

## SECTION 4(f) EVALUATION

This chapter addresses the requirements of Section 4(f) of the U.S. Department of Transportation Act of 1966. Section 4(f) applies to publicly owned parks, recreation areas, and wildlife and waterfowl refuges and publicly or privately owned significant historic properties. Section 4(f) requirements are set forth in 49 U.S.C. 303 as amended and 23 CFR 774.

Section 4(f) prohibits the U.S. Department of Transportation (USDOT) agencies from approving the use of any Section 4(f) land for a transportation project, except as follows:

- First, the USDOT agency can approve the use of Section 4(f) land by making a determination that (1) there is no prudent and feasible alternative that would avoid the use of the Section 4(f) resource, *and* (2) the project includes all possible planning to minimize harm to that property.
- Second, the USDOT agency can approve the use of Section 4(f) property by making a finding of *de minimis* impact for that property.

“Use” of a Section 4(f) resource occurs when land is permanently incorporated into a transportation facility, when there is temporary occupancy of land that impairs its protected attributes, or when the proximity impacts of the transportation facility are so severe that protected attributes are “substantially impaired.”

The U.S. Congress amended Section 4(f) when it enacted Public Law 109-59, the Safe, Accountable, Flexible, and Efficient Transportation Equity

Act: A Legacy for Users, enacted August 10, 2005 (SAFETEA-LU). Section 6009 of SAFETEA-LU added a new subsection to Section 4(f), which authorizes the Federal Highway Administration (FHWA) to approve a project that uses Section 4(f) lands, without analysis of avoidance alternatives, if it makes a finding that a use would have a *de minimis* impact upon the Section 4(f) resource. A finding of *de minimis* impact can be made if the FHWA, in consultation with the State Historic Preservation Officer (SHPO), has made a “no adverse effect” or a “no historic properties affected” determination for the resource under Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA). Therefore, Section 106 of the NHPA is relevant to the analysis of Section 4(f) impacts because it leads to the identification of the historic properties that are subject to Section 4(f) protection.

The Section 106 review process requires historic properties to be evaluated for eligibility and listing

### What does Section 4(f) require?

*If there is no prudent and feasible alternative that avoids 4(f) resources, the Federal Highway Administration (FHWA) must select the alternative that causes the least harm to 4(f) resources.*

*For the Provo Westside Connector, it was determined that any of the proposed build alternatives would cross a historic canal and irrigation system in the Project Area.*

*The FHWA is authorized to approve a de minimis impact on this resource if a build alternative is selected in the Record of Decision for this project.*

on the National Register of Historic Places (NRHP), based upon whether “the quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association,” and meet one or more of four established criteria for eligibility to be included in the NRHP.

## **4.1 PROJECT PURPOSE**

Joint lead agencies in preparing the Environmental Impact Statement (EIS) are the FHWA, the Utah Department of Transportation (UDOT), and the City of Provo, Utah. The joint lead agencies have proposed to improve roadway system linkage in southwest Provo between Provo Airport and the vicinity of the U.S. Interstate 15 (I-15)/University Avenue/1860 South Interchange (Proposed Project). The Project Area is located in southwest Provo. Southwest Provo is defined by three Provo neighborhoods (Provo Bay, Sunset, and Lakewood), which are generally located south of Center Street and west of I-15. The Provo Airport is located immediately west of the Project Area.

The purpose of the Proposed Project is to improve roadway system linkage in southwest Provo, between Provo Airport and the vicinity of the I-15/University Avenue/1860 South Interchange (the Interchange), in a manner that would:

- provide a connection to the existing arterial and freeway transportation network to support planned residential development and land use changes in southwest Provo;
- provide a more direct roadway link between Provo Airport and the vicinity of the Interchange to support planned improvements at the Provo Airport and related commercial and industrial development in the vicinity of the airport; and

- provide a more direct roadway link between the residential areas west of I-15 and the commercial center of Provo east of I-15, including the Provo Towne Centre Mall, to support the continued economic viability of the commercial center of Provo.

## **4.2 PROJECT ALTERNATIVES**

The Final Environmental Impact Statement (FEIS) evaluates the No-Build Alternative and three build alternatives. The 1860 South Alternative has been identified by the joint lead agencies as the Preferred Alternative.

### **4.2.1 No-Build Alternative**

The Federal regulations for completing an EIS require evaluation of a “no action” or No-Build Alternative, (40 C.F.R. § 1502.14) which in this case consists of not building the proposed transportation improvements.

### **4.2.2 Build Alternatives**

Build alternatives advanced for detailed analysis are illustrated in Figure 4-1. Under any of the build alternatives a five-lane arterial roadway between the Interchange and 3110 West Street in Provo would be constructed. Connections to 500 West Street, 1100 West Street, and Mike Jense Parkway would be included. All three of the build alternatives also include a paved trail system (adjacent to the road alignment) for pedestrians and bicyclists.

## **4.3 SECTION 4(f) IMPACT ANALYSIS AREA**

The Section 4(f) impact analysis area includes the right-of-way area necessary for each build alternative. The Area of Potential Effects (APE)

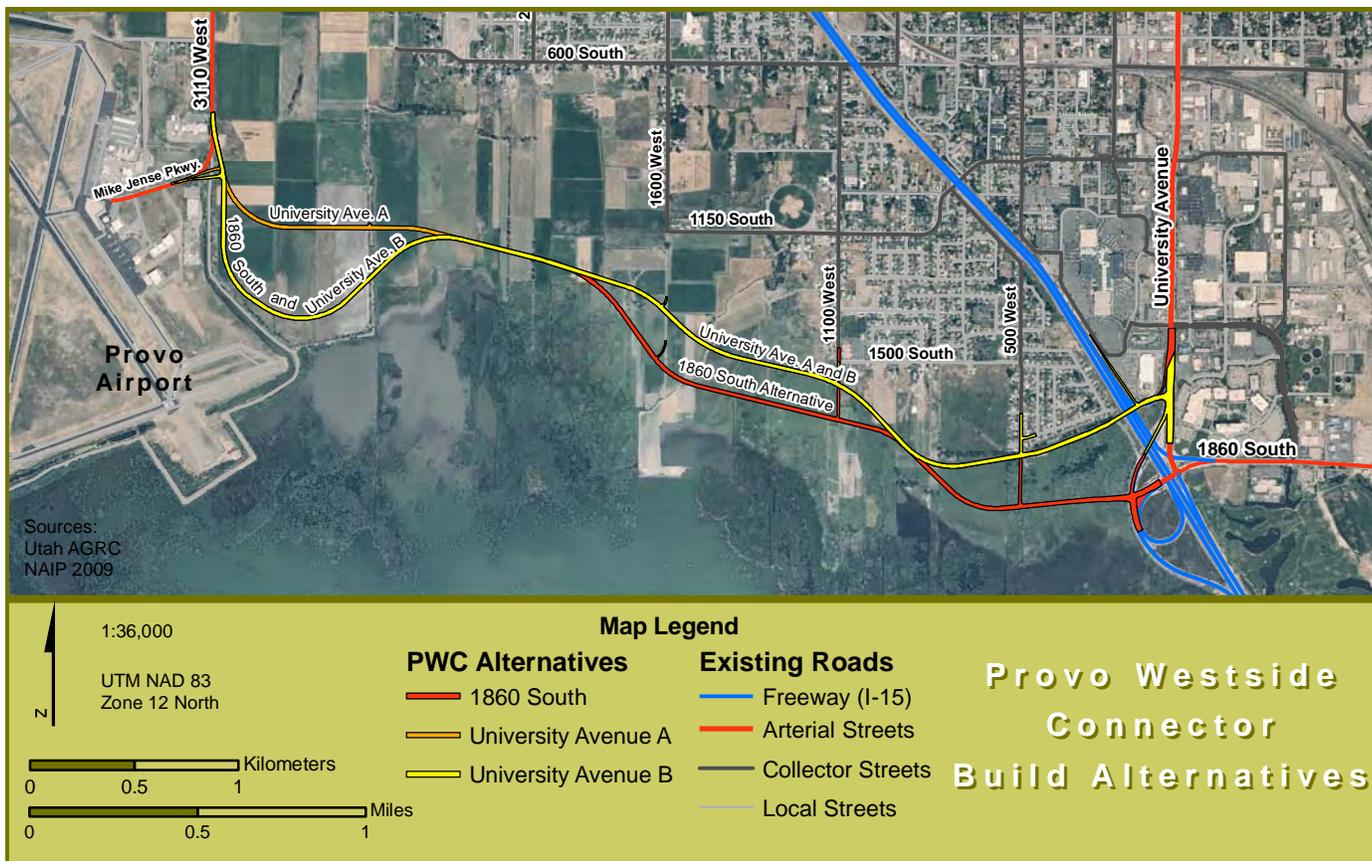


Figure 4-1. Project Area, build alternatives, and Section 4(f) analysis area.

inventoried for potential 4(f) resources was a 200-foot buffer area surrounding each of the proposed build alternative alignments (Figure 4-1).

## 4.4 SECTION 4(f) RESOURCES

### 4.4.1 Parks, Recreation Facilities, and Wildlife/Waterfowl Refuges

Because there are no parks, recreation facilities, or wildlife/waterfowl refuges within the APE, no use of such a property would occur as a result of the Proposed Project.

### 4.4.2 Historic Sites

To meet the Federal requirements of Section 106 and Section 4(f), a cultural resources survey was conducted to identify, inventory, and evaluate cultural resources for eligibility to the NRHP (see Chapter 3 Section 3.12). Section 4(f) resources identified in the APE are summarized in Table 4-1.

Section 4(f) does not apply to archeological sites where the FHWA, after consultation with the SHPO and the Advisory Council on Historic Preservation (ACHP), determines 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 or where the FHWA

**Table 4-1. Section 106 Finding of Effect and Section 4(f) use for identified Project Area historic sites.**

SITE	NAME	SECTION 106 FINDING OF EFFECT	PRESERVATION IN PLACE WARRANTED?	SECTION 4(f) USE
42UT111	Hinckley Mounds	No Historic Properties Affected	No	None
42UT1617	Historic Canal and Irrigation System	No Adverse Effect	Yes	<i>de minimis</i>
42UT1618	Prehistoric Artifact Scatter	Adverse Affect	No	None

decides (with agreement of the SHPO and, where applicable, the ACHP) not to recover the resource (23 CFR 771.135(g)(2)).

Of three historic resource sites identified in the APE, the only site identified as having a Section 4(f) use was site 42UT1617. This site consists of the historic irrigation system constructed through much of the wetlands and low-lying agricultural lands located south of Center Street and between the eastern shoreline of Utah Lake and the I-15 corridor. The system is extensive, consisting of eight large dirt canals (Figure 4-2 is an example), five concrete-lined ditches (Figure 4-3), and many smaller subsidiary or divergent ditches (Figure 4-4). Most of these canals run perpendicular to the alignments of the build alternatives. Construction of the irrigation system began during the 1850s, shortly after settlement of the area, to facilitate farming. The site is eligible for the NRHP under Criterion A for its association with settlement and agriculture.

Another site, 42UT1618, would be adversely affected under Section 106 by any of the three build alternatives; however, the site does not warrant preservation in place. Therefore, Section 4(f) does not apply and there is no Section 4(f) use of this site.

## 4.5 USE OF SECTION 4(f) PROPERTIES

The proposed road construction for any of the build alternatives would involve piping canal segments, installing culverts, and utilizing other methods to maintain the function of the historic canal and irrigation system. These activities would affect a relatively small portion of the overall site and would not substantially impact or alter the irrigation system as a whole or any of its character-defining features for which the overall site was determined eligible for the NRHP under Section 106.

Based upon FHWA’s determination of, and SHPO concurrence in, the finding of no adverse effect for site 42UT1617 under Section 106, FHWA has determined that there would be a *de minimis* impact on this site. There would be no 4(f) use of any other sites.

## 4.6 COORDINATION

As part of the effort to identify Section 4(f) resources in the impact analysis area, Section 106 consultation was carried out among UDOT, FHWA, Provo City, and several other agencies and individuals.



**Figure 4-2. Example of a large dirt canal in the Project Area.**

Among agencies consulted were the Utah SHPO, the Utah Geological Survey, and the U.S. Bureau of Land Management (Salt Lake Field Office). A concurrence request regarding the APE and the scope of identification efforts was completed on December 17, 2008. Copies of responses are included in Appendix C.

In addition, individuals associated with professional and community-based archaeological organizations were contacted for information about resources in the Project Area. These efforts were intended to help identify resources that are important to individual communities.

In accordance with Section 106 of the NHPA, on May 1, 2007, the FHWA sent letters to Native American tribes that might be interested in consulting on the Proposed Project. A copy of the letter is contained in Appendix B: Scoping Report. The recipients of the letter included the following tribes:

- Confederated Tribes of the Goshute Reservation
- Northwestern Band of the Shoshone Nation
- Eastern Shoshone Tribe of the Wind River Reservation



**Figure 4-3.** Example of a concrete-lined ditch in the Project Area.



**Figure 4-4. Example of a subsidiary ditch in the Project Area.**

- Shoshone-Bannock Tribes of the Fort Hall Reservation
- Skull Valley Band of the Goshute Indians
- Ute Indian Tribe of the Uintah and Ouray Reservation

A follow-up letter announcing availability of the DEIS was sent to Native American tribes in May 2010. An additional letter describing an adverse affect on cultural site 42UT1618 was sent in November 2010. One response, from the

Confederated Tribes of the Goshute Reservation, indicated agreement with the recommendations of effect and the approach to resolution of adverse effects.

## **4.7 CONCLUSION**

Based on the results of this Section 4(f) evaluation and required consultations, the FHWA is authorized to approve a *de minimis* 4(f) use if a build alternative is selected in the Record of Decision for this project.