental resources protected under other Federal statutes;

(iv) It results in additional construction, maintenance, or operational costs of an extraordinary magnitude;

(v) It causes other unique problems or unusual factors; or

(vi) It involves multiple factors in paragraphs (3)(i) through (3)(v) of this definition, that while individually minor, cumulatively cause unique problems or impacts of extraordinary magnitude.

FONSI. Refers to a Finding of No Significant Impact prepared pursuant to 40 CFR 1508.13 and §771.121 of this chapter.

Historic site. For purposes of this part, the term "historic site" includes any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization that are included in, or are eligible for inclusion in, the National Register.

Official(s) with jurisdiction. (1) In the case of historic properties, the official with jurisdiction is the SHPO for the State wherein the property is located or, if the property is located on tribal land, the THPO. If the property is located on tribal land but the Indian tribe has not assumed the responsibilities of the SHPO as provided for in the National Historic Preservation Act, then a representative designated by such Indian tribe shall be recognized as an official with jurisdiction in addition to the SHPO. When the ACHP is involved in a consultation concerning a property under Section 106 of the NHPA, the ACHP is also an official with jurisdiction over that resource for purposes of this part. When the Section 4(f) property is a National Historic Landmark, the National Park Service is also an official with jurisdiction over that resource for purposes of this part.

(2) In the case of public parks, recreation areas, and wildlife and waterfowl refuges, the official(s) with jurisdiction are the official(s) of the agency or agencies that own or administer the property in question and who are empowered to represent the agency on matters related to the property.

(3) In the case of portions of Wild and Scenic Rivers to which Section 4(f) applies, the official(s) with jurisdiction are the official(s) of the Federal agency or agencies that own or administer the affected portion of the river corridor in question. For State administered, federally designated rivers (section 2(a)(ii) of the Wild and Scenic Rivers Act, 16 U.S.C. 1273(a)(ii)), the officials with jurisdiction include both the State agency designated by the respective Governor and the Secretary of the Interior.

ROD. Refers to a Record of Decision prepared pursuant to 40 CFR 1505.2 and §771.127 of this chapter.

Section 4(f) evaluation. Refers to the documentation prepared to support the granting of a Section 4(f) approval under §774.3(a), unless preceded by the word "programmatic." A "programmatic Section 4(f) evaluation" is the documentation prepared pursuant to §774.3(d) that authorizes subsequent project-level Section 4(f) approvals as described therein.

Section 4(f) Property. Section 4(f) property means 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.

Use. Except as set forth in §§774.11 and 774.13, a "use" of Section 4(f) property occurs:

- (1) When land is permanently incorporated into a transportation facility;
- (2) When there is a temporary occupancy of land that is adverse in terms of the statute's preservation purpose as determined by the criteria in §774.13(d); or
- (3) When there is a constructive use of a Section 4(f) property as determined by the criteria in §774.15.

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SECTION 4(f)

POLICY PAPER

September 24, 1987

(Revised) June 7, 1989

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Section 4(f) Background

History

Section 4(f) has been part of Federal law in some form since 1966. It was enacted as Section 4(f) of the Department of Transportation (DOT) Act of 1966 (hence the reference to "Section 4(f)"). Section 4(f) was originally set forth in Title 49, United States Code (U.S.C.), Section 1653(f), and applies only to agencies within the DOT. Also, in 1966, a similar provision was added to Title 23 U.S.C. Section 138. Between 1966 and 1968, the wording in the two provisions was somewhat different. This led to some confusion since Section 4(f) applied to all programs of DOT, whereas Section 138 applied only to the Federal-Aid Highway Program. Consequently, the Federal-Aid Highway Act of 1968, amended the wording in both sections to be substantially consistent. Except for the last sentence of the second paragraph (which appears only in Section 138) the two sections read:

"It is hereby declared to be the national policy 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. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interiors Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed.

After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, States, 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, recreation areas, wildlife and waterfowl refuge, or historic sites resulting from such use. In carrying out the national policy declared in this Section, the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, is authorized to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas."

In January 1983, as part of an overall recodification of the DOT Act, Section 4(f) was amended and codified in 49 U.S.C. Section 303. The wording in Section 303 reads as follows:

- (a) It is the policy of the United States Government that special effort be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.

- (b) The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Developments, and Agriculture, and with the States, in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities or facilities.
- (c) The Secretary may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation areas or wildlife and waterfowl refuge, 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, recreation areas refuge, or site) only if,
 - (1) there is no prudent and feasible alternative to using that land; and
 - (2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuges or historic site resulting from the use.

Section 138 was not amended, so the wording in the two sections is once again different. The legislative history of the 1983 recodification indicates that no substantive change was intended. Further, because of familiarity with Section 4(f) by thousands of Federal and State personnel, the Federal Highway Administration (FHWA) continues to refer to the requirements as Section 4(f).

The statute does not establish any procedures for preparing Section 4(f) documents for circulating them, or for coordinating them with other agencies. The statute does not require the preparation of any written document, but the FHWA has developed procedures for the preparation circulation, and coordination of Section 4(f) documents. The purpose of these procedures is to establish an administrative record of the basis for determining that there is no feasible and prudent alternative, and to obtain informed input from knowledgeable sources on feasible and prudent alternatives and on measures to minimize harm.

Numerous legal decisions on Section 4(f) have resulted in a DOT policy that conclusions on no feasible and prudent alternatives and on all possible planning to minimize harm must be well documented and supported. The Supreme Court in the *Overton Park* case (Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971)) ruled that determinations on no feasible and prudent alternative must find that there are unique problems or unusual factors involved in the use of alternatives or that the cost, environmental impacts, or community disruption resulting from such alternatives reach extraordinary magnitudes.

Purpose of this Paper

Since the enactment of Section 4(f) in 1966, courts have made several interpretations of how this statute should be applied. From these court interpretations and many years of project-by-project applications, FHWA has developed numerous policy positions on various aspects of the Section 4(f) requirements. This paper presents these various

policy positions. This paper addresses only the programs and activities administered by FHWA and serves as a guide for the applicability of Section 4(f) for project situations most often encountered. For specific projects that do not completely fit the situations described in this paper, contact the Regional Office or Washington Headquarters.

Important Points

A few points should be noted at the outset. Section 4(f) applies to all historic sites, but only to publicly owned public parks, recreational areas, and wildlife and waterfowl refuges. When parks, recreational areas, and wildlife and waterfowl refuges are owned by private institutions and individuals, even if such areas are open to the public, Section 4(f) does not apply. The FHWA does however, strongly encourage the preservation of such privately owned lands. If a governmental body has a proprietary interest in the land (such as fee ownership, drainage easements or wetland easement), it can be considered "publicly owned."

When projects are litigated, Section 4(f) has been a frequent issue. Therefore, it is essential that the following are completely documented: (1) the applicability/nonapplicability of Section 4(f); (2) the coordination efforts with the officials having jurisdiction over or administering the land (relative to significance of the land, primary use of the land, mitigation measures, etc.), (3) the location and design alternatives that would avoid or minimize harm to the Section 4(f) land; and (4) all measures to minimize harm, such as design and landscaping.

There are often concurrent requirements of other Federal agencies when Section 4(f) lands are involved in highway projects. Examples include compatibility determinations for the use of lands in the National Wildlife Refuge System and the National Park System, consistency determinations for the use of public lands managed by the Bureau of Land Management, determinations of direct and adverse effects for Wild and Scenic Rivers under the jurisdiction of such agencies as the U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, and Forest Service, and approval of land conversions covered by the Federal-aid in Fish Restoration and the Federal-Aid in Wildlife Restoration Acts (the Dingell-Johnson and Pittman-Robertson Acts), the Recreational Demonstration Projects and the Federal Property and Administrative Service (Surplus Property) Acts, and Section 6(f) of the Land and Water Conservation Fund Act. The mitigation plan developed for the project should include measures that would satisfy the requirements for these determinations and for Section 4(f) approval. When Federal lands, which are needed for highway projects are not subject to Section 4(f), there is still a need for close coordination with the Federal agency owning or administering the land in order to develop a mitigation plan that would satisfy any other requirements for a land transfer.

Section 4(f) Evaluation

When a project uses land protected by Section 4(f), a Section 4(f) evaluation must be prepared. The following information provides guidance on the key areas of a Section 4(f) evaluation.

Alternatives

The intent of the Section 4(f) statute and the policy of the Department Of Transportation is to avoid public parks, recreation areas, refuges, and historic sites. In order to demonstrate that there is no feasible and prudent alternative to the use of Section 4(f) land, the evaluation must address location alternatives and design shifts that avoid the Section 4(f) land. Supporting information must demonstrate that such alternatives result in unique problems. Unique problems are present when there are truly unusual factors or when the costs or community disruption reach extraordinary magnitude.

When making a finding that an alternative is not feasible and prudent, it is not necessary to show that any single factor presents unique problems. Adverse factors such as environmental impacts, safety and geometric problems, decreased traffic service# increased costs, and any other factors may be considered collectively. A cumulation of problems such as these may be a sufficient reason to use a 4(f) property, but only if it creates truly unique problems.

In applying the standard of "unique problems", the nature, quality, and effect of the taking of the 4(f) property may be considered to show that there are truly unusual factors, or cost or community disruption of extraordinary magnitude. Thus the net impact of any build, no-build, or mitigation alternative on both the 4(f) property and the surrounding area or community must be considered. This may include the mitigation opportunities presented by an alternative (which uses some 4(f) property) that would reduce or eliminate the impact on the 4(f) property. Not all uses of 4(f) property have the same magnitude of effect and not all 4(f) properties being used have the same quality. For example, evaluation of net impact may consider whether the use of the 4(f) property involves (1) a large taking or a small taking (2) shaving an edge of its property or cutting through the middle, (3) altering part of the land surrounding an historic building or removing the building itself, or (4) an unused portion of a park or a highly used portion.

Care should be taken that consistent standards are applied throughout the length of any given project. For example, it would be inconsistent to accept a restricted roadway cross section (with a Jersey barrier in the median or substandard width shoulders) for a highway over a drainage structure or for a bridge in order to reduce the project cost when at other locations on the same project (or similar projects) this roadway cross section is rejected as unacceptable in order to avoid a park.

The Section 4(f) evaluation must address the purpose and need of the project. This discussion must support the project termini and the types of alternatives, e.g. new location or modification of the existing alignments that would satisfy the need for the project. That need must be sufficiently explained to show that the no-build alternative and any alternative that does not serve that need result in unique problems, i.e. truly unusual factors or cost or community disruption that reach extraordinary magnitude and are therefore not prudent and feasible. Theoretically there may be an unlimited number of alternatives that satisfy the need, but it is not necessary to examine all. The evaluation of alternatives must demonstrate a reasoned methodology for narrowing the field of alternatives to a number sufficient to support a sound judgment that the study of additional variations is not worthwhile.

If all the "build" alternatives use some Section 4(f) land, the alternative which has the least overall Impact to Section 4(f) resources must be selected unless it is not feasible and prudent. For example, Table 1 shows the results of an analysis for two projects. On Project 1, Alternative D must be selected since it is feasible and prudent and does not use Section 4(f) land. On Project 2, Alternative B must be selected since (1) Alternative D, which avoids the Section 4(f) land is not feasible and prudent and (2) of the remaining alternatives that use Section 4(f) land, Alternative B has the least impact (after mitigation) on Section 4(f) land. The above analysis must be used when eliminating alternatives from further consideration regardless of when they are dropped in the project development process.

TABLE I

<u>Project</u>	<u>Alternative</u>	<u>Feasible and Prudent</u>	<u>Uses Section 4(f) Land</u>	<u>Harm to Section 4(f) land (after mitigation)</u>
1	A	YES	YES	Greatest
	B	YES	YES	Least
	C	YES	YES	Medium
	D	YES	NO	None
2	A	YES	YES	Greatest
	B	YES	YES	Least
	C	YES	YES	Medium
	D	NO	NO	None

If a project includes the demolition of a historic bridge, the following alternatives must have been considered and found not feasible and prudent:

1. Do nothing;
2. Build on new location without using the historic bridge; and
3. Rehabilitation without affecting the historic integrity of the bridge.

There have been many projects where it is feasible and prudent to build on new location but it is not feasible and prudent to preserve the existing bridge. This could occur (1) when the historic bridge is beyond rehabilitation for a transportation or an alternative use; (2) when no responsible party can be located, through a marketing effort, to maintain and preserve the historic features of the bridge; or (3) when a permitting authority, such as the Coast Guard, requires removal or demolition of the historic bridge.

Mitigation

The statute and the FHWA regulation require all possible planning to minimize harm. All possible planning to minimize harm (i.e., mitigation measures) should be determined through consultation with the official of the agency owning or administering

the land. Note that neither the Section 4(f) statute nor the FHWA Section 4(f) regulation require the replacement of Section 4(f) land used for highway projects. However, mitigation measures (other than design modifications in the project to lessen the impact on Section 4(f) land) involving parks, recreation areas, and wild-life and waterfowl refuges will usually entail replacement of land and facilities (of comparable value and function) or monetary compensation which could be used to enhance the remaining land. Mitigation of historic sites usually consist of those measures necessary to preserve the historic integrity of the site and agreed to in accordance with 36 CFR Part 800, by the FHWA, the State Historic Preservation Officer (SHPO), and, as appropriate, the Advisory Council on Historic Preservation (ACHP). The cost of mitigation should be a reasonable public expenditure in light of the severity of the impact on the Section 4(f) resource.

State and local governments often obtain grants through the Land and Water Conservation Fund Act to acquire or make improvements to parks and recreation areas. Section 6(f) of this Act prohibits the conversion of property acquired or developed with these grants to a non-recreational purpose without the approval of the Department of the Interior's (DOI) National Park Service. Section 6(f) directs DOI to assure that replacement lands of equal value, location and usefulness are provided as conditions to such conversions. Consequently, where conversions of Section 6(f) lands are proposed for highway projects, replacement lands will be necessary. Regardless of the mitigation proposed, the Section 4(f) evaluation should document the National Park Service's tentative position relative to Section 6(f) conversion.

Coordination

Preliminary coordination prior to the circulation of the draft Section 4(f) evaluation should be accomplished with the official of the agency owning or administering the land, the DOI and, as appropriate, the Departments of Agriculture (USDA) and Housing and Urban Development (HUD). The preliminary coordination with DOI and HUD should be at the regional level. The preliminary coordination with USDA should be with the appropriate National Forest Supervisor. There should be coordination with USDA whenever a project uses land from the National Forest System. Since the Housing and Urban Rural Recovery Act of 1983 repealed the use restrictions for the Neighborhood Facilities Program authorized by Title VII of the HUD Act of 1965 and the Open Space Program authorized by Title VII of the Housing Act of 1961, the number of instances where coordination with HUD should be accomplished has been substantially reduced. ~~Coordination with HUD should occur whenever a project uses section 4(f) land for/on which HUD funding (other than the above) had been utilized.~~

If any issues are raised by these agencies resulting from the circulation of the draft Section 4(f) evaluation, follow up coordination must be undertaken to resolve the issues. In most cases the agency's response will indicate a contact point for the follow up coordination. However, case law indicates that if reasonable efforts to resolve the issues are not successful (one of these agencies is not satisfied with the way its concerns were addressed) and the issues were disclosed and received good-faith attention from the decisionmakers, we have met our procedural obligation under Section 4(f) to consult with and obtain the agency's comments. Section 4(f) does not require more.

Format and Approval

The Section 4(f) evaluation may be incorporated as an element of an environmental assessment/finding of no significant impact (EA/FONSI) or environmental impact statement (EIS). However, the Section 4(f) evaluation must be presented in a separate section. All Section 4(f) evaluations are approved at the Regional Office. If the Section 4(f) evaluation is contained in an EIS, the Region will make the Section 4(f) approval either in its approval of the final EIS or in the Record of Decision (ROD). In those cases where the Section 4(f) approval is made in the final EIS, the basis for the Section 4(f) approval will be summarized in the ROD.

Programmatic Section 4(f) Evaluations

As an alternative to preparing an individual Section 4(f) evaluation, FHWA may, in certain circumstances have the option of applying a programmatic evaluation. Under a programmatic Section 4(f) evaluations, certain conditions are laid out such that, if a project meets the conditions, it will satisfy the requirements of Section 4(f) that there are no feasible and prudent alternatives and that there has been all possible planning to minimize harm. These conditions generally relate to the type of project, the severity of impacts to Section 4(f) property, the evaluation of alternatives the establishment of a procedure for minimizing harm to the Section 4(f) property and adequate coordination with appropriate entities. Programmatic Section 4(f) evaluations can be nationwide, regionwide, or statewide.

There are four nationwide programmatic Section 4(f) evaluations. One covers projects that use historic bridges. The second covers projects that use minor amounts of land from public parks, recreation areas and wildlife and waterfowl refuges. The third covers projects that use minor amounts of land from historic sites. The fourth covers bikeway projects.

The fact that the Nationwide programmatic Section 4(f) evaluations are approved does not mean that these types of projects are exempt from or have advance compliance with the requirements of Section 4(f). Section 4(f) does, in fact, apply to each of the types of projects addressed by the programmatic evaluations. Furthermore, the programmatic Section 4(f) does not relax the Section 4(f) standards; i.e., it is just as difficult to justify using Section 4(f) land with the programmatic Section 4(f) evaluation as it is with an individual Section 4(f) evaluation.

These programmatic Section 4(f) evaluations may be applied only to projects meeting the applicability criteria. How the project meets the applicability criteria must be documented. The documentation needed to support the conclusions required by the programmatic Section 4(f) evaluation would be comparable to the documentation needed for an individual Section 4(f) evaluation.

These programmatic Section 4(f) evaluations streamline the amount of interagency coordination that is required for an individual Section 4(f) evaluation. Interagency coordination is required only with the official (s) with jurisdiction and not with DOI, USDA, or HUD (unless the Federal agency has a specific action to take, such as DOI approval of a conversion of land acquired using Land and Water Conservation Funds).

Section 4(f) Applicability

The following questions and answers provide guidance on the applicability of Section 4(f) to various types of land. The examples used describe the situations most often encountered. For advice on specific situations or issues not covered in this paper, contact the Regional Office or Washington Headquarters.

1. Use of Land

Question A:

What constitutes a "use" of land from a publicly owned public park, recreation area, wildlife refuge, and waterfowl refuge or historic site?

Answer A:

A "use" occurs (1) when land from a Section 4(f) site is acquired for a transportation project, (2) when there is an occupancy of land that is adverse in terms of the statute's preservationist purposes, or (3) when the proximity impacts of the transportation project on the Section 4(f) sites, without acquisition of land, are so great that the purposes for which the Section 4(f) site exists are substantially impaired (normally referred to by courts as a constructive use).

The following types of work do not "use" land from a Section 4(f) site provided the historic qualities of the facility will not be adversely affected: (a) modification or rehabilitation of a historic highway; and (b) maintenance or rehabilitation of a historic bridge. Such determinations should be made only after the SHPO and the ACHP have been consulted and have not objected to the finding.

Question B:

Can a transportation project, located near or adjacent to a Section 4(f) site make a "constructive use" of that site even though there is no occupancy of the site by the project? How is "constructive use" determined?

Answer B:

Yes. A constructive use of a Section 4(f) site can occur when the capability to perform any of the site's vital functions is substantially impaired by the proximity impacts from a transportation project. Such substantial impairment would occur when the proximity impacts to Section 4(f) lands are sufficiently serious that the value of the site in terms of its prior significance and enjoyment are substantially reduced or lost. The degree of impairment should be determined in consultation with the officials having jurisdiction over the resource. An example of such impact is excessive noise near an amphitheater. A November 12, 1985, memorandum from Mr. Ali F. Sevin, Director of the Office of Environmental Policy to the Regional Federal Highway Administrators provides a process that can be used to

determine whether there is a constructive use. The FHWA policy is that a constructive use of Section 4(f) lands is possible, but because of its rarity, it should be carefully examined. If it is concluded that the proximity effects do not cause a substantial impairment, the FHWA can reasonably conclude that there is no constructive use. Project documents should, of course, contain the analysis of proximity effects and whether there is substantial impairment to a Section 4(f) resource. Except for responding to review comments in environmental documents which specifically address constructive uses the term "constructive use" need not be used. Where it is decided that there will be a constructive uses, the draft Section 4(f) evaluation must be cleared with the Washington Headquarters prior to circulation.

2. Public Parks, Recreation Areas, and Wildlife and Waterfowl Refuges

Question A:

When is publicly owned land considered to be a park, recreation area or wildlife and waterfowl refuges? Who makes the decision?

Answer A:

Publicly owned land is considered to be a park, recreation areas, or wildlife and waterfowl refuge when the land has been officially designated as such or when the Federal, State, or local officials having jurisdiction over the land determine that one of its major purposes or functions is for park, recreation, or refuge purposes. Incidental, secondary, occasional, or dispersed recreational activities do not constitute a major purpose. For the most parts the "officials having jurisdiction" are the officials of the agency owning or administering the land. There may be instances where the agency owning or administering the land has delegated or relinquished its authority to another agency, via an agreement on how some of its land will be used. The FHWA will review this agreement and determine which agency has authority on how the land will be used. If the authority has been delegated/relinquished to another agency, that agency must be contacted to determine the major purpose(s) of the land. After consultation and in the absence of an official designation of purpose or function by the officials having Jurisdiction, the FHWA will base its decision on its own examination of the actual functions that exist.

The final decision on applicability of Section 4(f) to a particular type of land is made by FHWA. In reaching this decision, however, FHWA normally relies on the official having jurisdiction over the land to identify the kinds of activity or functions that take place.

Question B:

How should the significance of public parks, recreation areas, and waterfowl and wildlife refuges be determined?

Answer B:

"Significance" determinations (on publicly owned land considered to be parks recreation areas, or wildlife and waterfowl refuge pursuant to Answer A above) are made by the Federal, State, or local officials having jurisdiction over the land. For the most part, the "officials having jurisdiction" are officials of the agency owning or administering the land. For certain types of Section 4(f) lands, more than one agency may have jurisdiction over the site. The significance determination must consider the significance of the entire property and not just the portion of the property being used for the project. The meaning of the term "significance" for purposes of Section 4(f) should be explained to the officials having jurisdiction. Significance means that in comparing the availability and function of the recreation, park, or wildlife and waterfowl refuge area with the recreational, park, and refuge objectives of that community, the land in question plays an important role in meeting those objectives. If a determination from the official with jurisdiction cannot be obtained, the Section 4(f) land will be presumed to be significant. All determinations (whether stated or presumed) are subject to review by FHWA for reasonableness.

Question C:

Are publicly owned parks and recreation areas which are significant but not open to the public as a whole, subject to the requirements of Section 4(f)?

Answer C:

The requirements of Section 4(f) would apply if the entire public is permitted visitation at any time. Section 4(f) would not apply when visitation is permitted to only a select group and not the entire public. Examples of such groups include residents of a public housing project; military and their dependents; students of a school; and students, faculty, and alumni of a college or university. The FHWA does, however, strongly encourage the preservation of such parks and recreation areas even though they may not be open to the public at large.

Question D:

When does an easement or lease agreement with a governmental body constitute "public ownership?"

Answer D:

Case law holds that land subject to a public easement in perpetuity can be considered to be publicly owned land for the purpose which the easement exists. Under special circumstances, lease agreements may also constitute a proprietary interest in the land. Such lease agreements must be determined on a case-by-case basis, and such factors as the term of the lease, the understanding of the parties to the lease, any cancellation clauses, and the like should be considered.

Any questions on whether or not a leasehold or other temporary interest constitutes public ownership should be referred to the Washington Headquarters through the Regional Office.

3. Historic Sites

Question A:

How should the significance (for Section 4(f) purposes) of historic sites be determined?

Answer A:

Pursuant to the National Historic Preservation Act, the FHWA in cooperation with the State highway department consults with the SHPO and if appropriate, with local officials to determine whether a site is on or eligible for the National Register of Historic Places. In case of doubt or disagreement between FHWA and the SHPO, a request for determination of eligibility is made to the Keeper of the National Register. A third party may also request the Keeper for a determination of eligibility. For purposes of Section 4(f), a historic site is significant only if it is on or eligible for the National Register of Historic Places, unless the FHWA determines that the application of Section 4(f) is otherwise appropriate. If a historic site is determined not to be on or eligible for the National Register of Historic Places, but an official (such as the Mayor, President of the local historic society, etc.) provides information to indicate that the historic site is of local significance, FHWA may apply Section 4(f). In the event that Section 4(f) is found inapplicable, the FHWA Division Office should document the basis for not applying Section 4(f). Such documentation might include the reasons why the historic site was not eligible for the National Register.

Question B:

How does Section 4(f) apply to either permanent or temporary occupancy of non historic property within a historic district but not an integral part of the historical basis for designation of the district?

Answer B:

Normally, Section 4(f) does not apply where a property is not individually historic, is not an integral part of the historic district in which it is located, and does not contribute to the factors which make the district historic. The property and the district must be carefully evaluated to determine whether or not such a property could be occupied without adversely affecting the integrity of the historic district. If the occupancy of the property adversely affects the integrity of the district, then Section 4(f) would apply. Appropriate steps (including consultation with the SHPO) should be taken to establish and document that the property is not historic, that it has no value in the context of the historic district, and its occupancy would not adversely affect the integrity of the historic district.

Question C:

If a highway project does not occupy land in a historic site or district but does cause an "adverse effect" under 36 CFR 800, do the Section 4(f) requirements apply (i.e., is there a constructive use)?

Answer C:

An "adverse effect" under 36 CFR 800 does not automatically mean that Section 4(f) applies. If the impact would not substantially impair the historic integrity of a historic site or district, Section 4(f) requirements do not apply. Whether or not the historic integrity of the historic site or district is substantially impaired should be determined in consultation with the SHPO and thoroughly documented in the project records.

4 Historic Bridges and Highways

Question A:

How does Section 4(f) apply to historic bridges and highways?

Answer A:

The Section 4(f) statute places restrictions on the use of land from historic sites for highway improvements. The statute makes no mention of historic bridges or highways which are already serving as transportation facilities. The Congress clearly did not intend to restrict the rehabilitation, repair, or improvement of historic bridges and highways if the historic integrity is not adversely affected. The FHWA has, therefore, determined that Section 4(f) would apply if a historic bridge or highway is demolished or if its historic integrity (the criteria for which the bridge was designated historic) is adversely affected due to the proposed improvement. The affect on the historic integrity is determined in consultation with the SHPO. Section 4(f) does not apply to the construction of a replacement bridge when a historic bridge is left in place and the proximity impacts of the replacement bridge do not substantially impair the historic integrity of the historic bridge.

Question B:

How do the requirements of Section 4(f) apply to donations (pursuant to 23 U.S.C. 144(o)) to a State, locality, or responsible private entity?

Answer B:

A Section 4(f) use exists when the donee cannot maintain the features that give the bridge its historic significance. In such cases the Section 4(f) evaluation would need to establish that it is not feasible and prudent to leave the historic bridge alone. If the bridge marketing effort is unsuccessful and the bridge is to be demolished, a finding would have to be made that there is no feasible and prudent alternative.

5. Archaeological Resources

Question A:

When does Section 4(f) apply to archaeological sites?

Answer A:

Section 4(f) applies to all archaeological sites on or eligible for inclusion on the National Register and which warrant preservation in place (including those discovered during construction). Section 4(f) does not apply if FHWA, after consultation with the SHPO and the ACHP, determines that the archaeological resource is important chiefly because of what can be learned by data recovery (even if it is agreed not to recover the resource) and has minimal value for preservation in place. For sites discovered during construction, where preservation of the resource in place is warranted the Section 4(f) process will be expedited. In such cases, the evaluation of feasible and prudent alternatives will take account of the level of investment already made. The review process, including the consultation with other agencies should be shortened, as appropriate. An October 19, 1980, memorandum (copy attached) with the Heritage Conservation and Recreation Service (now National Park Service) provides emergency procedures for unanticipated cultural resources discovered during construction.

Question B:

How should the Section 4(f) requirements be applied to archaeological districts?

Answer B:

Section 4(f) requirements apply to an archaeological district the same as they do to an archaeological site (only where preservation in place is warranted). However, as with historic districts, Section 4(f) would not apply if after consultation with the SHPO, FHWA determines that the project occupies only a part of the district which is a noncontributing part of that district provided such portion could be occupied without adversely affecting the integrity of the archaeological district. In addition, Section 4(f) would not apply if after consultation with the SHPO and the ACHP, it is determined that the project occupies only a part of the district which is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place, provided such portion could be occupied without adversely affecting the integrity of the archaeological district.

6. Public Multiple-use Land Holdings

Question:

Are multiple-use public land holdings (e.g., National Forests, State Forests, Bureau of Land Management lands, etc.) subject to the requirements of Section 4(f)?

Answer:

Section 4(f) applies to historic sites and only to those portions of lands which are designated by statute or identified in the management plans of the administering agency as being for parks recreation, or wildlife or waterfowl refuge purposes and which are determined to be significant for such purposes. For public land holdings which do not have management plans (or where existing management plans are not current) Section 4(f) applies to those areas which function primarily for Section 4(f) purposes. Section 4(f) does not apply to areas of multiple-use lands which function primarily for purposes not protected by Section 4(f).

7. Late Designation

Question:

Are properties in highway ownership that are designated (as park and recreation lands, wildlife and waterfowl refuges, and historic sites) late in the development of a proposed project subject to the requirements of Section 4(f)?

Answer:

Except for archaeological resources, a project may proceed without consideration under Section 4(f) if that land was purchased for transportation purposes prior to the designation or prior to a change in the determination of significance and if an adequate effort was made to identify properties protected by Section 4(f) prior to the acquisition. The adequacy of effort made to identify properties protected by Section 4(f) should consider the requirements, or the standards of adequacy, that existed at the time of search. Archaeological resources may be subject to the requirements of Section 4(f) in accordance with Question 5A.

8. Wild and Scenic Rivers

Question A:

Are rivers and adjoining lands under study (pursuant to Section 5(a) of the Wild and Scenic Rivers Act) as potential wild and scenic rivers subject to Section 4(f)?

Answer A:

No. However, publicly owned public parks, recreation areas, and refuges and historic sites in a potential river corridor would still be subject to Section 4(f).

Question B:

Are rivers which are included in the National Wild and Scenic Rivers System and the adjoining lands subject to Section 4(f)?

Answer B:

Publicly-owned waters of designated wild and scenic rivers are protected by Section 4(f). Publicly-owned lands in the immediate proximity of such rivers may be protected by Section 4(f) depending on the manner in which they are administered by the Federal, States, or local government which administers the land. Wild and scenic rivers are managed by different Federal agencies including the U.S. Forest Service, the National Park Service and the Fish and Wildlife Service. The FHWA should examine the management plan developed for the river (as required by the Wild and Scenic Rivers Act) to determine how the public lands adjacent to the rivers are administered. Section 4(f) would apply to those portions of the land designated in the management plan for recreation or other Section 4(f) activities. Where the management plan is not sufficiently specific, FHWA should consult further with the river manager and document the primary function of the area in order to make a Section 4(f) determination. Those areas that function primarily and/or are managed for recreational purposes are subject to Section 4(f).

9. Fairgrounds

Question:

Are publicly owned fairgrounds subject to the requirements of Section 4(f)?

Answer:

Section 4(f) is not applicable to publicly owned fairgrounds that function primarily for commercial purposes (e.g., stock car races, annual fairs, etc.), rather than recreation. When fairgrounds are open to the public and function primarily for public recreation other than an annual fair, Section 4(f) only applies to those portions of land determined significant for recreational purposes.

10. School Playgrounds

Question:

Are publicly owned school playgrounds subject to the requirements of Section 4(f)?

Answer:

While the primary purpose of school playgrounds is for structured physical education classes and recreation for students, such lands may also serve public recreational purposes and as such, may be subject to Section 4(f) requirements. When the playground serves only school activities and functions, the playground is not considered subject to Section 4(f). However, when the playground is open to the public and serves either organized or recreational purposes (walk-on activity), it is subject to the requirements of Section 4(f) if the playground is determined to be significant for recreational purposes (See Question 2B). In determining the significance of the playground facilities, there may be more than one official having jurisdiction over the facility. A school official is considered to be the official having

jurisdiction of the land during school activities. However, the school board may have authorized the city's park and recreation department or a public organization to control the facilities after school hours. The actual function of the playground is the determining factor under these circumstances. Therefore, documentation should be obtained from the officials) having jurisdiction over the facility stating whether or not the playground is of local significance for recreational purposes.

11. Bodies of Water

Question:

How does the Section 4(f) apply to publicly owned lakes and rivers?

Answer:

Lakes are sometimes subject to multiple, even conflicting, activity and do not readily fit into one category or another. When lakes function for park, recreation, or refuge activities, Section 4(f) would only apply to those portions of water which function primarily for those purposes. Section 4(f) does not apply to areas which function primarily for other purposes. In general, rivers are not subject to the requirements of Section 4(f). Rivers in the National Wild and Scenic Rivers System are subject to the requirements of Section 4(f) in accordance with Questions 8A and 8B. Those portions of publicly owned rivers which are designated as recreational trails are subject to the requirements of Section 4(f). Of course Section 4(f) would also apply to lakes and rivers or portions thereof which are contained within the boundaries of parks, recreational areas, refuges, and historic sites to which Section 4(f) otherwise applies.

12. Trails

Question A:

The National Trails System Act permits the designation of scenic and recreational trails. Are these trails or other designated scenic or recreational trails on publicly owned land subject to the requirements of Section 4(f)?

Answer A:

Yes, except for the Continental Divide National Scenic Trail which was exempted from Section 4(f) by Public Law 95-625.

Question B:

Are trails on privately owned land (including land under public easement) which are designated as scenic or recreational trails subject to the requirements of Section 4(f)?

Answer B:

Section 4(f) does not apply to trails on privately owned land unless there is a public easement to permit the public to utilize the trail. Nevertheless, every reasonable effort should be made to maintain the continuity of designated trails in the National System.

Question C:

Are trails on highway rights-of-way which are designated as scenic or recreational trails subject to the requirements of Section 4(f)?

Answer C:

If the trail is simply described as occupying the rights-of-way of the highway and is not limited to any specific location within the right-of-ways, a "use" of land would not occur provided adjustments or changes in the alignment of the highway or the trail would not substantially impair the continuity of the trail. In this regard, it would be helpful if all future designations made under the National Trails System Act describe the location of the trail only as generally in the right-of-way.

Question D:

Are historic trails which are designated (pursuant to the National Trails System Act) as national historic trails (but not scenic or recreational) subject to the requirements of Section 4(f)?

Answer D:

Only lands or sites adjacent to historic trails which are on or eligible for the National Register of Historic Places are subject to Section 4(f). Otherwise (pursuant to Public Law 95-625), national historic trails are exempt from Section 4(f).

13. Bikeways

Question:

Do the requirements of Section 4(f) apply to bikeways?

Answer:

If the bikeway is primarily for transportation and is an integral part of the local transportation system, the requirements of Section 4(f) would not apply. Section 4(f) would apply to bikeways (or portions thereof) designated or functioning primarily for recreation unless the official having jurisdiction determines it not to be significant for such purpose. However, as with recreational trails, if the recreational bikeway is simply described as occupying the highway rights-of-way and is not limited to any specific location within that right-of-way, a "use" of land would not occur (Section 4(f) would not apply) provided adjustments or changes in the alignment of the

highway or bikeway would not substantially impair the continuity of the bikeway.

Regardless of whether Section 4(f) applies to a bikeway, Title 23, Section 109(n), precludes the approval of any project which will result in the severance or destruction of an existing major route for nonmotorized transportation traffic unless such project provides a reasonably alternative route or such a route exists.

14. Joint Development (Park with Highway Corridor)

Question:

Where a public park or recreation area is planned on a publicly owned tract of land and a strip of land within the tract is reserved for a highway corridor at the time the development plan for the tract is established, do the requirements of Section 4(f) apply?

Answer:

The requirements of Section 4(f) do not apply to the subsequent highway construction on the reserved right-of-way as previously planned. All measures which were taken to jointly develop the highway and the park should be completely documented in the project records.

15. "Planned" Facilities

Question:

Do the requirements of Section 4(f) apply to publicly owned properties "planned" for park, recreation area, wildlife refuge, or waterfowl refuge purposes even though they are not presently functioning as such?

Answer:

Section 4(f) applies if the agency that owns the property has formally designated and determined it to be significant for park, recreation areas wildlife refuge, or waterfowl purposes.

16. Temporary Occupancy of Highway Right-of-way

Question:

Is temporary occupancy of highway rights-of-way for park and recreational activity (e.g., a playground or snowmobile trail is allowed to be located on highway property) subject to the requirements of Section 4(f)?

Answer:

Section 4(f) does not apply to either authorized or unauthorized temporary occupancy of highway right-of-way pending further project development. For

authorized temporary occupancy of highway rights-of-way for recreation, it would be advisable to make clear in a limited occupancy permit with a reversionary clause that no right is created and the park or recreational activity is a temporary one pending completion of the highway project.

17. Tunneling

Question:

Is tunneling under a publicly owned public park, recreation areas wildlife refuge, and waterfowl refuge, or historic site subject to the requirements of Section 4(f)?

Answer:

Section 4(f) would apply only if the tunneling (1) will disturb any archaeological sites on or eligible for the National Register of Historic Places which warrant preservation in place, or (2) causes disruption which will harm the purposes for which the park, recreation, wildlife or waterfowl refuge was established or will adversely affect the historic integrity of the historic site.

18. Wildlife Management Areas

Question:

Do the requirements of Section 4(f) apply to Wildlife Management Areas?

Answer:

Section 4(f) may apply to publicly owned wildlife management areas (or any other wildlife area, e.g., Wildlife Reserve, Wildlife Preserve, Wildlife Sanctuary, Waterfowl Production Area, etc.), which are not a wildlife refuge but perform some of the same functions as a refuge. If a Federal, State, or local law clearly delineates a difference between Wildlife Refuges and Wildlife Management Areas, the intentional separation of these systems demonstrates that Section 4(f) should not apply to Wildlife Management Areas in the jurisdiction for which the law governs. If a Federal, State, or local law does not establish such a clear distinction, the property should be examined to determine its "refuge" characteristics. If the wildlife management area primarily functions as a sanctuary or refuge for the protection of species, Section 4(f) would apply.

Publicly owned wildlife management areas (or any other wildlife area, which is not a refuge or sanctuary) may allow recreation opportunities. The areas on which the recreation occurs may be subject to the requirements of Section 4(f) in accordance with Question 6.

19. Air Rights

Question:

Do the requirements of Section 4(f) apply to bridging over a publicly owned public park, recreation areas wildlife refuge, waterfowl refuge, or historic site?

Answer:

Section 4(f) applies if piers or other appurtenances are placed on the park, recreation, wildlife refuge or waterfowl refuge or historic site. Section 4(f) also applies if the bridge harms the purposes for which these lands were established or adversely affects the historic integrity of the historic site.

20. Access Ramps (in accord with Section 147)

Question:

Is the construction of access ramps (pursuant to Section 147 of the Federal-aid Highway Act of 1976, Public Law 94-250) to public boat launching areas located within a publicly owned public park, recreation areas wildlife refuges, or waterfowl refuge subject to the requirements of Section 4(f)?

Answer:

Section 147 provides for the construction of access ramps to public boat launching areas adjacent to bridges under construction, reconstruction, replacement, repair, or alteration on the Federal-aid primary, secondary, and urban system highways. Such access ramps are not an integral or necessary component of the bridge project (to which they are appended) which is approved by the FHWA nor do such access ramps most any transportation need or provide any transportation benefits.

Where boat launching areas are located in publicly owned parks, recreational areas, or refuges otherwise protected by the provisions of Section 4(f), it would be contrary to the intent of Section 147 to search for "feasible and prudent alternatives" to the use of such areas as a site for a ramp to a boat launching area. A consistent reading of Section 147 and Section 4(f) precludes the simultaneous application of the two sections to boat launching ramp projects through or to the publicly owned park, recreation area or refuge with which the boat launching area is associated. Therefore, Section 4(f) does not apply to access ramp projects to such boat launching areas carried out pursuant to Section 147. However, the constructions replacement, repair, or alteration of a bridge on Section 4(f) land will be subject to Section 4(f),

21. Scenic Byways (revised June 7, 1989)

Question:

How does Section 4(f) apply to scenic byways?

Answer:

The designation of a road as a scenic byway is not intended to create a park or recreation area within the meaning of 49 U.S.C. 303 or 23 U.S.C. 138. The improvement (reconstruction, rehabilitation, or relocation) of a publicly-owned scenic byway would not come under the purview of Section 4(f) unless the improvement were to otherwise use land from a protected resource.

22. Temporary Construction Easements (revised June 7, 1989)

Question:

How does Section 4(f) apply to temporary construction easements?

Answer:

Section 4 (f) does not apply to a temporary occupancy (including those resulting from a right-of-entry, construction and other temporary easements and other short-term arrangements) of publicly-owned parks, recreation areas, wildlife or waterfowl refuges, or any historic site where there is documentation that the officials having jurisdiction over the protected resource agree that the temporary occupancy will:

- (a) be of short duration and less than the time needed for construction of the project,
- (b) not change the ownership or result in the retention of long-term or indefinite interests in the land for transportation purposes,
- (c) not result in any temporary or permanent adverse change to the activities, features, or attributes which are important to the purposes or functions that qualify the resource for protection under Section 4(f), and
- (d) include only a minor amount of land.



Appendix B

Coordination Letters



Appendix B: Coordination Letters

Copies of the following coordination letters appear in this section:

Agency	Date	Subject
Montgomery County Council	1/26/93	County Attorney's opinion regarding interim trail use of the Georgetown Branch
Montgomery County Government	8/13/93	Request for FTA preliminary administrative determination of Section 4(f) applicability for the Georgetown Branch
Federal Transit Administration	9/20/93	Section 4(f) applicability for temporary recreational use of Georgetown Branch
Federal Transit Administration	2/27/95	Intent to preserve Georgetown Branch for transportation use has been adequately documented as suggested by Section 4(f) policy guidance (guidance attached)
Montgomery County Council	8/1/95	Resolution adopted re: funding for Georgetown Branch Interim Trail
Montgomery County Council	7/30/96	Resolution adopted re: funding for Georgetown Branch Interim Trail
Montgomery County Council	2/10/98	Resolution adopted re: funding for Georgetown Branch Interim Trail
Maryland Historical Trust	2/6/07	Concurrence with proposed survey treatment for historic properties, with noted exceptions

M E M O R A N D U M

January 26, 1993

TO: Marilyn Praisner, President
Montgomery County Council

VIA: Joyce R. Stern
County Attorney

FROM: Diane S. Kramer, *Diane S. Kramer*
Associate County Attorney

RE: Interim Trail Use of the Georgetown Branch Between
Bethesda Central Business District and Silver Spring

The question has arisen whether the installation of an interim trail on the Georgetown Branch between Silver Spring and Bethesda, the area devoted to light rail and hiker/biker use, would require a determination that subsequent construction of the light rail could only occur if there was no prudent or feasible alternative to using that land.

FACTS

On December 16, 1988, the County acquired the right-of-way from Silver Spring to the D.C. line known as the Georgetown Branch. The right-of-way was acquired pursuant to a Certificate of Interim Trail Use ("CITU") issued in accordance with 16 U.S.C. Section 1247(d). The CITU preserves the corridor for restoration of rail service at some future date.

At the time the property was acquired, it was acquired for the express purpose of constructing a light rail facility within the right-of-way from Silver Spring to Bethesda and a hiker/biker trail from Silver Spring to the D.C. line. The hiker/biker trail and the light rail facility were approved by the Montgomery County Council in the Georgetown Branch Master Plan Amendment approved and adopted January 1990 by Council Resolution No. 11-1737. Due to a current lack of funding, the light rail facility and the permanent hiker/biker trail have not been constructed, but remain in the Master Plan.

Proponents of the hiker/biker trail have advocated that the entire right-of-way be used for a temporary, interim trail. It is this proposal that gives rise to the question whether the interim trail use of the entire width of the right-of-way would,

once used for parks and recreation purposes, give rise to considerations under 49 U.S.C. § 303 if Federal funds are to be used for the light rail facility. Can the entire right-of-way be reconstructed for transportation and recreation/park uses after it has been put to an interim park or recreation use?

DISCUSSION

49 U.S.C. § 303(c), also known as Section 4(f), provides:

"The Secretary may approve a transportation program or project (other than any project for a park road or parkway under section 204 of title 23) 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 of the park, area, refuge, or site) only if --

(1) There is no prudent and feasible alternative to using that land; and

(2) 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."

This provision may be applicable because the County and State may seek Federal funds to assist with the construction of the light rail facility. Additionally, the hiker/biker trail would be considered a recreation area or a park. Because the hiker/biker trail would likely go from Silver Spring to the D.C. line, a distance of approximately 6.4 miles, and would connect with a proposed park along the same right-of-way owned by the National Park Service, it would be difficult to say that the ultimate hiker/biker trail is not a public park or recreation area of State or local significance. Although the determination of significance of the public park or recreation area is made by the officials having jurisdiction over the land, the Federal Highway Administration will review the determination to assure its reasonableness. See 23 CFR § 771.135(d) which provides:

"Where Federal lands or other public holdings (e.g. State forest) are administered under statutes permitting management for multiple uses, and, in fact, are managed for multiple uses, section 4(f) applies only to those portions of such lands which function for, or are designated in the plans of the administering agency as being for, significant park, recreation, or wildlife and waterfowl purposes. The determination as to which lands so function or are so designated, and the significance of those lands, shall be made by the officials having jurisdiction over the lands. The Administration will review this determination to assure its reasonableness. The determination of significance shall apply to the entire area of such park, recreation, or wildlife and waterfowl refuge site."

Under § 771.135(d), section 4(f) applies only to that portion of the right-of-way which is actually to be used for light rail purposes. Under this subsection, section 4(f) would not apply to the portion of the right-of-way to be used for light rail, if both the light rail and recreation facilities were constructed together or in a manner whereby construction of the light rail would not impact the recreation area. The complication, under the circumstances, is that an interim trail use of the entire right-of-way including that portion of the right-of-way which was not intended for park or recreation would be, in fact, used for park or recreation purposes.

23 CFR § 771.135(h) supports the proposition that, to the extent the right-of-way was acquired for transportation purposes, the Administration may permit a project to proceed without 4(f) consideration. The problem is that because the right-of-way is a single right-of-way that, at the time of acquisition, was acquired for light rail and hiker/biker usage (the Master Plan had not yet been adopted), it could be argued that there was no line of demarcation. 23 CFR § 771.135(h) provides as follows:

"Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made and determinations of significance changed late in the development of a proposed action. With the exception of the treatment of archeological resources in paragraph (g) of this section, the Administration may permit a project to proceed without consideration under section 4(f) if the property interest in the section 4(f) lands was acquired for transportation purposes prior to the

Marilyn Praisner
January 26, 1993
Page 4

designation or change in the determination of significance and if an adequate effort was made to identify properties protected by section 4(f) prior to acquisition."

The problem with the foregoing language is that the property was acquired for both transportation and recreation or park purposes. Thus, there is an ambiguity where the entire property is first put to a park purpose rather than being devoted simultaneously to both park and transportation purposes.

These circumstances are distinguishable from Citizens Concerned About Freeway Expansion, et al. v. Federal Highway Administration, et al., No. 90-605-RE (U.S.D.C. Oregon, August 2, 1990), which has been cited to you. The distinguishing facts are that in the Oregon case, a freeway was completed. As part of the freeway project; Oregon built an esplanade on highway right-of-way. The Court found that because an existing highway was being improved by adding auxiliary lanes, the proposed work fell squarely within an exemption under 23 CFR § 771.117(a). It is noteworthy that in the Oregon case, the road was constructed within the right-of-way and, as part of its work, an esplanade was built on highway right-of-way. See slip op. page 3. The challenged action in the Oregon case involved a subsequent addition to an existing transportation facility. With respect to the Georgetown Branch, the transportation facility has not been constructed, was acquired with the dual purpose of utilizing the right-of-way for a hiker/biker trail and a light rail facility, and the construction of the recreation facility (albeit temporary) will potentially precede the construction of the transportation facility and will, initially, occupy the entire right-of-way.

It is useful to look at the definition of the word "use" in the Federal regulations. Section 771.135(p) provides that use occurs when land is permanently incorporated into a transportation facility, when there is a temporary use of land that is adverse to a statute's preservation purposes, or when there is constructive use of land. Constructive use occurs when the transportation project does not actually incorporate the land from a Section 4(f) area but is so proximate and its impacts are so severe that the activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired. 23 CFR § 771.135(p)(2). However, pursuant to 23 CFR § 771.135(p)(5), the Federal Highway Administration has determined that constructive use does not occur when:

"(v) There are impacts to a proposed public park, recreation area, or wildlife refuge, but the proposed transportation project and the resource are concurrently planned or developed. Examples of such concurrent planning or development include, but are not limited to:

(A) Designation or donation of property for the specific purpose of such concurrent development by the entity with jurisdiction or ownership of the property for both the potential transportation project and the section 4(f) resource, . . ." (Emphasis added.)

Again, the wrinkle, under the circumstances, is the proposed development of the entire right-of-way for a hiker/biker path to be then replaced by a light rail and hiker/biker path. The interim trail use could be said to move the light rail outside of the scope of concurrent planning and development.

Under all of the foregoing cited provisions, credible arguments can be made that the entire right-of-way should not be considered to be a Section 4(f) site. A credible argument could be made that only that part of the right-of-way which would be dedicated on a permanent basis to the recreation or public park use should be considered as a Section 4(f) project. It is, however, the interim use of the right-of-way for public park or recreation purposes that does not fall neatly within any of the exceptions set forth in the Code of Federal Regulations.

If the County allows development of a temporary hiker/biker trail on the right-of-way, the following procedures would be helpful to clarify that the right-of-way should not be considered a Section 4(f) project:

1. The County Council and the Montgomery County Planning Board should acknowledge that the right-of-way is being managed for multiple uses which are concurrently planned and that only the portion of the right-of-way which is intended to be used on a permanent basis for a park or recreation area will constitute a significant park or recreation area.

2. The Council and the Montgomery County Planning Board should determine that the temporary use of the right-of-way for hiker/biker purposes is not a significant park or recreation purpose. The basis for this determination could be that the use of the right-of-way for the recreation use is temporary only and that a permanent significant facility will be created in a

limited portion of the right-of-way in the future in conjunction with development of the light rail.

3. The Council could further direct that any trail constructed upon the right-of-way be constructed only to temporary standards and not to standards that would create a permanent facility.

4. The County should seek concurrence from the Federal Highway Administration that interim use of the right-of-way for a temporary trail would not trigger a Section 4(f) analysis. This position would be supported by: 1) the acquisition of the right-of-way for multiple uses; 2) the fact that the right-of-way was acquired under a CITU which by its terms requires potential restoration of the right-of-way to a transportation use; and 3) the trail will be temporary only and, therefore, not a significant park or recreation area.

CONCLUSION

The use of the right-of-way for a temporary hiker/biker trail rather than for the permanent light rail and hiker/biker trail for which the property was acquired does not fall neatly within any of the regulations that would make it clear that such use would not trigger Section 4(f) or 49 U.S.C. § 303 analyses. There are very credible arguments as to why such use would not trigger Section 4(f) considerations; however, there are actions which the County Council can take as described above which will strengthen the argument that the entire right-of-way, by virtue of the temporary public park or recreation use, does not become a significant public park or recreation area triggering the requirements of Section 4(f).



Montgomery County Government

AUG 13 1993

Sheldon A. Kinbar, Regional Administrator
Federal Transit Administration
1760 Market Street, Suite 500
Philadelphia, PA 19103

Dear Mr. Kinbar:

I am seeking an FTA preliminary administrative determination of whether federal law and regulations, including 49 USC 303(c), known as Section 4(f), and accompanying regulations dealing with the potential impact of federally assisted transportation projects on park and recreation areas, would apply under specific conditions described herein. This request is being addressed to you as a follow-up to my staff's contact with Mr. Al Lebeau of your staff and Mr. Joe Ossi of the Washington office of FTA. A response to this inquiry by September 20, 1993 would be appreciated.

The proposed project for which future Federal assistance would be sought is a light-rail facility between Bethesda and Silver Spring, Maryland, on land purchased by Montgomery County for this purpose under the National Rails to Trails Act. This right-of-way, known as the Georgetown Branch, was formerly owned by the CSX Transportation Company and used for a railroad line. The County purchased the Maryland portion of the right-of-way in 1988 pursuant to a Certificate of Interim Trail Use issued in accordance with 16 U.S.C. Section 1247(c).

Montgomery County's Adopted Master Plan calls for the section of the right-of-way between Silver Spring and Bethesda to be used for both a light-rail line and, to be built concurrently, a parallel hiker/biker trail. The section between Bethesda and the District of Columbia is planned only for a paved trail, which will be continuous with a trail now being constructed in D.C. by the National Park Service from the D.C. Line to Georgetown. The entire planned length of the trail from Silver Spring to Georgetown is referred to as the Capital Crescent Trail.

Funding for the light-rail line is proposed to be from state and federal sources, while the parallel trail between Silver Spring and Bethesda would be locally funded. We are currently in discussion with state officials regarding steps to be taken to qualify the transit project for future federal funding assistance. The section of trail from Bethesda to D.C. will be funded partially with Federal Surface Transportation Program "Enhancement" funds, administered through the Maryland Department of Transportation.

Office of the Director, Department of Transportation

101 Monroe Street, 10th Floor, Rockville, Maryland 20850-2589, 301/217-2170

Mr. Sheldon A. Kinbar

Page 2

Because the light rail/parallel trail project is not now included in the Maryland Department of Transportation's six-year construction program, trail advocates and local neighborhood groups have suggested that the County remove the existing (but no longer used) railroad track in the section between Silver Spring and Bethesda, and develop an interim trail in its place. Since construction of a light-rail line and a parallel permanent hiker/biker trail within the existing right-of-way would require closure and removal of an interim trail during the period of construction, we are concerned that such an interim trail might be considered to have "protected status" as a park or recreation facility or use under the meaning of section 4(f). We believe that a hiker/biker trail, whether interim or permanent, should be considered a transportation use rather than a recreation use. We are concerned that an interim trail could constitute an obstacle to future federal funding of the light-rail facility.

The attached January 26, 1993 memorandum from the County Attorney's Office to the President of the County Council, provides extensive background information on the project in question, and suggests how some of the issues relating to potential section 4(f) impact could be addressed. The Council has deferred further consideration of the interim trail proposal until the issue of potential 4(f) problems can be resolved.

Specifically, we request responses to the follow questions:

- 1) By itself and under current federal regulations, and under any circumstances, would the establishment of an interim unpaved trail along the centerline of the right-of-way planned for the future light-rail line and permanent trail, constitute a local, state, or nationally significant park or recreation facility (or use) such that section 4(f) would be invoked at the time a federal grant is requested for construction of the light-rail line?
- 2) Would the types of acknowledgements by the Montgomery County Council and the County Planning Board, if made as suggested under paragraphs 1, 2 and 3 on pages 5 and 6 of the afore-mentioned County Attorney memorandum, be sufficient to guarantee that an interim trail would not trigger a section 4(f) condition?
- 3) What other local actions, if any, must be taken to prevent the presence of an interim trail from being interpreted as a park or recreation use of local, state, or national significance under the provisions of section 4(f)?
- 4) Would the development of an interim trail surface in between the existing rails, as opposed to removal of the rails for development of an interim trail, make any difference in the interpretation of whether section 4(f) provisions would apply?

Mr. Sheldon A. Kinbar

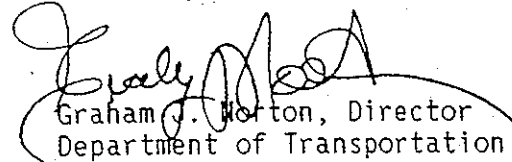
Page 3

5) Would a temporary trail be considered a transportation or recreation facility?

Please note in your analysis of these questions, that the County acquired the right-of-way for the express purpose of using it both for a light rail facility and a permanent hiker/biker trail. The permanent facilities are being and will be planned and designed concurrently.

The Montgomery County Council's Transportation and Environment Committee is scheduled to review this issue on October 4, 1993. I would appreciate a response to this request by September 20, 1993. If clarification of this request is needed, please contact me or Edward Daniel of my staff, at 301-217-2976.

Sincerely,


Graham J. Horton, Director
Department of Transportation

GJN:EAD:jp:6462Z

Attachment

cc: Donald Emerson, Office of Planning, FTA



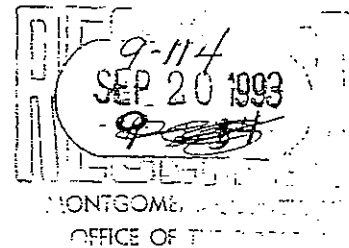
U.S. Department
of Transportation
Federal Transit
Administration

Region III
Delaware, District of
Columbia, Maryland,
Pennsylvania, Virginia,
West Virginia

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215-656-6900
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SEP 20 1993

Mr. Graham J. Norton
Director
Department of Transportation
Montgomery County Government
101 Monroe Street
10th Floor
Rockville, Maryland 20850



Re: Section 4(f) Determination

Dear Mr. Norton:

Your letter of August 13, 1993 requested a preliminary administrative determination as to whether a Section 4(f) determination would be required if Montgomery County undertakes a particular project in the future with DOT funding. You have provided a legal opinion on the subject and asked several specific questions.

As your attorney has indicated, the law is not clear on the questions you are asking. For this reason, it is difficult to give you unequivocal answers, particularly since both the law and the facts may change by the time you propose to construct a light rail project.

As we understand the situation, in 1988 the County, under the National Rail to Trails Act, purchased the Georgetown Branch Railroad right-of-way (ROW) from the former CSX Transportation Company for future use as a light rail corridor. Until funding is available for construction of the light rail line in the corridor, you would like to know if the existing track could be removed (or otherwise adapted) to permit the property to be used as a hiker/biker trail. You appear to be concerned that this proposed temporary use of the light rail portion of the ROW would foreclose its later use for light rail transportation through application of Section 4(f), 49 U.S.C. 303(c).

At the outset, it would seem that fears about possible classification of the trail as a "4(f) property" should not prevent you from using the right of way as intended under the "Certificate of Interim Trail Use" referred to in your attorney's opinion, especially since it is unknown when funding to construct the light rail portion of the project will be available. It

would be a shame not to allow temporary recreational use of the property in the (mistaken) belief that property which is classified as "4(f) property" is automatically precluded from being used in a transportation project or for transportation purposes since that is not the case.

There are some recommendations we might make to remove some foreseeable obstacles. One is that since Section 4(f) determinations must be coordinated with the Department of Interior's National Park Service, you would be advised to consult with the National Park Service prior to and during construction of a hiker/biker trail. This would assure a design that would be compatible with both the light rail and hiker/biker requirements. Such coordination could also avoid unnecessary expenditure of funds to correct any avoidable problems.

Other suggestions are made in the response below to your five specific questions:

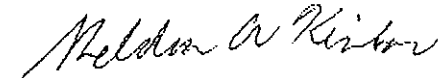
1. It is entirely possible that establishing an interim unpaved trail along the centerline of the right-of-way planned for the future light-rail line and permanent trail would trigger a Section 4(f) review. However, as stated above, being classified a "Section 4(f) property" does not preclude property from consideration for a possible light rail corridor.
2. The suggestions made by your attorney might obviate the need for a Section 4(f) determination. However, there can be no "guarantee" because the precise scope of the project has not been determined. A Section 4(f) determination will be made, if at all, at the time the project is proposed to be DOT funded.
3. The County may wish to consider passing a resolution prior to undertaking any development. The resolution would reiterate the purpose and plans for which the ROW was purchased, i.e.; transportation purposes. A public meeting on this resolution should indicate whether there is public support for the proposal. This action arguably continues the designation of the corridor as a transportation corridor on which recreational activity is permitted.
4. If the corridor has been clearly identified as a transportation corridor, developing an interim trail surface versus removing rails should have little impact on a Section 4(f) determination.

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5. A temporary trail being used on an interim basis in a transportation corridor should not alter the corridor's designation.

I trust you will find this information helpful. Alfred Lebeau is available to provide assistance on this issue if needed.

Sincerely,



Sheldon A. Kinbar
Regional Administrator

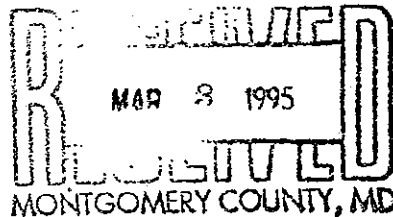


U.S. Department
of Transportation
Federal Transit
Administration

Region III
Delaware, District of
Columbia, Maryland,
Pennsylvania, Virginia,
West Virginia

1760 Market Street
Suite 500
Philadelphia, PA 19103-4124
215-656-6900
215-656-7260 (fax)
215-656-7269 (TDD)

County Attorney



FEB 22 1995

Mr. Graham J. Norton
Director
Department of Transportation
Montgomery County Government
101 Monroe Street
Rockville, Maryland 20850-2589

RECEIVED
DEPT. OF TRANSPORTATION

FEB 27 1995
2-109
MONTGOMERY COUNTY, MD.
OFFICE OF THE DIRECTOR

Dear Mr. Norton:


This letter responds to your recent letter to Samuel Zimmerman, Director Office of Planning, concerning "section 4(f)" of the U.S. DOT Act (which is the common name for 49 U.S.C. §303). You specifically asked whether the creation of an unpaved interim trail on the Georgetown Branch right-of-way would subject a future U.S. DOT-assisted transit project in the right-of-way to requirements of section 4(f) to which the project would not otherwise be subjected.

The policy of the Federal Transit Administration, borrowed from the Federal Highway Administration (FHWA) which has greater experience and a promulgated policy on similar matters, is that section 4(f) does not apply to land that has been temporarily used for recreational or park purposes if the State or local government with jurisdiction over the land officially indicated, prior to allowing the temporary park or recreational use, that the land was intended for a transportation use. Questions 14 and 16 of the enclosed FHWA policy guidance address analogous situations.

FTA believes that, at the present time, the intent of the Montgomery County Council to preserve the right-of-way in question for a transportation use has been adequately documented as suggested by the section 4(f) policy guidance. An official reiteration of that intent at the time the interim recreational use is approved would help to avoid any ambiguity or possible misunderstanding about a change in plans. Pre-existing parks and recreational facilities such as Rock Creek Park would, of course, retain their section 4(f) protections.

Thank you for the opportunity to elaborate on the requirements of the U.S. Department of Transportation relative to section 4(f) matters. Nancy Greene, Regional Counsel, is available to provide further assistance if necessary.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sheldon A. Kinbar".

Sheldon A. Kinbar
Regional Administrator

Enclosure

Resolution No.: 13-248
Introduced: July 11, 1995
Adopted: August 1, 1995

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: County Council

Subject: Emergency Appropriation and Amendment to the FY 96 Operating Budget
Montgomery County Government
Department of Transportation: General Fund
Divisions of Engineering Services and Mobility Services
Georgetown Branch Interim Trail between Silver Spring and Bethesda.
\$391,000

Background

1. Article 3, Section 307 of the Charter of Montgomery County, Maryland, provides that an emergency appropriation: (a) may be made at any time after public notice by news release to meet an unforeseen disaster or other emergency; (b) must specify the revenues to finance it; and (c) must be approved by no fewer than six members of the Council.
2. The Georgetown Branch Master Plan Amendment (1989), Silver Spring CBD Sector Plan (1993), and Bethesda CBD Sector Plan (1994) provide for a planned transit facility and permanent trail in the Georgetown Branch right-of-way between Silver Spring and Bethesda.
3. The Maryland Mass Transit Administration has initiated a Major Investment Study and Draft Environmental Impact Analysis for a transit/trail project in this corridor, utilizing a planning process that could qualify the project for federal assistance in the future.
4. The Council desires to implement an interim trail in this corridor in a way that does not jeopardize ultimate use of the right of way as noted in Council resolution 12-1751 adopted July 18, 1994.
5. The Federal Transit Administration has advised the County of measures that can be taken to avoid any ambiguity regarding the County's intent to preserve the right-of-way for transportation purposes consistent with the County's master plan.

Emergency Appropriation, Georgetown Branch Interim Trail
Page 2

6. The Transportation and Environment Committee of the Council recommends an emergency appropriation and a budget amendment to the FY 96 Operating Budget in the amount of \$391,000 for the removal of the railroad tracks between Woodmont Avenue in Bethesda and beyond Stewart Avenue in Silver Spring, excluding the Rock Creek trestle, and for installation of an interim trail of crushed stone on the Georgetown Branch right-of-way continuously between Elm Street Park and Jones Mill Road in Bethesda and between a point about one-quarter mile east of the Rock Creek trestle bridge (east of the intersection of Grubb Road and Terrace Drive) and Kansas Avenue in Silver Spring. The source of funds will be the General Fund reserve.
7. Notice of a public hearing was given and public hearing was held.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

1. The FY 96 Operating Budget of the Montgomery County Government, Department of Transportation, is amended and an emergency appropriation is approved as follows for: the removal of the railroad tracks between Woodmont Avenue in Bethesda and beyond Stewart Avenue in Silver Spring, excluding the Rock Creek trestle, and the installation of an interim trail of crushed stone on the Georgetown Branch right-of-way continuously between Elm Street Park and Jones Mill Road in Bethesda and between a point about one-quarter mile east of the Rock Creek trestle bridge (east of the intersection of Grubb Road and Terrace Drive) and Kansas Avenue in Silver Spring. The source of funds is the General Fund reserve.

	<u>Personnel</u> <u>Cost</u>	<u>Operating</u> <u>Expense</u>	<u>Capital</u> <u>Outlay</u>	<u>Total</u>
Montgomery County Government				
Department of Transportation				
Division of Engineering Services				
Index Code 504002008	\$86,320	\$284,680	0	\$371,000
Division of Mobility Services				
Index Code 505003031	2,000	18,000	0	20,000
TOTAL	\$88,320	\$302,680	\$0	\$391,000

2. The Council reiterates that the purpose and plans for which the Georgetown Branch right-of-way was purchased was for transportation purposes (including both transit and trail), and that the section between Bethesda and Silver Spring remains designated as a transportation corridor in which an interim trail is permitted until the master planned transit and trail facility is approved and funded consistent with the master plan.

Emergency Appropriation, Georgetown Branch Interim Trail
Page 3

3. The interim trail is considered to be primarily for transportation purposes, including access to the MetroRail system, to the Bethesda and Silver Spring employment centers, and to the Capital Crescent Trail leading into Washington, D.C. Recreational use of the interim trail is considered to be secondary to its transportation function. It is not intended hereby to diminish the joint development of this property for ultimate transportation and recreational use.
4. The interim trail shall be maintained and administered by the County Department of Transportation consistent with its normal applicable maintenance standards.
5. It remains County policy that at such time as funds are available to locate a transit facility in the corridor between Bethesda and Silver Spring, a permanent paved trail is to be incorporated in the design of that facility.

This is a correct copy of Council action.

Mary A. Edgar

Mary A. Edgar CMC

Acting Secretary of the Council

Resolution No.: 13-643
Introduced: July 23, 1996
Adopted: July 30, 1996

RECEIVED DEPARTMENT OF
PUBLIC WORKS & TRANSPORTATION

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

AUG 7 1996

DIRECTOR'S OFFICE

By: County Council

Subject: Emergency Appropriation (2-E97-OGF-1) and amendment to the FY 97 Operating Budget
Montgomery County Government
Department of Public Works and Transportation: General Fund
Division of Engineering Services
Georgetown Branch Interim Trail between Silver Spring and Bethesda
\$172,000

Background

1. Article 3, Section 307 of the Charter of Montgomery County, Maryland, provides that an emergency appropriation: (a) may be made at any time after public notice by news release to meet an unforeseen disaster or other emergency; (b) must specify the revenues to finance it; and (c) must be approved by no fewer than six members of the Council.
2. The Georgetown Branch Master Plan Amendment (1989), Silver Spring CBD Sector Plan (1993), and Bethesda CBD Sector Plan (1994) provide for a planned transit facility and permanent trail in the Georgetown Branch right-of-way between Silver Spring and Bethesda.
3. The Maryland Mass Transit Administration has initiated a Major Investment Study and Draft Environmental Impact Analysis for a transit/trail project in this corridor, utilizing a planning process that could qualify the project for federal assistance in the future.
4. The Council desires to implement an interim trail in this corridor in a way that does not jeopardize ultimate use of the right of way as noted in Council resolution 12-1751 adopted July 18, 1994.
5. The Federal Transit Administration has advised the County of measures that can be taken to avoid any ambiguity regarding the County's intent to preserve the right-of-way for transportation purposes consistent with the County's master plan.

- RESOLUTION NO. 15-010
6. The Council approved an emergency appropriation and a budget amendment to the FY 96 Operating Budget in the amount of \$391,000 for the removal of the railroad tracks between Woodmont Avenue in Bethesda and beyond Stewart Avenue in Silver Spring, excluding the Rock Creek trestle, and for installation of an interim trail of crushed stone on the Georgetown Branch right-of-way continuously between Elm Street Park and Jones Mill Road in Bethesda and between a point about one-quarter mile east of the Rock Creek trestle bridge (east of the intersection of Grubb Road and Terrace Drive) and Kansas Avenue in Silver Spring. The source of funds was the General Fund reserve.
 7. The Department of Public Works and Transportation estimates that an additional \$72,000 will be required for right-of-way easements at the east and west ends of the interim trail: \$54,000 for the ramp to Elm Street Park in Bethesda across two separately owned properties that lie outside of the County-owned railroad easement; and \$18,000 for an easement across an industrial parking lot needed to assure trail continuity from Stewart Avenue to Kansas Avenue in the Lyttonsville area of Silver Spring.
 8. The Columbia Country Club has indicated that it intends to file suit in an effort to enjoin the County from constructing this interim trail on the right-of-way that bisects the Club's property claiming that the County has no interest in the portions of the Georgetown Branch right-of-way bisecting the Club's property and therefore has no right to use it for the interim trail. The Club also has concerns that the design of the interim trail raises safety and security issues with respect to trail users, golf course users, Club employees and Club property, and therefore desires that certain safety and security features be incorporated in the project: security fencing along the interim trail as it bisects the Club, two golf cart tunnels going under the interim trail, a relocated golf cart path, and shrubbery to provide visual screening. The cost of these additional improvements is approximately \$277,315.
 9. The County has signed an agreement with Columbia Country Club by which the County has agreed to provide \$100,000 towards the cost of the additional improvements, plus an amount equal to the amount of credit determined by a change order for the construction of the trail, deleting from the contract the fencing on the portion of the right-of-way bisecting the Club property. In return, the Club has agreed to forego any action to enjoin the construction and use of the interim trail. The agreement is dependent upon the County Council approving this \$100,000 appropriation by August 15, 1996; if the Council does not appropriate the \$100,000 amount, the agreement is terminated.
 10. Notice of a public hearing was given and public hearing was held.

Action


The County Council for Montgomery County, Maryland approves the following resolution:

1. The FY 97 Operating Budget of the Montgomery County Government, Department of Public Works and Transportation, is amended and an emergency appropriation is approved as follows: \$100,000 towards the cost of constructing additional improvements on the section of the Georgetown Branch interim trail which bisects the Columbia Country Club, and \$72,000 for the acquisition of right-of-way easements to connect the interim trail to Elm Street Park in Bethesda and to Kansas Avenue in Silver Spring. The source of funds is the General Fund reserve.

	Operating Expense	Capital Outlay	Total
Montgomery County Government			
Department of Public Works and Transportation			
Division of Engineering Services			
Index Code 504002008	\$100,000	\$0	\$100,000
Index Code 504005001	\$0	\$72,000	\$72,000
Total	\$100,000	\$72,000	\$172,000

2. The Council reiterates that the purpose and plans for which the Georgetown Branch right-of-way was purchased was for transportation purposes (including both transit and trail), and that the section between Bethesda and Silver Spring remains designated as a transportation corridor in which an interim trail is permitted until the master planned transit and trail facility is approved and funded consistent with the master plan.
3. The interim trail is considered to be primarily for transportation purposes, including access to the Metrorail system, to the Bethesda and Silver Spring employment centers, and to the Capital Crescent Trail leading into Washington, D.C. Recreational use of the interim trail is considered to be secondary to its transportation function. It is not intended hereby to diminish the joint development of this property for ultimate transportation and recreational use.
4. The interim trail shall be maintained and administered by the County Department of Public Works and Transportation consistent with its normal applicable maintenance standards.
5. It remains County policy that at such time as funds are available to locate a transit facility in the corridor between Bethesda and Silver Spring, a permanent paved trail is to be incorporated in the design of that facility.

This is a correct copy of Council action.


 Elda Dodson
 Acting Secretary of the Council

Ed Daniel

Resolution No: 13-1159
Introduced: January 15, 1998
Adopted: February 10, 1998

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: County Council

SUBJECT: Supplemental Appropriation #15-S98-OGF-5
Amendment to the FY98 Operating Budget
Montgomery County Government
Department of Public Works and Transportation
Georgetown Branch Interim Trail Extension Through Bethesda Tunnel, \$410,000

Background

- Article 3, Section 307, of the Charter of Montgomery County, Maryland, provides that: (a) a supplemental appropriation may be adopted by the County Council for any purpose on or after January 1 of any fiscal year upon the recommendation of the County Executive; (b) the County Executive must specify the source of funds to finance the supplemental appropriation; and (c) a public hearing must be held after at least one week's notice to the public.
- The Department of Public Works and Transportation has requested the following increase in their FY98 Operating Budget to extend the Georgetown Branch Interim Trail:

<u>Personnel</u>	<u>Operating Expenses</u>	<u>Capital Outlay</u>	<u>Total</u>	<u>Source of Funds</u>
\$5,000	\$405,000	\$0	\$410,000	General Fund Reserve

- The Georgetown Branch Master Plan Amendment (1989), the Silver Spring CBD Sector Plan (1993), and the Bethesda CBD Sector Plan (1994) provide for a planned transit facility and permanent trail in the Georgetown Branch right-of-way between Silver Spring and Bethesda.
- The Federal Transit Administration has advised the County of measures that can be taken to permit interim use of the right-of-way while avoiding ambiguity regarding the County's intent to preserve the right-of-way for transportation purposes consistent with the County's master plan.
- The Council previously appropriated funds for initial construction of segments of an interim trail between Elm Street Park in Bethesda and Stewart Avenue in Silver Spring, including jointly funded trail fencing and grade separations on the right-of-way through Columbia Country Club.

6. The Council desires to now implement an extension of the interim trail in this corridor, between Woodmont Avenue and Elm Street Park, in a way that does not jeopardize ultimate use of the right-of-way as noted in Council's resolutions 12-1751 adopted July 18, 1994 and 13-643 adopted July 30, 1996.
7. Notice of public hearing was given and a public hearing was held.

Action

The County Council for Montgomery County, Maryland, approved the following action:

The FY98 Operating Budget of the Department of Public Works and Transportation is amended and a supplemental appropriation is approved as follows:

<u>Personnel</u>	<u>Operating Expenses</u>	<u>Capital Outlay</u>	<u>Total</u>	<u>Source of Funds</u>
\$5,000	\$405,000	\$0	\$410,000	General Fund Reserve

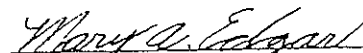
1. The FY98 Operating Budget of the Montgomery County Government, Department of Public Works and Transportation, is amended and a supplemental appropriation is approved to connect the Georgetown Branch Interim Trail between Woodmont Avenue and Elm Street Park. This action will expand the trail through a tunnel beneath the Bethesda Air Rights and Apex buildings in downtown Bethesda for a total cost of \$330,000. These funds are necessary to design and construct the expansion, including the installation of fencing, security lighting, and safety modifications to the Woodmont/Bethesda Avenue intersection. The remaining \$80,000 will purchase an easement required for the existing segment of the trail to access Elm Street Park. Appropriation of those funds was originally made through the FY97 Operating Budget, but could not be spent as an agreement with the property owner was not reached before the funds lapsed.
2. The Council reiterates that the purpose and plans for which the Georgetown Branch right-of-way was purchased was for transportation purposes (including both transit and trail), and that the section between Bethesda and Silver Spring remains designated as a transportation corridor in which an interim trail is permitted until the master planned transit and trail facility is approved and funded consistent with the master plan.
3. The interim trail is considered to be primarily for transportation purposes, including access to the Metrorail system, to the Bethesda and Silver Spring employment centers, and to the Capital Crescent trail leading into Washington D.C. Recreational use of the interim trail is considered to be secondary to its transportation function. It is not intended hereby to diminish the joint development of this property for ultimate transportation and recreational use.

Supplemental Appropriation #15-S98-OGF-5

Page 3

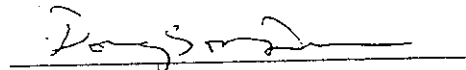
4. The interim trail shall be maintained and administered by the County Department of Public Works and Transportation consistent with its normal maintenance standards.
5. It remains County policy that at such time as funds are available to locate a transit facility in the corridor between Bethesda and Silver Spring, a permanent paved trail is to be incorporated in the design of that facility.

This is a correct copy of Council action.



Mary A. Edgar, CMC
Secretary of the Council

APPROVED:



Douglas M. Duncan
County Executive



*Maryland Department of Planning
Maryland Historical Trust*

*Martin O'Malley
Governor*

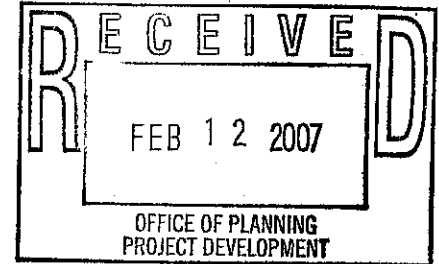
*Anthony G. Brown
Lt. Governor*

*Richard Eberhart Hall
Secretary*

*Matthew J. Power
Deputy Secretary*

February 6, 2007

Dawn McCleary, Chief
Environmental Documentation
Maryland Transit Administration
6 Saint Paul Street
Baltimore, Maryland 21202-6806



Re: Purple Line / Former Bi-County Transitway
Cultural Resources Reconnaissance Study
Montgomery County and Prince George's County, Maryland

Dear Ms. McCleary:

Thank you for your submittal regarding the above-referenced project. The Maryland Historical Trust (Trust) has reviewed the following report: *Bi-County Transitway: Cultural Resources Reconnaissance Survey* (MTA 2005). This study presents the results of preliminary investigations conducted to identify historic properties within the Area of Potential Effect (APE) delineated for the project. We are writing to provide our comments in accordance with Section 106 of the National Historic Preservation Act of 1966, as amended, and the Maryland Historical Trust Act of 1985.

We would like to acknowledge the vast amount of research and field work conducted to compile the thorough reconnaissance of a large study area. We believe this work will greatly facilitate project planning and future intensive-level survey efforts.

Based on the information included in the report, we concur with the proposed survey treatment for historic properties, with the following exceptions noted below. The Trust reserves the right to request additional information if the intensive-level documentation does not provide adequate rationale to support a determination of eligibility.

- We concur with the survey treatments proposed for neighborhoods/community clusters/multiple resource groupings, but we have not had an opportunity to review proposed resource boundaries. We may require revisions if the resource boundaries are not appropriately delineated;
- We can not concur with the proposed treatment of parkland within the APE. In order to evaluate the property with the benefit of a historic context, we request that all parks be documented on regular DOE forms.
- If any properties of federal or state ownership are evaluated for listing in the National Register, the agency-owner must be involved in the evaluation process.

We look forward to further coordination with MTA and any other consulting parties to complete the Section 106 review of this project. If you have questions or require further information, please contact Beth Cole (for archeology) at 410-514-7631 or bcole@mdp.state.md.us or me (for historic built environment) at 410-514-7637 or ttamburrino@mdp.state.md.us.

Ms. Dawn McCleary
Purple Line / Former Bi-County Transitway
Page 2

Thank you for providing us this opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Tamburrino". The signature is fluid and cursive, with the first name "Tim" and last name "Tamburrino" clearly distinguishable.

Tim Tamburrino
Preservation Officer
Project Review and Compliance

TJT
200600486